

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF SOLVENCY REGULATION

Increase in Capital and Surplus Requirements for Insurers and Health Maintenance Organizations
Company Action Level Event

Proposed Amendment: N.J.A.C. 11:2-39.4

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

Authority: N.J.S.A. 17:18.1, 17:1-15e and 17:17-6 et seq.

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

Proposal Number: PRN 2008-247

Submit written comments by September 19, 2008 to:

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The agency proposal follows:

Summary

N.J.S.A. 17:17-6 et seq., 17B:18-67 et seq. and 26:2J-18.2 et seq. authorize the Commissioner of Banking and Insurance (Commissioner) to increase the minimum capital and surplus requirements for property/casualty and life/health insurers, and health maintenance organizations (HMO), respectively, based upon the insurer's or HMO's business risks. The Department of Banking and Insurance (Department) implements these statutes through N.J.A.C. 11:2-39, which provides for increases in capital and surplus for insurers and HMOs based on the

risk based capital (RBC) formulae and standards adopted by the National Association of Insurance Commissioners (NAIC). The rules are based on the model adopted by the NAIC. The rules require that insurers and HMOs file RBC reports in accordance with the RBC instructions adopted by the NAIC and provide different actions that insurers or the Department may or shall take depending on the RBC level determined to exist. There are four RBC levels, at which point different actions may or shall be taken: (1) Company Action Level RBC; (2) Regulatory Action Level RBC; (3) Authorized Control Level RBC; and (4) Mandatory Control Level RBC.

N.J.A.C. 11:2-39.4 defines a “company action level event” to mean, among other things, the filing of an RBC report by an insurer which indicates that: (1) the insurer’s total adjusted capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC; or (2) if a life/health insurer, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 2.5 and has a negative trend.

The NAIC model was amended during the past several years to add an additional circumstance that can trigger a company action level event with respect to property/casualty insurers. The proposed new circumstance is where the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the property/casualty RBC instructions. This provides an additional ground upon which a property/casualty insurer is required to take action by utilizing trend results, similar to the standards currently applicable to life/health insurers.

The Department now proposes to amend N.J.A.C. 11:2-39.4(a)1 to add in new subparagraph (a)liii the standards set forth above as an additional circumstance that can trigger a

company action level event so as to reflect the current NAIC model and national standard for property/casualty companies.

The Department also proposes to amend N.J.A.C. 11:2-39.4(a)2 and 3 to delete references therein to subparagraphs (a)1i or ii and simply refer to paragraph (a)1 to reflect the entirety of that paragraph.

The proposed amendments thus will reflect the national standard and provide additional safeguards with regard to the maintenance by property/casualty insurers of adequate capital and surplus based on the risks they carry.

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 provide an additional measure as to whether the financial condition of a property/casualty insurer is at a “company action level event” under the RBC rules. The proposed amendments reflect the national standard adopted by the NAIC and provide additional measures of a property/casualty insurer’s risk to determine whether the insurer is required to undertake additional action in order to achieve its required RBC levels. Accordingly, the Department will be in better position to properly evaluate a property/casualty insurer’s financial condition to determine whether its RBC level is appropriate to the level of risk it has incurred. Accordingly, this will help avoid an insurer becoming in a hazardous financial condition, and thus will help avoid attendant disruptions to insureds, the market and the public resulting from such an occurrence.

Economic Impact

Property/causality insurers will be required to analyze their RBC levels in accordance with the proposed amendments and take appropriate action to the extent a company action level event is triggered under the proposed amendments. As noted above, the proposed amendments reflect the national standard adopted by the NAIC. The Department believes that any additional costs to insurers should be minimal. Moreover, as noted above, the proposed amendments will enable the Department to better evaluate and monitor an insurer's financial condition, and thus help ensure that a property/casualty insurer does not fall into a hazardous financial condition by requiring that the insurer maintain appropriate capital and surplus levels commensurate to its risks. This will help avoid the insurer descending into a hazardous financial condition and the attendant costs to the insurer's policyholders, the public and the market generally resulting from such an occurrence.

The professional services required to comply with the proposed amendments are the same as those required to comply with the existing rules, and would include accounting and actuarial services. No additional professional services should be required to comply with the proposed amendments.

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 on the potential jobs impact of the proposed amendments 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 Analysis

The proposed amendments will apply to few, if any, “small businesses” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq. To the extent that the proposed amendments apply to small businesses, they will apply to domestic property/casualty insurers. As noted in the Economic Impact above, property/casualty insurers will be required to analyze their RBC levels in accordance with the proposed amendments and take actions as required by N.J.A.C. 11:2-39.4 if a company action level event is triggered in accordance with the proposed amendments. As noted above, the professional services required to comply with the proposed amendments are the same as those required to comply with the existing rules, and include accounting and actuarial. The Department does not believe that any new professional services will be required in order for property/casualty insurers to comply with the proposed amendments.

The proposed amendments provide no differentiation in compliance requirements based on business size. As noted above, the proposed amendments set forth an additional ground upon which a company action level event may be triggered, requiring insurers to take appropriate action pursuant to N.J.A.C. 11:2-39.4 to ensure that their capital and surplus levels are sufficient to meet the RBC levels appropriate and commensurate with the risks they have incurred. These goals do not vary based on insurer size.

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]):

11:2-39.4 Company action level event

(a) “Company action level event” means any of the following events:

1. The filing of an RBC Report by an insurer which indicates that:

i. The insurer's total adjusted capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC; [or]

ii. If a life/health insurer, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 2.5 and has a negative trend; or

iii. If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the Property and Casualty RBC instructions;

2. The notification by the Commissioner to the insurer of an Adjusted RBC Report that indicates the event in (a)1[i or ii] above, provided the insurer does not challenge the Adjusted RBC Report under N.J.A.C. 11:2-39.9; or

3. If the insurer, under N.J.A.C. 11:2-39.9, challenges an Adjusted RBC Report that indicates the event in (a)1[i or ii] above, the notification by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(b) – (c) (No change.)

(d) Every domestic insurer that [flies] **files** an RBC Plan or Revised RBC Plan with the Commissioner shall file a copy of the RBC Plan or Revised RBC Plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

1. – 2. (No change.)

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