

11:2-26.14 Exemptions

(a) Insurers having direct premiums written in this State of less than \$1,000,000 in any calendar year and less than 1,000 policyholders or certificateholders of directly written policies nationwide at the end of such calendar year shall be exempt from this subchapter for such year (unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities) except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,000,000 or more will not be so exempt.

(b) Insurers filing audited financial reports in another state, pursuant to such other state's requirement of audited financial reports which have been found by the Commissioner to be substantially similar to the requirements herein, are exempt from compliance with this subchapter if:

1. A copy of the audited financial report, the report on any significant deficiencies in internal controls, and the accountant's letter of qualifications which are filed with such other state are filed with the Commissioner in accordance with the filing dates specified in N.J.A.C. 11:2-26.4, 26.11 and 26.12 respectively (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance); and

2. A copy of any notification of adverse financial condition report filed with such other state is filed with the Commissioner within the time specified in N.J.A.C. 11:2-26.10.

(c) Upon written application of any insurer, the Commissioner may grant an exemption from compliance with this subchapter if the Commissioner finds, upon review of the application, that compliance would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specific period or periods.

Amended by R.1993 d.68, effective February 1, 1993.
See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Rule on compliance dates repealed; rule on exemptions recodified from 26.13, with new subsection (a) added.

Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2-26.15 Alien insurers

(a) In the case of alien insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their domiciliary supervision authority duly audited by an independent chartered or similarly certified accountant.

(b) For such insurers, the letter required in N.J.A.C. 11:2-26.7 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the Commissioner pursuant to N.J.A.C. 11:2-26.4 and shall affirm that the opinion expressed is in conformity with such requirements.

Amended by R.1993 d.68, effective February 1, 1993.

See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Rule on reports prepared in accordance with generally accepted accounting principles repealed; rule on alien insurers recodified from 26.16.

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2-26.16 Confidentiality of documents

All documents submitted to the Commissioner pursuant to this subchapter are confidential and not public documents as defined in the Public Records Act, N.J.S.A. 47:1A-1 et seq.

Recodified by R.1993 d.68, effective February 1, 1993.

See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Rule on alien insurers recodified to 26.15; rule on confidentiality of documents recodified from 26.17.

11:2-26.17 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as provided by law.

Recodified by R.1993 d.68, effective February 1, 1993.

See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Rule on confidentiality of documents recodified to 26.16; rule on penalties recodified from 26.18.

11:2-26.18 Severability

If any section of this subchapter is held to be invalid, the remaining parts of this subchapter are not to be affected.

Recodified by R.1993 d.68, effective February 1, 1993.

See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Rule on penalties recodified to 26.17; rule on severability recodified from 26.19.

SUBCHAPTER 27. DETERMINATION OF INSURERS IN A HAZARDOUS FINANCIAL CONDITION

11:2-27.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the factors which the Commissioner shall consider in determining whether an insurer is in a hazardous financial condition as defined herein. A determination of hazardous financial condition provides one of the grounds upon which the Commissioner may seek an order from the Superior Court to rehabilitate, liquidate the business or conserve the assets within this State of domestic, foreign or alien insurers pursuant to N.J.S.A. 17:30C-1 et seq. and 17B:32-31 et seq., or upon which an insurer may become subject to administrative supervision pursuant to N.J.S.A. 17:51A-1 et seq., and provides one of the grounds upon which the Commissioner may take action to revoke or nonrenew an insurer's authority to transact insurance in this State, or withdraw the eligibility of an eligible surplus lines insurer to insure surplus lines risks in the State pursuant to law, including but not limited to, N.J.S.A. 17:32-2, 17B:23-2, and 17:22-6.46.

(b) This subchapter shall apply to all domestic, foreign and alien insurers and all other entities subject to N.J.S.A. 17:30C-1 et seq., 17B:32-31 et seq., or N.J.S.A. 17:51A-1 et seq.; and to all eligible surplus lines insurers.

Emergency Amendment, R.1993 d.447, effective August 16, 1993 (expired October 15, 1993).

See: 25 N.J.R. 4286(a).

Adopted Concurrent Proposal, R.1993 d.556, effective October 15, 1993.

See: 25 N.J.R. 4286(a), 25 N.J.R. 5182(a).

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2-27.2 Definitions

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

AVR means the asset valuation reserve calculated for the purpose of completing the NAIC annual statement in accordance with its instructions and the Accounting Practices and Procedures Manual.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the insurer as defined in N.J.S.A. 17:27A-1.

