

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF SOLVENCY REGULATION

Admission Requirements for Foreign and Alien Property and Casualty Insurers

General Eligibility Requirements

Proposed Amendments: N.J.A.C. 11:1-10.4

Authorized By: Kenneth E. Kobylowski, Acting Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17:32-1 et seq.

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

Proposal Number: PRN 2012-056.

Submit comments by June 1, 2012 to:

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The agency proposal follows:

Summary

N.J.A.C. 11:1-10, which governs the requirements for admission of a foreign or alien insurer to transact property/casualty business in this State, was originally adopted in 1989 and subsequently amended several times. N.J.A.C. 11:1-10.4(a)5 sets forth “seasoning” requirements that an applicant for a Certificate of Authority to transact property/casualty insurance must satisfy. The rule currently requires that an applicant be authorized by its state or country of domicile to engage in the kind(s) insurance business for which it seeks a Certificate of Authority, and has in fact been actively engaged in such lines of business for a period of at least five years prior to the date of application for the New Jersey Certificate of Authority. The rule also sets forth provisions for waivers from the five-year seasoning requirement in specified circumstances. The waivers generally apply where the insurer’s parent has been engaged in the business of insurance for the five-year period, the applicant provides a parental guarantee, or where the line(s) of business to be transacted are underserved in this State. The seasoning requirement is utilized as a means by which the applicant demonstrates that it has been successfully operating as an insurer in the line or lines of insurance which it seeks to transact in New Jersey, thereby helping to satisfy the Commissioner of Banking and Insurance (Commissioner) that the applicant’s condition or methods of operation are not such as would render its operation hazardous to the public or its policyholders in this State as required under N.J.S.A. 17:32-2.b.

After more than 20 years under the general seasoning requirements established under N.J.A.C. 11:1-10.4(a)5, the Department of Banking and Insurance (Department) has determined that it is appropriate to revise the requirements to eliminate any potential barrier to entry of otherwise qualified applicants to transact business in this State. A summary of the proposed amendments follows.

N.J.A.C. 11:1-10.4(a)5i is proposed to be amended to change the seasoning requirement from five years to three years. The Department believes that this timeframe will continue to enable the Commissioner to ascertain whether an applicant's operations would be hazardous or prejudicial to the policyholders of this State. Moreover, the current five-year timeframe exceeds the timeframe used in most other states, which utilize a three-year timeframe.

N.J.A.C. 11:1-10.4(a)5ii(1) is proposed to be amended to change the requirement that an applicant demonstrate that during any three of the last five years the applicant generated net income from operations to provide that such documentation must be provided with respect to either any two of the last three years or the most recent year. This reflects the change in the timeframe for the seasoning requirement set forth above.

Similarly, N.J.A.C. 11:1-10.4(a)5ii(2) is proposed to be amended to change the reference to the five-year seasoning timeframe to a three-year period.

N.J.A.C. 11:1-10.4(a)5iii, which provides for waivers of the seasoning requirement, is proposed to be amended to change the reference to the five-year seasoning requirement to the three-year seasoning requirement to reflect the proposed amendment set forth above. Similarly, references to five years are proposed to be changed to three years in N.J.A.C. 11:1-10.4(a)5iii(1), (2), and (3), to reflect the proposed change in the seasoning requirement timeframe.

The waiver set forth in N.J.A.C. 11:1-10.4(a)5iii(4), with respect to insurers with a non-insurance company parent in operation for at least three years, is proposed to be deleted as no longer necessary. Such an entity would meet the proposed new three-year seasoning requirement.

The references to the five-year period set forth in N.J.A.C. 11:1-10.4(a)5iii(5) and (6) (proposed to be codified as (a)5iii(4) and (5)) are proposed to be changed to read three years to

be consistent with the proposed amendments as set forth above. Also, N.J.A.C. 11:1-10.4(a)5iii(4) (recodified from (a)5iii(5)) is proposed to be amended to delete the reference to N.J.A.C. 11:1-10.4(a)5iii(4)(D), which is proposed to be deleted, and to add the following language from that deleted reference with respect to the factors that the Commissioner may consider is setting the surety bond amount to include, but not be limited to: “the volume to be written and the type of risk, and any other factors which the Commissioner, in his or her discretion, shall consider to be appropriate.”

