

## INSURANCE

### (a)

#### DEPARTMENT OF BANKING AND INSURANCE OFFICE OF SOLVENCY REGULATION

##### Reciprocal Insurance Exchanges

##### Proposed Amendments: N.J.A.C. 11:1-28.3 and 28.6 and 11:19-1.2 and 1.3

Authorized By: Justin Zimmerman, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, 17:23-1 et seq., and 17:50-1 et seq.

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

Proposal Number: PRN 2025-127.

Submit written comments by November 14, 2025, to:

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The agency proposal follows:

#### Summary

The Department of Banking and Insurance (Department) proposes amendments at N.J.A.C. 11:1-28.3 and 28.6, which set forth filing requirements for the granting of a certificate of authority to transact property and casualty insurance, and to transact business as a reciprocal insurance exchange. The Department is also proposing amendments at N.J.A.C. 11:19-1.2 and 1.3, which set forth requirements for the filing of annual and quarterly financial statement data with the National Association of Insurance Commissioners (NAIC) and the Department. The amendments codify the Department's application of the rules: (1) regarding the relationship between the reciprocal insurance exchange and the attorney in fact; (2) that changes to the Power of Attorney (POA) are subject to review and approval by the Commissioner; and (3) that attorney in fact fees are subject to Statements of Statutory Accounting Principles (SSAP) No. 25 (Affiliates and Other Related Parties).

On December 20, 2022, the Department issued Bulletin No. 22-11 (Bulletin), the purpose of which was to remind reciprocal insurance exchanges authorized to transact insurance business in New Jersey of the laws and rules that they must comply with, including the relevant SSAPs, including SSAP No. 25. SSAP No. 25 is codified within the Accounting Practices and Procedures Manual (APPM) adopted by the NAIC. SSAP No. 25 provides guidance related to affiliated and related party transactions.

An appeal was made by the Department's issuance of the Bulletin to the Superior Court of New Jersey, Appellate Division (Appellate Division), arguing, *inter alia*, that SSAP No. 25 does not apply to the reciprocal insurance exchange's attorney in fact fees, and that the Bulletin constituted improper rulemaking. See *In Re 2022 Bulletin No. 22-11*, Docket No. A-1626-22 (App. Div. May 5, 2025) (slip op. at 15). Without reaching the substance of the Department's agency action but focusing instead on whether the Bulletin is a *de facto* rule, the Appellate Division reversed and remanded to the Department to comply with the rulemaking procedures of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. *Ibid.*

The Department proposes to amend rules regarding: (1) annual and quarterly statements; and (2) the formation of domestic property and casualty insurance corporations and reciprocal insurance exchanges. These amendments will conform with, and further reinforce, the requirements that reciprocal insurance exchanges comply with the APPM, including SSAP No. 25, N.J.S.A. 17:23-1, and N.J.A.C. 11:2-26.5. N.J.S.A. 17:23-1 and N.J.A.C. 11:2-26.5 already require insurers

(including reciprocal insurance exchanges) to prepare financial statements, in accordance with the APPM and ensure that transactions between related parties are fair and reasonable.

A reciprocal insurance exchange is an unincorporated organization comprised of members, known as subscribers. Pursuant to N.J.S.A. 17:50-1, subscribers are authorized by the Commissioner of the Department (Commissioner) to exchange reciprocal or interinsurance contracts with each other and share risks and costs. Pursuant to N.J.S.A. 17:50-2, the attorney in fact is duly authorized and acts for such subscribers. The attorney in fact is paid a fee by the reciprocal insurance exchange from the policy premiums paid by subscribers. SSAP No. 25 states that an attorney in fact of a reciprocal insurance exchange, or an affiliate of the attorney in fact, is a related party. SSAP No. 25 requires that payments between related parties, including an attorney in fact of a reciprocal insurance exchange, or any affiliate of the attorney in fact, be made on an arm's-length basis and be fair and reasonable. Pursuant to SSAP No. 25, fees to the attorney in fact are intended to pay for services rendered and not result in a transfer of excessive payments or profits from an insurer to a related party.

A POA provides authorization to the attorney in fact to effect or exchange such insurance contracts. Pursuant to a POA, subscribers of a reciprocal insurance exchange will make various authorizations, including authorizing a fee to be paid by the exchange from the policy premium to the attorney in fact for providing services to the reciprocal insurance exchange. The POA is a document that is reviewed and approved by the Commissioner pursuant to N.J.S.A. 17:50-10 and N.J.A.C. 11:1-28.6 and 28.8.

The POA takes effect and binds an applicant only after the insurance policy application is accepted and the applicant becomes a subscriber (and part) of the exchange. Consequently, the subscribers authorized by the Commissioner to exchange contracts are individually and collectively related parties with the attorney in fact. The attorney in fact's fees are collectively paid by the reciprocal insurance exchange from the premium revenue received and not paid by an individual subscriber. Consequently, the reciprocal insurance exchange must report the payment as premium revenue and attorney in fact fees as expenses, and not as pass-through expenses. Pass-through expenses would not be reported as part of the company's premium revenue, nor reflected in the company's expenses.

Amending the rules will conform to existing statutory and regulatory requirements and reinforce that the attorney in fact's fees are subject to SSAP No. 25. Consequently, the reciprocal insurance exchange must ensure that the attorney in fact's fees are made on an arm's-length basis and are fair and reasonable. These amendments will further protect insurance consumers and help ensure the solvency of the reciprocal insurance exchange.

