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iii. Payments by the reinsurer shall be made directly to the receiver of the ceding insurer except where the contract of insurance or reinsurance specifically provides another payee for such reinsurance in the event of the insolvency of the ceding insurer.

Amended by R.1993 d.557, effective November 15, 1993. See: 25 N.J.R. 4289(a), 25 N.J.R. 5184(a). Amended by R.1996 d.3, effective January 2, 1996. See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2-28.13 Contracts affected

All new and renewal reinsurance transactions entered into after February 5, 1994 shall meet the standards set forth in this chapter if credit is to be given to the ceding insurer for such reinsurance.

APPENDIX

FORM AR-1

CERTIFICATE OF ASSUMING INSURER

I, _____ of _____, _____ (name of officer) (title of officer) (name of assuming insurer) the assuming insurer under a reinsurance agreement(s) with one or more insurers domiciled in _____, hereby (name of state) certify that _____ ("Assuming Insurer"): (name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in _____ for the adjud- (ceding insurer's state of domicile) ication of any issues arising out of the reinsurance agreement(s), agrees to comply with all requirements necessary to given such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph

is not intended to conflict with or override the obligation of the parties to the reinsurance agreement(s) to arbitrate their disputes if such an obligation is created in the agreement(s).

2. Designates the Insurance Commissioner of _____ (ceding insurer's state of domicile) as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement(s) instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of _____ (ceding insurer's state of domicile) to examine its books and records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in _____ reinsured by Assuming (ceding insurer's state of domicile) Insurer and undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: _____ (name of assuming insurer) BY: _____ (name of officer) _____ (title of officer)

REG11228.A/LRWPC

Amended by R.1993 d.557, effective November 15, 1993. See: 25 N.J.R. 4289(a), 25 N.J.R. 5184(a).

SUBCHAPTER 29. ORDERLY WITHDRAWAL OF INSURANCE BUSINESS

11:2-29.1 Purpose and scope

(a) The purpose of this subchapter is to establish the requirements and procedures by which insurers may undertake an orderly withdrawal from the business of insurance in this State, thereby preventing or minimizing adverse effects upon the insurer's policyholders; preventing or minimizing disruption in the marketplace and harm to the public that would otherwise occur in the absence of regulation; and permitting insurers to withdraw from the marketplace in an orderly fashion consistent with N.J.S.A. 17:17-10 and 17:33B-30.

(b) This subchapter applies to all insurers that seek to withdraw from the business of insurance as defined herein. This subchapter shall not apply to any action constituting a block cancellation or block non-renewal regulated under N.J.A.C. 11:1-22 unless such action also is found to constitute a withdrawal under this subchapter.

(c) Withdrawal informational filings filed on or after January 1, 2007, or with a commencement date on or after January 1, 2007, shall be subject to N.J.S.A. 17:17-10 and 17:33B-30, as amended by P.L. 2003, c.89, and N.J.A.C. 11:2-29.8.

Amended by R.2005 d.111, effective April 4, 2005.

See: 36 N.J.R. 4358(a), 37 N.J.R. 1069(a).

Rewrote (a); in (b), added the last sentence; added (c).

Case Notes

Commissioner, in setting insurer's price for withdrawing from automobile insurance industry, was not arbitrary or capricious. Matter of Plan for Orderly Withdrawal From New Jersey of Twin City Fire Ins. Co., 248 N.J.Super. 616, 591 A.2d 1005 (A.D.1991), certification granted 127 N.J. 548, 606 A.2d 362, affirmed 129 N.J. 389, 609 A.2d 1248, certiorari denied 113 S.Ct. 1066, 506 U.S. 1086, 122 L.Ed.2d 370.

11:2-29.2 Definitions

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

"Affiliate" means an insurer that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the insurer that initiates a withdrawal, as defined in N.J.S.A. 17:27A-1.

"Annual statement" means the form of statement that is described in N.J.S.A. 17:23-1 or 17:46B-55, as applicable.

"Applicant" means the insurer seeking approval to withdraw from the business of insurance in this State.

"Assumption agreement" means a contract between insurers whereby one insurer transfers all or substantially all its rights, duties and obligations arising from certain policies to another insurer.

"Authority" means the power granted by the Commissioner which enables an insurer to transact the business of insurance.

"Automobile" is as defined in N.J.S.A. 39:6A-2.

"Business of insurance" or "insurance" means any kind, line, subline, or a portion thereof authorized by Chapters 17, 32, 46B or 50 of Title 17 of the Revised Statutes.

"Commencement date" of withdrawal means the effective date of the first action constituting a withdrawal from the business of insurance in this State pursuant to the approved plan of orderly withdrawal.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Control" is as defined in N.J.S.A. 17:27A-1.

"Department" means the New Jersey Department of Banking and Insurance.

"Effective date" of withdrawal means the date at which the applicant has complied with any and all conditions contained in the approved plan of orderly withdrawal.