“Department” means the New Jersey Department of Banking and Insurance.

“Eligible surplus lines insurer” means an unauthorized insurer in which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22-6.40 et seq.

“Hazardous financial condition” means that, based on its present or reasonably anticipated financial condition, an insurer, although not yet financially impaired or insolvent, is unlikely to be able:

1. To meet obligations to policyholders, certificate holders and other insureds with respect to known claims and reasonably anticipated claims; or
2. To pay other obligations in the normal course of business.

“Insurer” means a person subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization, or conservation by, the Commissioner pursuant to N.J.S.A. 17:30C-1 et seq., 17B:32-31 et seq. or N.J.S.A. 17:51A-1 et seq., or by the equivalent insurance supervisory official of another state. “Insurer” includes all persons purporting to be engaged in the business of insurance as an insurer in this State and all persons in the process of organization to become insurers.

“Life and health insurer” means an insurer authorized or admitted pursuant to the provisions of Title 17B of the Revised Statutes to solely transact the business of life insurance, health insurance or annuities in this State as those terms are defined in N.J.S.A. 17B:17-3, 17B:17-4 and 17B:17-5, respectively.

“NAIC” means the National Association of Insurance Commissioners.

Emergency Amendment, R.1993 d.447, effective August 16, 1993 (expired October 15, 1993).

See: 25 N.J.R. 4286(a).

Adopted Concurrent Proposal, R.1993 d.556, effective October 15, 1993.

See: 25 N.J.R. 4286(a), 25 N.J.R. 5182(a).

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Amended by R.2001 d.6, effective January 2, 2001.

See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

11:2-27.3 Determination of hazardous financial condition; factors

(a) The Commissioner shall consider the following factors, either singly or in a combination of two or more, in determining whether an insurer is in a hazardous financial condition:

1. Adverse findings reported in financial condition and market conduct examination reports and/or failure to comply with recommendations contained therein;
2. Adverse findings from the NAIC Insurance Regulatory Information System and its related reports;
3. The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annualized premium and net investment income which could lead to an impairment of capital and surplus;
4. A finding that the insurer’s asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to assure the company’s ability to meet its outstanding obligations as they mature;
5. A finding that an assuming reinsurer is not able to meet the obligations being assumed or that the insurer’s reinsurance program does not provide sufficient protection for the company’s remaining surplus, after taking into account the insurer’s cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;
6. A finding that the insurer’s operating loss in the last 12 month period or any shorter period of time, including, but not limited to, net capital gain or loss, change in non-admitted assets and cash dividends paid to shareholders, is greater than 50 percent of such insurer’s remaining surplus as regards policyholders in excess of the minimum required;

7. A finding that any parent, affiliate, subsidiary or reinsurer is insolvent, or, in the opinion of the Commissioner, is threatened with insolvency or is delinquent in payment of its monetary or other obligations;

8. A finding that contingent liabilities, pledges or guarantees, either individually or collectively, involve a total amount which, in the opinion of the Commissioner, may affect the solvency of the insurer;

9. A finding that any person controlling an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;

10. The age and doubtful collectability of receivables;

11. A finding that the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, expertise and reputation deemed necessary by the Commissioner;

12. A finding that the management of an insurer has failed to respond to inquiries from the Commissioner regarding the condition of the insurer or has furnished false and misleading information concerning such inquiries;

13. A finding that the management of an insurer has filed any false or misleading financial statement, has released any false or misleading financial statement to lending institutions or to the general public, has made a false or misleading entry or has omitted an entry of a material amount in the books of the insurer;

14. A finding that, in the opinion of the Commissioner, the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

15. A finding that, in the opinion of the Commissioner, the company has experienced or will experience in the foreseeable future cash flow and/or liquidity problems;

16. A finding that the surplus as regards policyholders is not adequate in relation to the amount of the insurer's loss and loss adjustment expense reserve liabilities established;

17. A finding that a life insurer's surplus as regards policyholders plus AVR reserves is not adequate in relation to the amount of liabilities less AVR reserves less separate account liabilities;

18. A finding that the insurer does not possess the minimum capital and surplus (in the case of stock insurers) or net assets (in the case of mutual insurers) required by statute to be maintained or as otherwise required by the Commissioner pursuant to law;

19. A finding that the insurer has reinsurance reserve credits, recoverables or receivables due from insurance companies in receivership and such credits, recoverables

or receivables are greater than 25 percent of surplus or 15 percent of admitted assets;