Finally, the Department proposes to provide, at proposed new N.J.A.C. 11:1-10.4(a)5iii(6), a new basis upon which the Commissioner may waive the existing seasoning requirements, which is whether the Commissioner finds that admission of the applicant would assist the Commissioner in helping to prevent or ameliorate disruptions in the property/casualty insurance market. In making this determination, the Commissioner may consider relevant factors in support of such a finding, including excessive marketplace volatility, inadequate competition, trends in restrictions in underwriting guidelines or acceptance criteria, or limitations or restrictions in coverage by companies admitted to transact the relevant line(s) of insurance. The purpose of this proposed additional basis for issuing a waiver is to recognize that, while there may be circumstances where a line of insurance or a particular insurance market is not “under served,” which would provide grounds for waiving the seasoning requirement under N.J.A.C. 11:1-10.4(a)5iii(5), there may be circumstances where insurers are curtailing or limiting the amount of business that may be written, or limiting the coverage(s) that may otherwise have been provided. Under such circumstances, the Department believes that it is reasonable and appropriate to help ensure adequate competition among insurers writing such affected line or

lines of insurance to help ensure the continued availability of such coverage to the insurance buying public in this State.

The Department notes that applicants for admission will continue to be required to demonstrate that their operations are not hazardous to the public or policyholders of this State, that they meet the requisite capital and surplus requirements, and that they are currently operating in their state of domicile in good standing and are otherwise are not in a hazardous financial condition. The proposed amendments eliminate the potential for qualified applicants to be unnecessarily precluded from transacting insurance in this State and, thereby eliminate unnecessary constraints on competition and choice among consumers in this State.

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 have a positive social impact by eliminating unnecessary restrictions on the admission of otherwise qualified insurers to transact property/casualty business in this State as set forth in the Summary above. The resulting enhanced competition will make more property and casualty insurance products available to New Jersey consumers at more competitive process.

Economic Impact

The proposed amendments will not impose any costs on applicants seeking to transact property/casualty insurance in this State. Rather, as set forth in the Summary above, the

proposed amendments are intended to eliminate potential unnecessary restrictions on the entry into the New Jersey insurance market of foreign and alien insurers otherwise qualified to transact property/casualty business in this State. The proposed amendments will enhance competition for such insurance in this State by eliminating an unnecessary barrier to entry, while continuing effective regulatory requirements to ensure that applicants for admission to transact property/casualty business are qualified to do so pursuant to N.J.S.A. 17:32-1 et seq. and N.J.A.C. 11:1-10. The benefits to be achieved by the proposed amendments thus outweigh any costs. The professional services required to comply with the proposed amendments would be those required to comply with the current admission rules, that is, financial, actuarial and legal. The proposed amendments impose no new reporting or compliance requirements, and actually reduce existing compliance requirements as set forth in the Summary above. No new professional services should be required to comply with the proposed amendments. Applicants for a Certificate of Authority to transact property/casualty insurance are currently those entities transacting such insurance in their state or country of domicile, and therefore should have the requisite services on staff or have contracted for such services.

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 lost as a result of the proposed amendments. To the extent that the proposed amendments eliminate any unnecessary barriers to

entry of foreign or alien insurers to transact property/casualty business in this State, the entry of such entities in this State may result in increased jobs to the extent such entities locate business offices here or increase ancillary services related to the provision of insurance from such entities.

The Department invites commenters to submit any data or studies on the potential jobs impact of the proposed amendments together with their comments on any 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 do not impose any 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 set forth in the Summary above, the proposed amendments apply to entities that are not domiciled in this State seeking admission to transact property/casualty business in this State. Moreover, the proposed amendments reduce existing requirements related to seasoning. Accordingly, no new reporting, recordkeeping, or other compliance requirements are imposed by the proposed amendments.