"Hazardous financial condition" is as defined and determined pursuant to N.J.A.C. 11:2-27.

"Homeowners' insurance" is as defined at N.J.A.C. 11:2-41.2.

"Insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer as defined in N.J.S.A. 17:27A-1.

"Insurance producer" or "producer" means the definition of "insurance producer" as set forth in N.J.S.A. 17:22A-28.

"Insurer" means an insurer, a reciprocal insurance exchange, and any insurance affiliates thereof, authorized or admitted pursuant to Chapters 17, 32, 46B or 50 of Title 17 of the Revised Statutes to transact in this State the business of insurance as defined herein.

"Multi-state account" means a single contract or policy of commercial lines insurance as defined in N.J.S.A. 17:29AA-3 which covers risks or locations in both New Jersey and at least one other state; any group policy in which covered members of the group reside in New Jersey and at least one other state; and any plan approved for the mass marketing of insurance pursuant to N.J.A.C. 11:2-12 in which policyholders of the plan reside in New Jersey and at least one other state.

"Plan" means a plan of orderly withdrawal from the business of insurance in New Jersey submitted by an insurer pursuant to this subchapter.

"Portfolio reinsurance agreement" means a contract between insurers whereby one insurer transfers its entire liability for in-force policies or outstanding losses, or both, to another insurer regarding a described segment of insurance business.

"Rating system" means every schedule, class, classification, rule, guide, standard, manual, table or rating plan by whatever name described containing the rates (or loss costs), rules and forms used by any insurer or by any advisory organization in determining or ascertaining rates or loss costs.

"Reinsurance agreement" means a contract between insurers whereby one insurer agrees to insure part or all of an insurance risk of an originating, or ceding, insurer.

"Residual market mechanism" means any program authorized or created by the New Jersey State Legislature which is designed to provide an insurance market for insureds who are unable to obtain insurance in the voluntary market.

“State” means the State of New Jersey.

“Withdraw” or “withdrawal” means the nonrenewal, cancellation, or termination of policies, or surrender of authority to transact the business of insurance in this State, or any insurer action that is equivalent to a withdrawal from the business of insurance in this State which may include, but is not limited to, the elimination of a rating system, termination of agency contracts, reduction in agency commissions, restrictions on agency solicitation or binding authority, insurer refusal of applications or declaration of a dividend to an affiliate, when such action or actions exceed those occurring in the ordinary course of business. Whether the above activities are equivalent to a withdrawal shall be determined by the Commissioner on a case-by-case basis.

“Withdraw” or “withdrawal” also means the transfer to another insurer of insurance business pursuant to an assumption agreement as defined herein or a portfolio reinsurance agreement as defined herein.

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

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

Amended by R.2005 d.111, effective April 4, 2005.

See: 36 N.J.R. 4358(a), 37 N.J.R. 1069(a).

Rewrote “Annual statement”, “Automobile”, “Business of insurance”, “Commencement date”, “Insurance producer”, “Insurer”, “Plan” and “Rating system”; added “Hazardous financial condition” and “Homeowners’ insurance”.

11:2-29.3 General provisions

(a) Any insurer that seeks to undertake any of the actions described as withdrawals in N.J.A.C. 11:2-29.2 shall provide the Commissioner with written notification so that he or she may determine whether the insurer must file a plan of orderly withdrawal pursuant to N.J.A.C. 11:2-29.4, or, if such plan is waived by the Commissioner under circumstances he or she considers appropriate, a reasonable substitute withdrawal procedure approved by the Commissioner. In determining whether to waive the requirement that the insurer file a plan of orderly withdrawal, the Commissioner shall consider whether the withdrawal will have a minimal impact on the market, for example, whether the insurer will be nonrenewing a small number of policies, whether there are other insurers writing the line or lines of business from which the company seeks to withdraw, whether a replacement carrier will be utilized; and whether there is sufficient capacity in the voluntary market with respect to the particular coverage involved.

(b) Any insurer that is required by the Commissioner to file a plan of orderly withdrawal pursuant to N.J.A.C. 11:2-29.4 shall submit to the Department an original and 12 copies of a proposed plan for prior approval thereof.

1. The Commissioner shall acknowledge to the applicant the receipt of any filing and request any additional information required for review pursuant to N.J.A.C. 11:2-29.4(b) within 45 days thereafter, the failure of which shall allow the applicant to treat the filing as complete. Failure of an insurer to respond to a request

for further information within 30 days of such request shall result in the filing being deemed withdrawn without prejudice.

2. An applicant shall not commence any action in furtherance of a withdrawal as defined herein prior to the Commissioner’s approval thereof. For the purposes of this paragraph, commencing an action in furtherance of a withdrawal does not include the non-binding oral or written communication between an insurer/applicant and another insurer in negotiating a replacement of the insurer/applicant’s insurance business by the other insurer, the negotiation of an agreement with a replacement carrier subject to approval of the Commissioner and conditioned on approval of the plan, or non-binding oral or written communications with any of the entities set forth at N.J.A.C. 11:2-29.4(a)11.

