

(2) Surplus has not decreased over the five-year period in question except for dividends to policyholders, reserve strengthening and increases in the asset valuation reserve;

iii. The Commissioner may, upon request of an applicant, on a case by case basis, waive in the case of (a)5iii(1), (2) and (3) below, or reduce in the case of (a)5iii (4) below, the five-year seasoning requirements of (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 the requirements described in (a)5iii(1) through (4) below, if applicable, have been satisfied. These requirements relate, respectively, to the following circumstances:

(1) The applicant is a wholly-owned subsidiary of a life and health insurer which has been authorized to transact the business of insurance in this State for at least five years or is an affiliate of a life and health insurer which has the same ultimate parent and which has been authorized to transact the business of insurance in this State for at least five 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 in a form prescribed by the Commissioner and passed by its board of directors, the minimum capital and surplus requirements required by law of the applicant during the first 10 years of its operation in this State. In the case of an authorized affiliate with the same ultimate parent, the Commissioner may require that the guarantee be provided by the ultimate parent. The applicant shall also be required to demonstrate a sound plan of operation and that surplus has not decreased over the five-year period in question, or such shorter time as the applicant has been operating under current control, except as provided in (a)5ii(2) above.

(2) The applicant is a wholly-owned subsidiary of an insurer which has been authorized to transact the business of insurance in this State for at least one year, and secured admission into this State by having been in operation for at least five 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 in a form prescribed by the Commissioner and passed by its board of directors, the minimum capital and surplus requirements required by law of the applicant during the first 10 years of its operation in this State. The insurer parent shall also be required to have either an evaluation acceptable to the Department from Dun and Bradstreet, or one of the top two ratings from at least one of the following: Standard and

Poor's, Duff and Phelps, Moody's, A.M. Best or other nationally recognized rating agency.

(3) The applicant is the continuing corporation resulting from a merger or consolidation of insurers, at least one of which has been authorized in this State 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 years and is currently in good standing. The applicant shall also be required to demonstrate a sound plan of operation.

(4) The applicant, being an insurance company with a non-insurance company parent, has completed three full years of operation without a change in control, 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 Department standards for examinations. The first two full years of operation 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, and shall demonstrate a sound plan of operation. Additionally, the applicant shall obtain or satisfy all of the following:

(A) A financial guaranty from its ultimate parent, in a form prescribed by the Commissioner, that the applicant will maintain the minimum capital and surplus required by law for a period of 10 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 either an evaluation acceptable to the Department from Dun and Bradstreet or one of the top three ratings from at least two of the following for at least three years prior to application: Standard and Poor's, Duff and Phelps, and Moody's; and

(D) The ultimate parent shall have a net worth of at least \$25,000,000, excluding investments in insurance or insurance related subsidiaries, 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.

iv. The Commissioner may initiate proceedings to revoke authorization for non-compliance with the requirements set forth in (a)5iii above.

6. The applicant shall procure a New Jersey certificate of authority by establishing compliance with the applicable requirements of N.J.S.A. 17B:17-1 et seq. and 17B:23-1 et seq. relating to authorization of foreign and alien insurers to transact the business of life and health insurance in this State, and by successfully completing an admissions process which shall include a detailed review by the Commissioner of the business affairs and financial condition of the applicant as provided by this subchapter.

(b) An applicant shall submit a letter of intent consisting of the preliminary information set forth in N.J.A.C. 11:2-1.5 prior to making a formal application for admission.

Amended by R.2001 d.99, effective March 19, 2001.

See: 32 N.J.R. 4194(a), 33 N.J.R. 1004(a).

Rewrote (a)3; and in (a)4i, deleted "been identified as second or third priority and/or has" from opening sentence.

Amended by R.2003 d.209, effective May 19, 2003.

See: 35 N.J.R. 66(a), 35 N.J.R. 2182(a).

In (a)5ii, deleted (3); in (a)5iii, substituted "(a)5iii(4)" for "(a)5iii(1)" preceding "the case of"; in (a)5iii(4)(c), substituted "three" for "two" following "top".

11:2-1.5 Letter of intent

(a) Prior to the acceptance of a final application for a certificate of authority in this State, all foreign and alien insurers who desire to transact the business of life and health insurance in this State shall submit, as a preliminary application, a letter of intent, which shall include, where applicable, the information required in (a)1 through 7 below.

1. The name of the applicant;
2. The name of any person, as defined in this subchapter, or other entity, by whom the applicant is controlled;
3. The applicant's insurance holding company registration statements including the holding company systems chart for the most recent five years;
4. The kind(s) of insurance proposed to be written by the applicant in this State;
5. A certified copy of the applicant's most recent annual statement, prepared on the NAIC annual statement forms used by New Jersey domestic insurers;
6. A certified copy of the applicant's current certificate of authority from its place of domicile; and
7. The most recent report(s) from rating agencies, including, but not limited to, A.M. Best, Moody's, Standard and Poor's, Duff and Phelps, and Dun and Bradstreet.

Amended by R.2003 d.209, effective May 19, 2003.

See: 35 N.J.R. 66(a), 35 N.J.R. 2182(a).

In (a), introductory paragraph substituted "7" for "9"; deleted 4; recodified existing 5 through 7 as 4 through 6; added a new 7.

11:2-1.6 Final application

(a) After the submission of the letter of intent as required by N.J.A.C. 11:2-1.5, the applicant, upon notice from the Department, shall file the following items:

1. A copy of its charter as currently in force, certified by the lawful custodian of the original document;
2. A copy of its bylaws as currently in force, certified by a senior officer of the insurer;
3. Six copies of the current annual statement, including all supplemental exhibits;
4. One copy of the annual statement for each of the past two years, including all supplemental exhibits;
5. A certificate of valuation, certified by the insurance commissioner of the insurer's state or country of domicile;
6. A certificate of compliance certified by the insurance commissioner of the insurer's place of domicile;
7. A certified copy of a report of the most recent examination of the insurer's affairs by the Department or its equivalent, of the place in which the insurer is domiciled;
8. A document appointing the Commissioner as attorney for service of process;
9. An application for admission, on a form to be prescribed and provided by the Department, including the payment of a non-refundable application fee of \$5,000;
10. A copy of the applicant's quarterly financial statements for the current year, in the NAIC format, and for such other periods of time as shall be required by the Commissioner;
11. Where applicable, a certified copy of the filing made pursuant to the holding company act of the place of domicile, for the last fiscal period, supplemented as necessary to meet the requirements of N.J.S.A. 17:27A-3(a) and (b) and applicable Securities and Exchange Commission filing requirements;
12. A statement of ownership of the applicant which shall include all shareholders of record who control five percent or more of the outstanding shares of the applicant, directly or indirectly;
13. Any tender offer materials (advertisements, invitations, etc.), if any tender offer has been made by the insurer or its parent to acquire another company within the three years preceding;
14. Biographical affidavits, to be completed by all directors and senior officers on a form prescribed and provided by the Department;
15. A corporate plan of operation consisting of: