

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF SOLVENCY REGULATION

Insurance Holding Company Systems
Acquisition of Control: Statement Filing; Procedures

Proposed Amendments: N.J.A.C. 11:1-35.6

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:27A-1 et seq.

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

Proposal Number: PRN 2007-163

Submit written comments by July 20, 2007 to:

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The agency proposal follows:

Summary

The New Jersey Insurance Holding Company Systems Act, N.J.S.A. 17:27A-1 et seq. (the Act), and implementing rules, N.J.A.C. 11:1-35, set forth the standards and requirements for the acquisition of control of a New Jersey domestic insurer and the operations of insurance holding company systems, which include a New Jersey domestic insurer. The statute was originally enacted in 1970, and the rules, which essentially codified existing practice and reflected the model regulation adopted by the National Association of Insurance Commissioners (NAIC) were originally adopted in 1993. N.J.S.A. 17:27A-2 provides that the Commissioner of

Banking and Insurance (Commissioner) shall approve a proposed acquisition of control, unless after a public Departmental hearing thereon, he or she finds that one or more of the seven disqualifying factors exists as set forth in the Act. Since the enactment of the Act, the Department of Banking and Insurance (Department) has held a public fact gathering hearing on all proposed acquisitions of control, and the rules at N.J.A.C. 11:1-35.6 reflect this current requirement.

After more than 35-years experience in reviewing proposed acquisitions of control of domestic insurers, the Department believes that it is reasonable and appropriate to revise the requirement that a public hearing with live testimony be held in all cases. The Department believes that there may be circumstances, such as where the insurer to be acquired is dormant with no policyholders, and/or the acquiring party is an entity that has had long-standing insurance operations in this State, where, through a hearing “on the papers,” the Commissioner can make a determination as to whether any of the seven disqualifying factors exist based on the documents filed. To that end, the Department proposes to amend N.J.A.C. 11:1-35.6 by adding new subsection (g) to provide that the hearing required pursuant to N.J.S.A. 17:27A-2d shall be on the documents filed. However, the Department shall conduct a public hearing on the proposed acquisition at the request of a committee of the Legislature. In addition, the Department may conduct a public hearing with live testimony if it determines that such a hearing is in the interest of the policyholders of the insurer being acquired or of the public. In considering whether this is the case, the Department shall consider the following, whether: (1) the insurer being acquired has policyholders; (2) the applicant is currently not transacting insurance business in this State, either directly or through affiliates; (3) the insurer to be acquired has been found to be in a hazardous financial condition, is under administrative supervision

pursuant to N.J.S.A. 17:51A-1 et seq., or is the subject of an order of rehabilitation pursuant to N.J.S.A. 17:30C-1 et seq. or 17B:32-31 et seq.; (4) the coverages or rates for policyholders of the insurer to be acquired will change or the coverages currently provided will be terminated; (5) the applicant, insurer to be acquired, or an interested party as defined in N.J.A.C. 11:1-35.6(j), requests a hearing with live testimony; and a hearing with live testimony is in the best interest of the policyholders of the insurer being acquired or of the public, based on the circumstances of a particular proposed acquisition. The Department believes that this proposed procedure will continue to enable the Department to properly evaluate proposed acquisitions of control, while streamlining the process and eliminating costs, ultimately borne by policyholders, where minimal or no additional relevant information may be gathered through public testimony. The Department notes that this approach is utilized in many states, notably New York, which does not require that a public hearing be held in any case, unless the Commissioner disapproves a proposed acquisition.

In addition, in order to implement these changes, the Department is proposing other amendments to N.J.A.C. 11:1-35.6 as follows.

Subsection (e) is proposed to be amended to delete the reference to the scheduling of the public hearing, to reflect that the hearing may also be on the documents.

Subsection (f) is proposed to be revised to provide that the notice of the hearing, whether it be on the papers or a public hearing with live testimony, shall be made upon the determination that all required information has been filed pursuant to N.J.A.C. 11:1-35.6(e). In addition, the rule is proposed to be amended to provide that notice shall also be posted on the Department's website. The proposed amendment also provides that unless a hearing with live testimony is determined to be necessary as set forth in proposed N.J.A.C. 11:1-35.6(g), for purposes of

subsection (f), the scheduled date for a hearing on the papers shall be seven days after publication of the noticed referenced therein.

Existing subsection (g) is proposed to be recodified at subsection (h), and is proposed to be amended to reflect that a verbatim transcript of the hearing will only be provided if the hearing is held pursuant to N.J.A.C. 11:1-35.6(g).

Subsections (h) and (i) are proposed to be recodified at (i) and (j), respectively. In addition, subsection (i) is proposed to be amended to refer to the Open Public Records Act, to reflect the proper designation of the applicable statute. Subsection (j) is proposed to be amended to reflect the recodification of the other sections in this rule.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments will continue to enable the Commissioner to evaluate whether any of the seven disqualifying factors set forth at N.J.S.A. 17:27A-2 exists upon which a proposed acquisition of control of the New Jersey domestic insurer may be disapproved. At the same time, the proposed amendments will streamline the process for the review of proposed acquisitions of control of a domestic insurer where minimal or no impact on the New Jersey domestic insurer and its policyholders, if any, will result from the proposed acquisition of control. Accordingly, the Department's regulatory interests will be preserved, while unnecessary costs will be avoided. This, in turn, will benefit applicants, insurers sought to be acquired, and policyholders.

Economic Impact

The proposed amendments impose no additional economic costs on entities. Indeed, the proposed amendments should reduce unnecessary costs by eliminating the necessity for an in-person public hearing where little or no regulatory interest is impacted and the required information may be obtained and evaluated based on the documents filed.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed amendments.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposal together with their comments on other aspects of the proposal.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

The proposed amendments do not impose any new reporting, recordkeeping or other compliance requirements on “small businesses,” as that term is defined in the Regulatory

Flexibility Act, N.J.S.A. 52:14B-16 et seq. As noted above, the proposed amendments eliminate the requirement that an in-person public hearing be held on all proposed acquisitions of control of New Jersey domestic insurers. The proposed amendments provide the standards by which the Commissioner shall determine whether an in-person public hearing should be required based on the potential impact to the insurer to be acquired, its policyholders or the general public.

Smart Growth Impact

The proposed amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

11:1-35.6 Acquisition of control: statement filing; procedures

(a) – (d) (No change.)

(e) The time frames for the [scheduling of the public] hearing on the proposed acquisition as set forth in N.J.S.A. 17:27A-2d(2) shall not commence until all of the information required to be contained in an acquisition statement as set forth in N.J.S.A. 17:27A-2 and this subchapter has been received by the Commissioner.

(f) Upon the [scheduling of the hearing] **determination that all required information has been filed pursuant to (e) above**, the acquiring party shall cause notice of the hearing to be published in not less than two newspapers of general circulation in this State. Such notice shall include, but not be limited to, the name of the acquiring party, the name of the insurer proposed to be acquired, and the time and place for the hearing. Such notice shall be published not later than seven days, nor earlier than 14 days, prior to the scheduled date of the hearing. **Notice also shall be posted on the Department's website.**

1. Unless a hearing with live testimony is determined to be necessary as set forth in (g) below, for purposes of this subsection, the scheduled date for a hearing on the papers shall be seven days after the publication of the notice referenced in (f) above.

(g) The hearing required pursuant to N.J.S.A. 17:27A-2d shall be on the documents filed. Notwithstanding the foregoing, the Department shall, however, conduct a public hearing with live testimony on a proposed acquisition at the request of a committee of the Legislature. In addition, the Department may conduct a public hearing with live testimony if it determines that such a hearing is in the interest of the policyholders of the insurer being acquired or of the public. In making that determination, the Department shall consider the following, whether:

1. The insurer being acquired has policyholders;

2. The applicant is not currently transacting insurance business in this

State, either directly or through affiliates;

3. The insurer to be acquired has been found to be in a hazardous financial condition, is under administrative supervision pursuant to N.J.S.A. 17:51A-1 et seq., or is the subject of an order of rehabilitation pursuant to N.J.S.A. 17:30C-1 et seq., or 17B:32-31 et seq.;

4. The coverages or rates for the policyholders of the insurer to be acquired will change or the coverage currently provided will be terminated;

5. The applicant, insurer to be acquired, or an “interested party” as defined in (j) below, has requested a hearing; and

6. A hearing with live testimony is in the best interest of the policyholders of the insurer being acquired or of the public, based on the circumstances of a particular proposed acquisition.

[(g)] **(h)** A verbatim transcript of a hearing, **if a hearing with live testimony is** held pursuant to [N.J.S.A. 17:27A-2d] **(g) above** shall be made, and the costs thereof shall be borne by the acquiring party. Copies of the transcript may be obtained directly from the stenographic service that created the transcript. In the alternative, a copy will be available for inspection at the Department's offices. Copies of the transcript shall not be made by the Department.

[(h)] **(i)** Until the date notice of the hearing is published pursuant to (f) above, any information received pursuant to N.J.S.A. 17:27A-2b or this subchapter as part of an acquisition of control statement filing shall be confidential and shall not be subject to public inspection or

copying pursuant to the ["Right to Know" law] **Open Public Records Act**, N.J.S.A. 47:1A-1 et seq.

[(i)] **(i)** A person whose interest may be affected by the acquisition of control of the domestic insurer may apply to the Commissioner for leave to seek discovery and to examine and cross-examine witnesses at the hearing. For the purposes of this subsection, a person whose interest may be affected by the acquisition of control means a shareholder, policyholder, claimant or creditor who has an interest that is unique, that is, not already subsumed within the Department's statutory oversight role as contemplated by N.J.S.A. 17:27A-1 et seq. If the Commissioner finds the person has an interest as set forth in this subsection, the Commissioner shall notify the person and provide a copy of the "Form A" statement filing when it becomes public pursuant to [(h)] **(i)** above.

1. (No change.)