3. The authority of an applicant to conduct the business of insurance from which it seeks to withdraw, as well as any other authority which it is required to surrender pursuant to this subchapter shall, upon approval of the plan, continue in effect, but only in accordance with the plan as approved.

4. No withdrawal shall become effective until the applicant has complied with any and all conditions contained in the approved plan which relate to the effective date of withdrawal.

5. Unless the applicant specifically requests and is granted a waiver, the applicant shall make either or both of the following special deposits, as a condition of approval of a withdrawal plan, in securities or the equivalent thereof in performance bonds as determined by the Commissioner, until such time as the applicant’s liabilities as determined by the Commissioner no longer exist in this State:

i. A deposit established with and in the name of the Commissioner for the benefit of all of the applicant’s New Jersey policyholders, claimants and creditors which shall be equal to an amount not to exceed 125 percent of the applicant’s current and potential liabilities, as developed and certified by a “qualified actuary” as defined in N.J.A.C. 11:1-21.1(a)2 for property and casualty lines, and N.J.A.C. 11:1-21A.2 for health lines, existing or that may exist in this State;

ii. A deposit established with and in the name of the Commissioner pursuant to a consent order signed by the applicant to guarantee compliance with the approved plan, a material breach of which may, upon notice to the insurer, result in an immediate forfeiture of the deposit in whole or in part. This deposit shall be in an amount established at the discretion of the Commissioner and may equal the greater of one million dollars or 10 percent of the applicant’s average annual net direct premiums written within the last three years in the line(s) from which it seeks to withdraw.

6. The applicant may substitute, with the approval of the Commissioner, in place of the deposits required in (b)5i above, the following:

- i. A guarantee from its immediate or ultimate parent in a form acceptable to the Commissioner;
- ii. A letter of credit;
- iii. A trust agreement; or
- iv. Any other financial guarantee of the applicant's total liabilities in a form acceptable to the Commissioner.

7. For good cause shown, the Commissioner may waive the special deposits or substitutes required in (b)5 and 6 above upon a consideration of factors including, but not limited to, the uniqueness of the applicant's circumstances, its size, its volume of business, whether it will continue to transact insurance in this State through affiliates, and whether the withdrawal is being effected pursuant to an assumption or portfolio reinsurance agreement.

8. The Commissioner shall issue an approval of the plan within 120 days of receipt of a completed plan or receipt of submission of further information, whichever is later, which decision shall include terms and conditions that the Commissioner finds appropriate.

(c) The Commissioner may require as a condition of approval of the plan the surrender of some or all certificates of authority, issued pursuant to Chapters 17, 32, 46B or 50 of Title 17 of the Revised Statutes, held by the applicant or by other companies within the same insurance holding company system as the applicant for amendment, termination, suspension, restriction or such other modification as the Commissioner considers appropriate. Upon specific request by the applicant for a waiver of any portion of these requirements, the Commissioner may grant the waiver in whole or in part if the Commissioner finds that, based upon proofs presented, one or more of the following mitigating circumstances exist:

1. The withdrawal will not cause a market availability problem or an undue disruption in the marketplace;
2. The applicant will enter into an agreement with a proposed replacement carrier to assume the applicant's existing book of business;
3. The withdrawal will not adversely affect competition;
4. The withdrawal is due to specified problems affecting the solvency of the applicant;
5. The withdrawal is consistent with the insurer's overall plan of withdrawal in other jurisdictions as part of a corporate restructuring; or
6. The public interest is best served by such a waiver.

(d) If more than one insurer within the same holding company system seeks or is required by the Commissioner pursuant to this subchapter to withdraw from the business of insurance in this State, each withdrawing affiliate shall submit a separate plan to the Commissioner pursuant to this subchapter or, if such plan is waived pursuant to (a) above, a reasonable substitute withdrawal procedure approved by the Commissioner.

(e) An insurer that currently services a residual market mechanism and is subject to the withdrawal provisions contained in the plan of operation governing such mechanism is exempted from the requirements of this subchapter to the extent of the insurance business serviced by the insurer in such mechanism.

(f) The applicant and its affiliates shall be prohibited for a period of up to five years after the effective date of withdrawal from acquiring, directly or indirectly, a controlling interest in any insurer that is licensed to do business in this State without approval of the Commissioner.

Amended by R.2005 d.111, effective April 4, 2005.
See: 36 N.J.R. 4358(a), 37 N.J.R. 1069(a).

In (a), added the last sentence; rewrote (b); in (c), substituted "Chapters 17, 32, 46B or 50 of Title 17" for "Chapters 17 or 32 of Title 17" preceding "of the Revised Statutes" in the introductory paragraph and deleted "conditioned, however, upon an approved plan" following "existing book of business" in 2.

11:2-29.4 Elements of proposed plan of orderly withdrawal

(a) A proposed plan of orderly withdrawal shall contain the following information supported by adequate proof of the validity thereof, if not specifically required herein:

1. The reasons the applicant seeks to withdraw, supported by a description and documentation of the applicant's financial condition for the last three years or such other period as the Commissioner considers appropriate, including the underlying accounting, actuarial and other relevant data or material relied upon in deciding to seek withdrawal;
2. The proposed commencement date of such withdrawal;
3. An organizational chart and narrative description of the relationships among the applicant and its insurer affiliates, if any, indicating at a minimum:
 - i. The marketing relationships;
 - ii. The agency relationships;
 - iii. The claims handling relationships; and
 - iv. Whether any of the applicant's insurer affiliates are also taking action or applying to withdraw from the business of insurance in this State (and if so, the details thereof);
4. A description, by line of insurance written in New Jersey, of the applicant's and its insurer affiliates' business (both property/casualty and life/health) during the last three years, including for each year the corresponding premium volume, number of current policyholders, number of exposures, approximate market share and the number of insurance producers and employees servicing the business to the extent the withdrawal will affect these items. If employees of the applicant or any of its affiliates will be terminated in this State as a result of the applicant's withdrawal, a description of the method of termination, a description of the termination benefits, and any other financial or nonfinancial accommodations made on the employees' behalf shall be included;

5. Copies of the proposed cancellation and nonrenewal notices, and termination notices, the applicant intends to send to its policyholders and insurance producers, respectively, as well as any other withdrawal-related correspondence, including the proposed dates of such notices or correspondence. Producer termination notices shall comply with the requirements contained in N.J.S.A. 17:22-6.14a. Notices approved pursuant to this subchapter shall be deemed valid and effective for all purposes related thereto;

6. In the case of a proposed withdrawal of health business to be effected through one or more assumption agreements, the proposed certificate(s) of assumption and letters of notification (where appropriate) to policyholders informing them of the transfer of their policies to another insurer. In the case of a proposed withdrawal of other than health business to be effected through one or more portfolio reinsurance agreements, the reinsurance agreement(s) and letters of notification (where appropriate) to policyholders informing them of the reinsurance of their risks with another insurer;

7. The name and address of each insurance producer, the number of policies in force and premium volume produced by each producer as of the date of filing the plan;

8. A specimen copy of each current producer contract;

9. Copies of all correspondence and notices to be sent to the following entities or their statutory successors, as well as a description of all agreements (which need not be in final form) reached with such entities or their statutory successors as to the applicant's financial and reporting obligations to them, as applicable; if not applicable, an explanation why. The following list is not intended to be exhaustive. It is the responsibility of the applicant to furnish the information required under this paragraph for any other statutorily created or authorized entity to which it owes or may owe a financial or reporting obligation. The Commissioner may require the applicant to deposit with any of the below-listed entities (or their statutory successors) an amount sufficient to meet the applicant's obligations thereto.

i. The New Jersey Property-Liability Insurance Guaranty Association established pursuant to N.J.S.A. 17:30A-1 et seq.;

ii. The New Jersey Automobile Insurance Risk Exchange established pursuant to N.J.S.A. 39:6A-21 through 22.1;

iii. The Mutual Workers' Compensation Security Fund established pursuant to N.J.S.A. 34:15-112;

iv. The Stock Workers' Compensation Security Fund established pursuant to N.J.S.A. 34:15-105;

v. The New Jersey Office of Insurance Fraud Prosecutor for assessments imposed pursuant to N.J.S.A. 17:33A-8;

vi. The Commercial Automobile Insurance Plan established pursuant to N.J.S.A. 17:29D-1;

vii. The New Jersey State Division of Taxation for premium taxes required by N.J.S.A. 54:18A-1 et seq.;

viii. The New Jersey Surplus Lines Insurance Guaranty Association established pursuant to N.J.S.A. 17:22-6.70 et seq.;

ix. The Personal Automobile Insurance Plan established pursuant to N.J.S.A. 17:29D-1;

x. The Department for examination fees provided for by N.J.S.A. 17:23-20 et seq. and other statutory fees provided for by N.J.S.A. 17:33-1 and N.J.A.C. 11:1-32;

xi. The New Jersey Insurance Underwriting Association established pursuant to N.J.S.A. 17:37A-1 et seq.; and

xii. Special purpose apportionments imposed pursuant to N.J.S.A. 17:1C-19 et seq.;

10. A statement, by line of insurance written in this State, of all of the applicant's current incurred liabilities and reserves, including those incurred but not reported, as developed and certified by a "qualified actuary" as defined in N.J.A.C. 11:1-21.1(a)2 for property and casualty lines and N.J.A.C. 11:1-21A.2 for health lines, as of a date not earlier than 90 days prior to the submission of the proposed plan and which shall include the following:

i. Copies of all work papers of the actuary supporting the actuarial opinions;

ii. Copies of all underlying statistics used by the actuary;

iii. If not included in (b)12ii above, development triangles, New Jersey only and countrywide for the following. Triangles shall be constructed as of December 31 for as many accident years and as many development years as necessary to display at least five mature accident years. For the purpose of this requirement, a mature accident year is defined as one for which paid losses equal at least 99 percent of incurred losses including IBNR. Such data shall be supplied both in hard copy and as their ASCII equivalent. Any narrative necessary for proper interpretation of the data supplied shall be provided.

(1) Paid losses;

(2) Incurred losses; and

(3) Claim counts:

(A) Reported; and

(B) Closed; and

iv. If the insurer does not have five mature accident years as required in (b)12iii above, then it shall display five accident years which are the closest to being mature, and if the insurer does not have five accident years of data, then it shall display the accident years it has.

11. A description of the manner in which the applicant intends to handle claims, premium factor charges, premium billing, and policyholder service regarding policies held by New Jersey residents remaining in force after the plan has been approved, to the extent the withdrawal will affect such activities. Provide a description of the applicant's staff and adjusters servicing these claims, including the servicing location and the procedures for consumer contact to the extent these items will be affected by the withdrawal;

12. A description of the kind and amount of all reinsurance assumed and ceded by the applicant, identifying each ceding and assuming insurer and describing the corresponding risks in each reinsurance agreement. An explanation of whether the proposed withdrawal will affect the surplus of another insurer as a result of the loss of credit received by that insurer on any of the applicant's assumed reinsurance, as well as a description of the procedures designed to minimize any marketplace disruption or hazardous financial condition that may occur as a result of the loss of credit, shall be included;

13. A description of all multi-state accounts under which insurance has been provided for risks located in New Jersey, as well as an explanation of the impact of withdrawal on such risks;

14. The proposed amount of the special deposits required under N.J.A.C. 11:2-29.3(b)5, which shall be maintained until such time as the applicant's liabilities and potential liabilities no longer exist in this State;

15. Written certification from a duly authorized officer of the applicant, signed under the pains and penalties of perjury, that the information submitted in the proposed plan is accurate and complete to the best of his or her belief and that for as long as insurance policies are in force or there are unpaid losses or expenses in this State:

i. The applicant shall fully honor all of its legal obligations in this State;

ii. The applicant shall continue to service, without discrimination, all outstanding policies, bonds and surety obligations, which includes processing all usual and customary endorsements requested by insureds during the term of such policies, subject to the applicant's normal underwriting standards;

iii. The applicant shall continue to submit annual statements and information required by the entities set forth in (a)9 above, upon request, for as long as the applicant has any unearned premium or any unpaid or incurred losses in this State;

iv. The applicant shall continue to operate in accordance with the laws and regulations of this State and remain subject to examination by the Department for as long as considered necessary by the Commissioner; and

v. The applicant shall maintain its current designation of its agent for service of process;

16. The plan shall include a method acceptable to the Commissioner to verify the applicant's compliance with its obligations under the plan as approved which may include, but is not limited to, quarterly financial and informational reports of the applicant's progress under the plan; and

17. A retention plan to maintain service to policyholders during the withdrawal period and run-off.

(b) The Commissioner may require any other information he or she considers relevant to the evaluation of the request to withdraw.

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

Rewrote the section.

Amended by R.2005 d.111, effective April 4, 2005.
See: 36 N.J.R. 4358(a), 37 N.J.R. 1069(a).

Rewrote the section.

11:2-29.5 Replacement; non-renewal

(a) Notwithstanding the provisions of N.J.A.C. 11:3-8.3, if an applicant's request to withdraw involves private passenger automobile insurance and the applicant is required to submit a proposed plan, the applicant may be subject to the following additional conditions which, if required, must be addressed in the proposed plan:

1. The applicant shall seek to place its business with a voluntary market replacement carrier or carriers acceptable to the Commissioner for a specified period of time after the Commissioner's approval of the plan or until all automobile insurance is replaced, whichever is sooner.

i. The period of time in which an applicant must seek to place its business with a replacement carrier will be determined by the Commissioner based on the number of years the applicant has been authorized or admitted to transact business in this State as set forth in N.J.A.C. 11:1-10.8(c) or 28.10(d), as applicable, but in no instance will it be more than five years. If, at the end of the designated period, the applicant has not succeeded in placing all of its private passenger automobile insurance policies with a voluntary market carrier, the applicant shall begin an orderly process of nonrenewal at a rate designated by the Commissioner. In accordance with such process, the applicant shall provide two notices of nonrenewal to remaining policyholders. Unless the Commissioner finds that good cause exists for shortening or waiving the initial notice period, the first nonrenewal notice shall be provided at least one year prior to the next policy expiration date. The insurer shall issue a second notice of nonrenewal in compliance with the time requirements of N.J.A.C. 11:3-8.3. The form of notice shall be provided with the insurer's filing under this subchapter.

ii. An insurer which acts as a replacement carrier for the private passenger automobile insurance business from which the applicant seeks to withdraw assumes all of the legal rights, duties and obligations associated with the participation of private passenger automobile insurers in the automobile insurance market in this State.