20. A finding that a life and health insurer has taken a credit for reserves for business assumed from an insurance company in receivership under a modified co-insurance system or in any other manner in which the ceding insurer withholds assets, and such reserve credit is greater than 25 percent of surplus or 15 percent of admitted assets;

21. A finding that the insurer has issued subordinated premium or surplus debentures to finance its operations without the prior approval of the Commissioner for use as policyholder surplus;

22. A finding that the insurer has failed to maintain books and records sufficient to permit examiners to determine the financial condition of the insurer;

23. A finding that the insurer has moved the location of the books and records necessary to conduct an examination of such insurer without notifying the Department of such location;

24. A finding that the owners or management of an insurer have engaged in unlawful transactions;

25. A finding that the insurer has delegated the administration of an insurance function necessary to such insurer's survival directly or indirectly to a person without adequate controls and/or which creates a conflict of interest;

26. A finding that the insurer has a pattern of not settling valid claims within a reasonable time after due proofs of loss have been received by such insurer;

27. A finding that the insurer has been issued a final administrative or judicial order, initiated by an insurance regulatory agency of another state, with a finding that such insurer is insolvent or in a hazardous financial condition;

28. A finding that the insurer does not follow a policy on rating and underwriting standards appropriate to the risk; and

29. A finding of any other fact or circumstance that indicates that an insurer is in a hazardous financial condition.

(b) The Commissioner shall presume that the factor set forth in (a)4 above exists with respect to a domestic property and casualty insurer if the Commissioner finds the following:

1. The insurer has invested in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, in amounts which exceed the lesser of 10 percent of such insurer's assets or 50 percent of such insurer's surplus as regards policyholders, or that otherwise after such investments that the insurer's surplus as regards policyholders is not reasonable in relation to

the insurer's outstanding liabilities and adequate to its financial needs.

i. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:

(1) The total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

(2) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation; or

2. The insurer has invested any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer, and that each such subsidiary has not agreed to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed the investment limitations described in (b)1 above or in any other applicable provision of N.J.S.A. 17:24-1 et seq. The total investment of the insurer shall include any direct investment by the insurer in an asset, and the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such subsidiary.

(c) An insurer may rebut the presumption as set forth in (b) above pursuant to N.J.A.C. 11:2-27.4(b) by demonstrating to the Commissioner that after such investments the insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(d) In making a determination of an insurer's financial condition pursuant to this subchapter, the Commissioner may adjust assets and liabilities as necessary to accurately reflect the insurer's financial position in any manner including, but not limited to, the following:

1. Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding, or which has entered into an invalid reinsurance agreement;

2. Make appropriate adjustments to asset values in its investment portfolio or attributable to investments in or transactions with parents, subsidiaries, or affiliates;

3. Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; and

4. Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12 month period.

Emergency Amendment, R.1993 d.447, effective August 16, 1993 (expired October 15, 1993).

See: 25 N.J.R. 4286(a).

Adopted Concurrent Proposal, R.1993 d.556, effective October 15, 1993.

See: 25 N.J.R. 4286(a), 25 N.J.R. 5182(a).

Amended by R.1994 d.550, effective November 7, 1994.

See: 26 N.J.R. 3589(a), 26 N.J.R. 4407(a).

11:2-27.4 Determination of hazardous financial condition; corrective action

(a) If the Commissioner determines that the continued operation of an insurer may be hazardous to the policyholders or public in this State, the Commissioner may, upon such a determination, subject the insurer to administrative supervision pursuant to N.J.S.A. 17:51A-1 et seq. and may issue an order requiring the insurer to take such actions as the Commissioner deems necessary to abate such determination, including, but not limited to:

1. Reduce the total amount of present and potential liability for policy benefits by reinsurance;

2. Reduce, suspend or limit the volume of business being accepted or renewed;

3. Reduce general insurance and commission expenses by specified methods;

4. Increase the insurer's capital and surplus;

5. Suspend or limit the declaration and payment of dividends by an insurer to its stockholders or to its policyholders;

6. File reports in a form acceptable to the Commissioner concerning the market value of an insurer's assets;

7. Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Commissioner deems necessary;

8. Document the adequacy of premium rates in relation to the risks insured;

9. File, in addition to regular annual statements, interim financial reports on the form adopted by the NAIC or in such format as prescribed by the Commissioner; or

10. Take such other actions as the Commissioner may deem necessary in a particular case to protect the insurer's policyholders and the public.