To further memorialize the long-held position and requirements: (1) regarding the relationship between the reciprocal insurance exchange and attorney in fact; (2) that changes to the POA are subject to review and approval by the Commissioner; and (3) that attorney in fact fees are subject to SSAP No. 25, the Department is proposing amendments at N.J.A.C. 11:1-28.3 and 28.6 and 11:19-1.2 and 1.3. The Department is proposing to amend the definition of "attorney in fact" or "attorney" at N.J.A.C. 11:1-28.3 to add language that the attorney in fact is authorized to act on behalf of, and as a related party to, a reciprocal insurance exchange comprised of subscribers authorized by the Commissioner to exchange reciprocal or interinsurance contracts with each other and with individuals, partnerships, trustees, and corporations of other states, districts, provinces, and countries. As such, the subscribers authorized by the Commissioner to exchange contracts are individually and collectively related parties with the attorney.

The Department is proposing to amend N.J.A.C. 11:1-28.6 to add a subsection that clarifies any changes to information submitted pursuant to this section, including the POA, during or after the formation of a domestic property, and casualty insurance corporation or reciprocal insurance exchange, are subject to review and approval of the Commissioner.

Lastly, the Department is proposing to amend N.J.A.C. 11:19-1.3 to add a new subsection that conforms to N.J.S.A. 17:23-1, which states that the annual statement shall be prepared in accordance with the annual and quarterly statement instructions and the APPM adopted by the NAIC, and

all applicable provisions of law, including SSAP No. 25, pertaining to transactions involving services provided by related parties. The Department is also proposing to amend N.J.A.C. 11:19-1.2 to clarify the definitions of “APPM” and “SSAP” as they pertain to N.J.A.C. 11:19-1.3.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The Department anticipates that the proposed amendments will have a positive social impact because they conform to and clarify existing guidance relating to reciprocal insurance exchanges in that attorney in fact fees charged to a reciprocal insurance exchange and its subscribers must be fair and reasonable pursuant to SSAP No. 25 and that any changes to relevant documents, such as the POA, after formation, must be reviewed and approved by the Commissioner. These clarifying amendments will enhance the Department’s ability to protect consumers and ensure insurer solvency.

#### Economic Impact

The Department believes that the proposed amendments will have a positive or neutral economic impact. Reciprocal insurance exchanges domiciled in the State have already been subject to the requirement that the attorney in fact fees are charged to the reciprocal insurance exchanges, and their subscribers must comply with SSAP No. 25. The Department believes that codifying this existing requirement into the rulemaking, pursuant to the proposed amended rules, imposes no additional cost on them and will further protect consumers and help ensure the exchange’s solvency.

#### 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 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 notice of proposal.

#### Agriculture Industry Impact

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

#### Regulatory Flexibility Statement

The proposed amendments will not impose reporting, recordkeeping, and compliance requirements on “small businesses” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., which defines a “small business” as any business that is resident in this State that employs fewer than 100 full-time employees, is independently owned and operated, and is not dominant in its field. N.J.S.A. 52:14B-17. To the extent the proposed amendments will apply to small businesses, they will apply equally to all reciprocal insurance exchanges that are required to comply with these proposed amendments. The proposed amendments do not provide differentiation in compliance requirements specifically based on business size. Further, reciprocal insurance exchanges are already required to submit quarterly and annual financial statements, in accordance with the APPM. The proposed amendments would not require any new filings. It is unlikely that additional professional services would be necessary to comply with the proposed amendments.

#### Housing Affordability Impact Analysis

The proposed amendments will not have any impact on housing affordability in this State because they relate to reciprocal insurance exchanges and are unlikely to evoke a change in the average costs associated with housing.

#### Smart Growth Development Impact Analysis

There is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey because the proposed amendments relate to reciprocal insurance exchanges.

#### Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text of the proposal follows (additions indicated in boldface thus):**

## CHAPTER 1 ADMINISTRATION

### SUBCHAPTER 28. FORMATION OF A DOMESTIC PROPERTY AND CASUALTY INSURANCE CORPORATION (STOCK OR MUTUAL) OR RECIPROCAL INSURANCE EXCHANGE

#### 11:1-28.3 Definitions

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

... “Attorney in fact” or “attorney” means a person or corporation possessing the power of attorney to act on behalf of, **and as a related party to, the individual and collective subscribers authorized by the Commissioner, pursuant to N.J.S.A. 17:50-1, to exchange reciprocal or interinsurance contracts with each other and with individuals, partnerships, trustees, and corporations of other states, districts, provinces, and countries as part of a reciprocal insurance exchange pursuant to N.J.S.A. 17:50-2.**

...

#### 11:1-28.6 Additional information requirements

(a)-(b) (No change.)

(c) **Any changes to the information submitted pursuant to this section, during or after the formation, are subject to the review and approval of the Commissioner.**

## CHAPTER 19 FINANCIAL EXAMINATIONS MONITORING SYSTEM

### SUBCHAPTER 1. ANNUAL AND QUARTERLY FINANCIAL STATEMENT SUBMISSION REQUIREMENTS

#### 11:19-1.2 Definitions

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

**“APPM” means the NAIC Accounting Practices and Procedures Manual.**

... **“SSAP” means the Statement of Statutory Accounting Principles included in the APPM.**

#### 11:19-1.3 Annual and Quarterly Financial Statement Submission Requirements

(a)-(b) (No change.)

(c) **The annual and quarterly statements shall be prepared in accordance with the annual and quarterly statement instructions and the APPM adopted by the NAIC, including all SSAPs, and all applicable provisions of law.**