2. An applicant shall be required to accept the quotas established by N.J.S.A. 17:33B-11(c)5 unless the applicant specifically requests and the Commissioner agrees to a waiver of this requirement.

(b) The Commissioner shall not consider any replacement carrier or carriers acceptable for the purposes of (a) above unless the applicant certifies that it will take any action(s) necessary to ensure that such replacement carrier(s) will maintain a net premium-to-surplus ratio not to exceed 2.5 to one. Where the replacement carrier is an affiliate of the applicant, the applicant shall provide a guarantee from its ultimate parent that such parent will take any action necessary to ensure the requirements set forth in this subsection are met.

1. The duration of the guarantee requirement set forth in (b) above shall be for a period not more than five years, such period to be coterminous with the remaining portion of the withdrawal period determined by the Commissioner pursuant to (a)1i above.

2. If the replacement carrier(s) is not an affiliate of the applicant, the Commissioner may waive the requirement set forth in (b) above if the applicant demonstrates to the Commissioner that the financial capacity of replacement carrier(s) to service the business to be assumed is equal to or greater than that of the withdrawing carrier, and that the financial condition and methods of operation of the proposed replacement carrier(s) is not such that the assumption of the applicant's book of business would render the replacement carrier's condition or operations hazardous to the public or policyholders of this State.

(c) If an applicant's request to withdraw involves other than private passenger automobile insurance, the applicant may be subject to conditions addressed either in the approved plan or, if the plan is waived pursuant to N.J.A.C. 11:2-29.3(a), in a reasonable substitute withdrawal procedure approved by the Commissioner.

Amended by R.1995 d.577, effective November 6, 1995.

See: 27 N.J.R. 2533(a), 27 N.J.R. 4311(a).

Amended by R.2005 d.111, effective April 4, 2005.

See: 36 N.J.R. 4358(a), 37 N.J.R. 1069(a).

Rewrote (a); in (b), deleted "less than one or" in 1.

11:2-29.6 Agent rights

In accordance with N.J.S.A. 17:22-6.14a(n), agents of record of a company that transfers its business to another insurer pursuant to this subchapter shall continue to service such business and shall be offered contracts by the company to which business is transferred which contain terms and conditions concerning the use, control and ownership of policy expirations and payment of commissions that are no less favorable than the agents' current contracts. Agent rights

pursuant to this rule shall be governed by N.J.S.A. 17:22-6.14a(n).

New Rule, R.2005 d.111, effective April 4, 2005.

See: 36 N.J.R. 4358(a), 37 N.J.R. 1069(a).

Former N.J.A.C. 11:2-29.6, Confidentiality of plan of orderly withdrawal, recodified to N.J.A.C. 11:2-29.7.

11:2-29.7 Confidentiality of plan of orderly withdrawal

(a) All data or information contained in a proposed plan shall be confidential. All data or information contained in an approved plan is confidential and will not be disclosed by the Department to any person other than its employees and representatives, except the following items, but only upon written, specified request and upon notice to the insurer/applicant:

1. N.J.A.C. 11:2-29.4(a)3—Organizational chart;

2. N.J.A.C. 11:2-29.4(a)3ii—Agency relationships of affiliates by agent name, to the extent available through the Department's licensing system;

3. N.J.A.C. 11:2-29.4(a)4—Premium volume, number of current policyholders, market share and number of producers by line of business;

4. N.J.A.C. 11:2-29.4(a)5—Policyholder nonrenewal and producer termination notices;

5. N.J.A.C. 11:2-29.4(a)7—Name and address of each insurance producer to the extent available through the Department's licensing system;

6. N.J.A.C. 11:2-29.4(a)9—Copies of all correspondence and notices sent to various entities, as approved, to which the applicant owes a financial obligation;

7. N.J.A.C. 11:2-29.4(a)10—Certified statement of New Jersey incurred liabilities and reserves; and

8. N.J.A.C. 11:2-29.4(a)14—Establishment of special deposits or equivalent performance bonds as approved.

Recodified from N.J.A.C. 11:2-29.6 and amended by R.2005 d.111, effective April 4, 2005.

See: 36 N.J.R. 4358(a), 37 N.J.R. 1069(a).

Rewrote the section. Former N.J.A.C. 11:2-29.7, Fines and penalties, recodified to N.J.A.C. 11:2-29.9.