Housing Affordability Impact Analysis

The proposed amendments will not have an impact on housing affordability in this State in that the proposed amendments relate to requirements for admission by foreign or alien insurers to transact property/casualty insurance in this State.

Smart Growth Development Impact Analysis

The proposed amendments will not have an impact on smart growth in this State and there is an extreme unlikelihood that the 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 in New Jersey in that the proposed amendments relate to requirements for admission by foreign and alien insurers to transact property/casualty business in the State.

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

11:1-10.4 General eligibility requirements

(a) In order for a foreign or alien company engaged in the business of property and casualty insurance to be admitted to transact the business of insurance in the State of New Jersey, the requirements in this section shall be satisfied in addition to any other requirements in this subchapter or any other provision of law.

1. – 4. (No change.)

5. The insurer shall satisfy the following seasoning requirements:

i. Subject to the provisions of this subchapter, no applicant shall be considered for a Certificate of Authority to transact the business of insurance in the State of New Jersey unless the Commissioner has been furnished with evidence that the applicant, under its

present control, has been authorized by its/their state(s), district(s), territory(ies), commonwealth(s), possession(s) or country(ies) of domicile, to engage in the kind(s) of insurance business for which the applicant seeks a Certificate of Authority, and has in fact been actively engaged in such business for a period of at least [five] **three** years prior to the date of the application for the New Jersey Certificate of Authority.

ii. An applicant insurer qualified under (a)5i above shall demonstrate that:

(1) During **either** any [three] **two** of the last [five] **three** years **or the most recent year**[, including therein either of the two most current years of business operations], it generated a net income from operations, after Federal taxes, as reported in the Underwriting and Investment Exhibit in the Annual Statement; and

(2) Surplus has not decreased due to operations over the [five] **three**-year period in question; and

iii. The Commissioner may, upon the request of an applicant, on a case-by-case basis, waive[, in the case of (a)5iii(1), (2), (3), (5) and (6) below, or reduce, in the case of (a)5iii(4) below,] the [five] **three**-year seasoning requirement required by (a)5i and ii above. In determining whether a reduction or waiver is appropriate in a particular case, the Commissioner shall consider whether the requirements of this section have been satisfied, and, in addition, whether any one of the applicable requirements provided in (a)5iii(1) through (6) below have been satisfied. These requirements include:

(1) Whether the applicant is a wholly-owned subsidiary of an insurer which has been authorized to transact the business of insurance in the State of New Jersey for at least [five] **three** years. The Commissioner shall be satisfied as to the financial

condition and methods of operation of the authorized insurer who shall effectively guaranty, by a resolution passed by its board of directors, the minimum capital and surplus requirements required by statute of the applicant during the first [five] **three** years of its operation in this State; or

(2) Whether the applicant is a wholly-owned subsidiary of an insurer which has been authorized to transact the business of insurance in the State of New Jersey for at least one year, and secured admission into New Jersey by having been in operation for at least [five] **three** years pursuant to (a)5i and ii above. The Commissioner shall be satisfied as to the financial condition and methods of operation of the authorized insurer, which shall effectively guaranty, by a resolution passed by its board of directors, the minimum capital and surplus requirements required by statute of the applicant during the first [five] **three** years of its operation in this State. The insurer parent shall also be required to have one of the top three ratings, or, in the case of Dun and Bradstreet, an evaluation acceptable to the Department, from at least two of the following: Standard and Poor's; Dun and Bradstreet; Moody's and A.M. Best; or

(3) Whether the applicant is the continuing corporation resulting from a merger or consolidation of insurers, at least one of which has been authorized in its state or country of domicile to transact the kind(s) of insurance business for which the applicant seeks a New Jersey Certificate of Authority and has been actively engaged in such insurance business for at least [five] **three** years and is currently in good standing; or

[(4) Whether the applicant, being an insurance company with a non-insurance company parent, has completed three full years of operation, and, subsequent to its first two years of operation, has available a filed examination report conducted by its state of

domicile, which report is in accordance with the New Jersey Department of Banking and Insurance standards for examinations. The first two full years of operations covered by the examination report shall be sufficient to make the report useful and meaningful to the Department. The applicant shall also be required to have experienced profitable operations in two of the three years, including the most current year of business. Additionally, the applicant shall obtain or satisfy all of the following:

(A) A financial guaranty from its ultimate parent that the applicant will meet the minimum required capital and surplus requirements on a quarterly basis, for a period of five years from the date of admission;

(B) The ultimate parent must be a United States corporation actively engaged in business for a period of not less than five years prior to the date of application for the New Jersey Certificate of Authority;

(C) The ultimate parent shall have one of the top two ratings, or, in the case of Dun and Bradstreet, an evaluation acceptable to the Department, from at least two of the following for at least three years prior to application and shall maintain said rating for at least three years after admission: Standard and Poor's; Dun and Bradstreet; and Moody's. The Commissioner may initiate proceedings to revoke authorization for non-compliance with this requirement; and

(D) The ultimate parent shall have a net worth of at least \$25,000,000, which amount shall be set by the Commissioner upon his or her consideration of the general financial condition of the parent and relevant underwriting factors such as, but not limited to, the volume to be written and the type of risk, and any other factors which the Commissioner, in his or her discretion, shall consider to be appropriate; or]

[(5)] (4) Whether the applicant obtains a surety bond or bonds issued by an insurance company or insurance companies approved by the Commissioner and authorized in the State of New Jersey, in an amount to be determined by the Commissioner, with a minimum requirement of \$5,000,000 and issued for a period of time as shall be determined by the Commissioner, but which shall not exceed [five] **three** years. The Commissioner shall exercise his or her discretion in setting an amount for a surety bond upon consideration of [the] factors [noted in (a)5iii(4)(D) above] **such as, but not limited to, the volume to be written and the type of risk, and any other factors which the Commissioner, in his or her discretion, shall consider to be appropriate.** This bond shall be prepared in such a way as to meet the requirements of the Department concerning the protection of New Jersey policyholders, claimants and creditors of the applicant insurance company; or

[(6)] (5) Whether the applicant demonstrates to the Commissioner that a line or lines of insurance in this State for which the applicant is seeking authority is underserved in this State at the time the request for waiver is made. For purposes of this provision “line of insurance” shall be construed to mean a sub-line of business or category of business within the line, and shall not be construed to mean an entire line of business. Any applicant seeking a waiver of the [five] **three**-year seasoning requirement set forth in (a)5i and ii above pursuant to this provision shall submit a written request for such waiver which shall include the following:

(A) – (B) (No change.)

(C) A certification that the applicant acknowledges that if the request is granted and the applicant is admitted to transact business under such waiver, the applicant’s authority to transact business shall be limited only to the type of coverage involved in

the request, and that the applicant may not write any other business so long as it does not satisfy the seasoning requirements set forth (a)5i and ii above or any waiver therefrom set forth in (a)5iii(1) through (5) above. This shall not be construed to limit the ability of the applicant to request that the Commissioner remove the restriction upon a showing that it satisfies the seasoning requirements pursuant to (a)5i and ii above, or waiver therefrom set forth in (a)5iii(1) through (5) above, and that it is otherwise qualified to write such business pursuant to law, including, but not limited to, this subchapter[.]; **or**

(6) Whether the Commissioner finds that admission of the applicant would assist the Commissioner in helping to prevent or ameliorate disruptions in the property/casualty insurance market. In making this determination, the Commissioner may consider relevant factors in support of such a finding, including, but not limited to, the financial strength of the applicant as evidenced by such factors as its level of capitalization, RBC score, and whether the applicant is part of a holding company system the members of which have been successfully engaged in the business of insurance, excessive marketplace volatility, inadequate competition, trends in restrictions in underwriting guidelines or acceptance criteria, or limitations or restrictions in coverage by companies admitted to transact the relevant line(s) of insurance.

6. (No change.)

(b) (No change.)