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APPENDIX A

SUBCHAPTER 1. ADMISSION REQUIREMENTS FOR FOREIGN AND ALIEN LIFE AND HEALTH INSURERS

11:2-1.1 Purpose

This subchapter establishes the procedures, requirements and standards which govern the application of foreign and alien insurers engaged in the business of life and health insurance for a certificate of authority to transact the business of insurance in this State.

11:2-1.2 Scope

This subchapter applies to all foreign and alien insurers that apply for a certificate of authority to transact the business of life and health insurance in this State. The filing requirements contained in this subchapter shall not apply to the continuation, renewal or timely reinstatement of existing certificates of authority except where the Commissioner, pursuant to law, shall otherwise require.

11:2-1.3 Definitions

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

"Commissioner" means the Commissioner of the Department of Banking and Insurance of this State.

"Committee on Admissions" means the advisory committee within the Department appointed by the Commissioner to aid in the review of applications for admission to transact the business of insurance in this State and to render to the Commissioner recommendations as to the disposition of such applications.

"Department" means the Department of Banking and Insurance of this State.

"IRIS" means the NAIC Insurance Regulatory Information System.

"NAIC" means National Association of Insurance Commissioners.

Amended by R.2001 d.6, effective January 2, 2001.
See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).
Amended "Commissioner" and "Department".

11:2-1.4 General eligibility requirements

(a) In order for a foreign or alien insurer to be admitted as a life and health insurer in this State, the requirements in this section shall be satisfied in addition to any other requirements in this subchapter or any other provision of law.

1. The applicant shall satisfy the Commissioner that its condition or methods of operation are not such as would render its operation hazardous to the public or its policyholders in this State. In determining whether a hazardous financial condition exists, the factors identified in N.J.A.C. 11:2-27.3 shall be considered. A hazardous financial condition shall exist when those factors indicate, either singly or in combination of two or more, that the financial condition of any applicant which has applied to transact, or is already transacting the business of insurance in any jurisdiction, is considered by the Commissioner to be hazardous to the policyholders, stockholders, claimants, creditors, or the general public. The Commissioner shall further consider any other fact or circumstance that indicates that an insurer's operations may be hazardous.

2. The applicant shall satisfy at least the minimum capital and surplus requirements of a similar domestic insurer of this State for all lines of insurance that it is authorized to write pursuant to the certificate of authority issued by its place of domicile, whether or not the applicant desires to transact any of those lines of insurance in this State, subject to the following:

i. In determining whether an applicant meets the minimum capital and surplus requirements, the following shall be deducted from unassigned funds:

(1) The statement value of any and all special deposits not held for the protection of all policyholders;

(2) Reserves and losses reinsured with companies not authorized in New Jersey, accredited as reinsurers in New Jersey, or otherwise in compliance with N.J.S.A. 17:51B-1 et seq., net of any offsets;

(3) The statement value for the portion of assets held in excess of investment limitations for life and health insurers pursuant to N.J.S.A. 17B:20-1 et seq.;

(4) Reserve shortfalls caused by the company holding reserves weaker than those mandated by N.J.S.A. 17B:19, or such other standards provided by administrative rule, actuarial guidelines, or determined necessary by actuarial analysis;

(5) The excess of the statement value over the market value of bonds held by the applicant; and

(6) Off balance sheet guarantees and contingent liabilities for which the company has not previously established a liability in an appropriate amount.

ii. Capital and surplus requirements may be reduced to the level required for the kinds of insurance actually being marketed if the applicant:

(1) Does not transact one or more of the kinds of insurance contained in the certificate of authority issued by its state or country of domicile; and

(2) Submits a resolution by its board of directors stating that it will refrain from transacting the kind(s) of insurance permitted by the certificate of authority issued by its state or country of domicile.

3. The applicant shall be deemed ineligible if any one of the following conditions exist:

i. An applicant which has received from the NAIC a "first priority" designation for the calendar year next preceding its application date shall not be considered for admission until such designation has been removed by the NAIC;

ii. An applicant which is a member of an insurance holding company system, where its parent or subsidiary has received from the NAIC a "first priority" designation, shall not be considered for admission until such designation has been removed by the NAIC; or

iii. An applicant which has total adjusted capital of less than its company action level risk-based capital or which has otherwise triggered a company action level event, as these terms are defined in N.J.A.C. 11:2-39, as of December 31 of the preceding calendar year, shall not be considered for admission until the applicant's status has improved.

4. The applicant shall be deemed to have its application deferred if any one of the following conditions exist:

i. An applicant which has been identified as "second or third priority" and/or has failed four or more IRIS tests shall have its application deferred until it has demonstrated to the Commissioner and its place of domicile that the IRIS test results are not indicative of a financial condition that may be hazardous to the policyholders, stockholders, claimants, creditors or the general public; or

ii. An applicant which has failed to file with the NAIC an annual statement for the prior year shall have its application deferred until it has filed with the NAIC such annual statement.

5. The applicant 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 this State unless the Commissioner has been furnished with evidence that the applicant has been authorized by its state or country 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, continuously and successfully engaged in such business, without a change in control, for a period of at least five years prior to the date of the application for the New Jersey certificate of authority.

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

(1) During any three of the last five years, including therein the two most recent years of business operations, it generated a net gain from operations, after Federal taxes, as reported in the annual statement;

(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; and

(3) It has received either an evaluation acceptable to the Department from Dun and Bradstreet or one of the top three ratings from one of the following:

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

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(1) 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 two 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.

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 9 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 name of any insurer(s) currently licensed, or applying for admission, in this State with whom the applicant is affiliated;
5. The kind(s) of insurance proposed to be written by the applicant in this State;
6. A certified copy of the applicant's most recent annual statement, prepared on the NAIC annual statement forms used by New Jersey domestic insurers;
7. A certified copy of the applicant's current certificate of authority from its place of domicile;
8. The results of the most recent NAIC IRIS tests and related communications concerning the applicant, which shall satisfy the requirements of N.J.A.C. 11:2-1.4(a)4i-ii; and
9. The risk-based capital report as of December 31 for the calendar year next preceding its application date, as filed with the insurance regulatory official of its state of domicile. If the state of domicile does not have a risk-based capital statute or regulation substantially similar to N.J.A.C. 11:2-39, the applicant shall submit a risk-based capital report prepared in accordance with N.J.A.C. 11:2-39.

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. Seven copies of the current annual statement, including all supplemental exhibits;
4. One copy of the annual statement for each of the past four years, including all supplemental exhibits;

5. An analysis of par/non-par profits and surplus;
6. A certificate of valuation, certified by the insurance commissioner of the insurer's state or country of domicile;
7. A certificate of compliance certified by the insurance commissioner of the insurer's place of domicile;
8. 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;
9. A document appointing the Commissioner as attorney for service of process;
10. 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 for an admissions application and \$2,500 for an application for an extension of authority;
11. 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;
12. 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;
13. 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;
14. A copy of any agreements by which the right to conduct or influence any of the affairs of the applicant is transferred to others;
15. Any employment or deferred compensation agreements in which any officer, director or shareholder who controls five percent or more of the outstanding shares of the applicant, directly or indirectly, participates;
16. 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;
17. Biographical affidavits, to be completed by all directors and senior officers on a form prescribed and provided by the Department;
18. A calculation of adjusted surplus as described in N.J.A.C. 11:2-1.4(a)2i and completed in accordance with the instructions and worksheets provided by the Department;