Case Notes

Ability to pay should not be considered in ordering restitution of misappropriated funds in trucking insurance fraud scheme. *Fortunato v. Pappas Trucking Insurance Agency, Inc.*, 96 N.J.A.R.2d (INS) 1.

11:2-29.8 Informational filing withdrawals

(a) Any proposed withdrawal informational filing filed on or after January 1, 2007, or with a commencement date on or after January 1, 2007, shall be subject only to the provisions of this section, N.J.A.C. 11:2-29.1 and 29.2, and N.J.S.A. 17:17-10 or 17:33B-30, as applicable, as amended by P.L. 2003, c.89.

(b) Any insurer seeking to withdraw shall file the information and otherwise comply with the requirements set forth in N.J.S.A. 17:17-10 or 17:33B-30, as applicable.

(c) An insurer may request a waiver of the one-year and 90-day waiting period for commencement of nonrenewals pursuant to N.J.S.A. 17:17-10b(2) or 17:33B-30a(2), a waiver of the requirement to send non-renewal notices no later than one year prior to the dates of the nonrenewals set forth in N.J.S.A. 17:17-10b(3) and 17:33B-30a(3), and a waiver of the maximum three-year non-renewal period set forth in N.J.S.A. 17:17-10b(4) and 17:33B-30a(4). A request shall include a list of the insurer's producers and their current business addresses, the proposed commencement date of the withdrawal, the name(s) of any replacement carrier(s) proposed to be utilized, the number of policies to be non-renewed, and the insurer's market share in this State with respect to the type of policies to be nonrenewed. The decision regarding the request for a waiver pursuant to this section shall constitute a final agency decision.

1. The Commissioner shall approve a request for waiver for any line(s), other than private passenger automobile, homeowners', workers' compensation, or medical malpractice liability, provided:

i. The insurer files notice of the proposed withdrawal with the Commissioner at least 120 days prior to the proposed date of initial non-renewal, and provides notice to policyholders 30 days after the notice is provided to the Commissioner;

ii. Non-renewals shall take place over a period not less than one policy cycle, there are no mid-term cancellations, except as otherwise specifically provided by law for the reason(s) set forth therein, and are performed on a random, equitable basis; and

iii. The Commissioner does not find that the waiver will adversely affect the market. In making this determination, the Commissioner shall consider, without limitation, the number of policies to be non-renewed, whether there are other insurers writing the line or lines of business from which the company seeks to withdraw, and whether there is sufficient capacity in the voluntary market with respect to the particular coverage involved.

2. With respect to private passenger automobile, homeowner's, workers' compensation, and medical malpractice liability coverages, the Commissioner shall approve a request for a waiver if the company will nonrenew no more than 9.5 percent of the total market per year for the particular coverage(s) involved, as of the date of the request, based on the most recent reported data available, or the Commissioner concludes that granting the waiver will not adversely affect the market after considering the standards set forth in (c)1iii above. If a waiver is granted, the insurer shall comply with the requirements in (c)1i and ii above. For purposes of this paragraph, for private passenger automobile insurance, the total market shall be determined by the number of exposures, based the most recent year-end consolidated report filed pursuant to

N.J.A.C. 11:3-3A. For all other lines, the total market shall be determined by premium volume, based on the most recent annual statement filed pursuant to N.J.S.A. 17:23-1.

3. For all lines, in addition to the foregoing, the Commissioner shall grant a waiver if he or she finds that the insurer is or would be in a hazardous financial condition absent provision of the waiver.

(d) An insurer may utilize a replacement carrier for the business that will not be renewed, pursuant to N.J.S.A. 17:17-10d or 17:33B-30d, as applicable, subject to approval by the Commissioner. The Commissioner shall approve a replacement carrier:

1. If the replacement is authorized to transact the line or lines of business being transferred;

2. The replacement carrier demonstrates to the satisfaction of the Department that it will be able to maintain a net premium-to-surplus ratio of not more than 2.5 to one for five years after the transfer;

3. The replacement carrier certifies that it will comply with N.J.S.A. 17:22-6.14a(n) with respect to agents' rights;

4. If the replacement carrier has not transacted the particular line involved in the transfer in this State, the replacement carrier demonstrates that it possesses the requisite services and experience such that its methods of operation will not be hazardous to the policyholders of this State; and

5. If the replacement carrier is not domiciled in this State, the replacement carrier provides evidence that it has notified its domiciliary regulator of its intent to assume the business, and the domiciliary regulator does not object to such action.

New Rule, R.2005 d.111, effective April 4, 2005.

See: 36 N.J.R. 4358(a), 37 N.J.R. 1069(a).

Former N.J.A.C. 11:2-29.8, Severability, recodified to N.J.A.C. 11:2-29.10.

Amended by R.2006 d.131, effective April 17, 2006.

See: 37 N.J.R. 4368(b), 38 N.J.R. 1742(a).

In (c)2, deleted "does not have a market share of"; added "will nonrenew no" and "of the total market per year"; and substituted "the total market" for "market share".

11:2-29.9 Fines and penalties

Failure to comply with this subchapter may result in the imposition of sanctions by the Department including, but not limited to, sanctions pursuant to N.J.S.A. 17:33-2.

Recodified from N.J.A.C. 11:2-29.7 by R.2005 d.111, effective April 4, 2005.

See: 36 N.J.R. 4358(a), 37 N.J.R. 1069(a).

11:2-29.10 Severability

If any provision of this subchapter or its application to any person or circumstance is held invalid, such determination shall not affect other provisions or applications of this

subchapter which can be given effect without the invalid provision or application, and to that end the provisions of this subchapter are separable.

Recodified from N.J.A.C. 11:2-29.8 by R.2005 d.111, effective April 4, 2005.

See: 36 N.J.R. 4358(a), 37 N.J.R. 1069(a).

SUBCHAPTER 30. (RESERVED)

SUBCHAPTER 31. MANNER OF DETERMINING PREMIUM FOR PERPETUAL HOMEOWNERS INSURANCE

11:2-31.1 Purpose

This subchapter sets forth the manner of determining premium for perpetual homeowners insurance for any applicable statutory fee, surcharge, tax or assessment.

11:2-31.2 Scope

The provisions of this subchapter apply to all insurers transacting the business of perpetual homeowners insurance in this State, including all perils insured thereunder.

11:2-31.3 Definitions

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

“Annual adjustments” means any adjustments in the perpetual deposit account during the calendar year, exclusive of dividends. Increases include any additions to the account, such as policy fees and premium assessments. Decreases include the return of perpetual deposits, in whole or in part, due to the termination of policies and any other decreases, exclusive of dividends.

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

“Insurer” means an insurance company licensed to transact the business of perpetual homeowners insurance in this State.

“Net perpetual deposits” means the total perpetual deposits received by an insurer for perpetual homeowners insurance increased or decreased by annual adjustments.

“Perpetual deposit” means a payment by a policyholder for perpetual homeowners insurance.

“Perpetual homeowners insurance” means a homeowners policy and related endorsements, including all perils insured thereunder, which remains continuously in effect until cancelled, and is paid for with one lump sum deposit with no additional payment required, notwithstanding any subsequent fees or assessments.

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

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

11:2-31.4 Determination of premium

(a) For the purposes of any statutory fee, surcharge, tax or assessment based on premium and applicable to perpetual homeowners insurance, premium is:

1. The sum of the net perpetual deposits received for perpetual homeowners insurance from the inception of the policy through the calendar year immediately preceding the date that such applicable statutory fee, surcharge, tax or assessment is due, multiplied by:

2. The average annual interest rate on one-year U.S. Treasury bills for the calendar year in question.

(b) The premium base for any applicable statutory fee, surcharge, tax or assessment is calculated annually as set forth in (a) above less any so-called dividends returned or credited to policyholders during the calendar year in question.

11:2-31.5 Data filed; examination

(a) Each insurer shall include with the annual statement filed with the Commissioner, a list of the lines of business under which perpetual homeowners insurance is written, on form(s) prescribed by the Commissioner.

(b) All data submitted is examined by the Commissioner and he or she may make any further audit or investigation or reaudit as necessary. An insurer shall pay the reasonable expenses of any examination, pursuant to N.J.S.A. 17:23-22d.

Amended by R.2005 d.350, effective October 17, 2005.

See: 37 N.J.R. 2285(a), 37 N.J.R. 4026(a).

In (b), substituted “N.J.S.A. 17:23-22d” for “N.J.S.A. 17:23-4”.

11:2-31.6 Penalties

Failure to comply with these provisions may result in the imposition of sanctions by the Department including, but not limited to, sanctions pursuant to N.J.S.A. 17:33-2.

SUBCHAPTER 32. CUSTODIAL DEPOSITS

11:2-32.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the procedures for the holding by the Commissioner of any required deposits and to establish the fees to be charged the depositor for the services of the custodian of such deposits pursuant to N.J.S.A. 17:20-1 et seq., 17:46B-1 et seq., 17:50-6, and 17B:18-37 et seq.

(b) This subchapter applies to all insurers required by the laws of this State to make a security deposit to be held for the benefit and security of all the policyholders of the company making such deposit. This subchapter also applies to any

other entity required to make a deposit with the Commissioner in order to transact business in this State. This subchapter does not apply to any insurer under liquidation pursuant to N.J.S.A. 17:30C-1 et seq. or 17B:32-1 et seq., as applicable.

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

11:2-32.2 Definitions

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

“Bank” means a State or Federally chartered bank, savings bank, or savings and loan association which has trust powers and which has its principal office in New Jersey.