

**ALABAMA DEPARTMENT OF INSURANCE
INSURANCE REGULATION**

CHAPTER 482-1-094

SURPLUS NOTES

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Rule 482-1-094-.01 Purpose. The purpose of this chapter is to establish the procedures and guidelines for the approval of surplus notes as authorized under Section 27-27-40, Code of Alabama 1975.

Author: Commissioner of Insurance

Statutory Authority: Ala. Code §§ 27-27-40, 27-2-7, 27-2-17, 27-27-1, 27-27-2

History: New December 18, 1992, Effective January 1, 1993

Rule 482-1-094-.02 Authority. This chapter is made and promulgated by the undersigned Commissioner of Insurance pursuant to the authority set forth in Sections 27-2-7 and 27-2-17, Code of Alabama 1975.

Author: Commissioner of Insurance

Statutory Authority: Ala. Code §§ 27-27-40, 27-2-7, 27-2-17, 27-27-1, 27-27-2

History: New December 18, 1992, Effective January 1, 1993

Rule 482-1-094-.03 Applicability and Scope. The provisions of this chapter shall apply to surplus notes issued on or after the effective date hereof.

Author: Commissioner of Insurance

Statutory Authority: Ala. Code §§ 27-27-40, 27-2-7, 27-2-17, 27-27-1, 27-27-2

History: New December 18, 1992, Effective January 1, 1993

Rule 482-1-094-.04 Definitions. The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise.

(a) **INSURER.** Any domestic stock or mutual insurer, as defined in Section 27-27-1, including mutual aid associations and fraternal benefit societies, pursuant to Section 27-27-2.

(b) **MINIMUM SURPLUS or "FLOOR."** The amount of surplus specified in the surplus note which may not be used for payments or repayments of the surplus note and which amount must exceed the sum of (i) 10% of the face amount of the surplus note plus, (ii) the greater of the statutory minimum capital and surplus required by statute, rule, or regulation applicable to the issuing insurer, or the total stated capital and surplus of the insurer immediately before the issuance of the surplus note. The Commissioner may approve a different amount if the Commissioner is satisfied such amount is appropriate considering the financial condition of the insurer.

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(c) SURPLUS NOTES. Surplus notes, also known as "surplus debentures," "contribution certificates," "surplus capital notes," and "premium income notes, bonds, or debentures," however denominated, which are financing vehicles that increase the surplus of an insurer.

Author: Commissioner of Insurance

Statutory Authority: Ala. Code §§ 27-27-40, 27-2-7, 27-2-17, 27-27-1, 27-27-2

History: New December 18, 1992, Effective January 1, 1993

Rule 482-1-094-.05 General Provisions.

(1) The issuance of a surplus note shall not be utilized to initially capitalize an insurer, other than a mutual insurer, or a reciprocal or interinsurance exchange, or a captive insurer.

(2) The consideration received by an insurer in return for the issuance of surplus note shall be in the form of cash.

(3) An application for approval of a surplus note, filed in accordance with the provisions of this chapter by an insurer other than a captive insurer shall be deemed approved unless the insurer is otherwise notified within fifteen (15) business days after the date of filing such application. Applications for approval of a surplus note filed by a captive insurer must be approved by the commissioner in writing before issuance.

(4) An application for approval of the payment of interest on a surplus note, according to the terms thereof, shall be deemed approved unless the insurer is otherwise notified within fifteen (15) business days after the date of filing such application. Such application may include a request for the pre-approval of periodic payments of interest extending over a period of time not exceeding twelve (12) months.

(5) An application for approval of the payment of principal of such a loan, or any portion thereof, shall not be deemed approved except upon written notice from the Commissioner.

(6) For the purposes of this rule, no application shall be deemed filed until the date all material required and sufficient to constitute a full application according to this chapter has been received by the Department.

Author: Commissioner of Insurance

Statutory Authority: Ala. Code §§ 27-27-40, 27-2-7, 27-2-17, 27-27-1, 27-27-2

History: New December 18, 1992, Effective January 1, 1993; Revised June 10, 2021, Effective July 1, 2021

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Rule 482-1-094-.06 Written Agreements. When issuing a surplus note, the insurer must execute a written agreement with the creditor, providing the following:

(a) The creditor may be paid only out of the portion of the insurer's surplus that exceeds the minimum surplus stated in the agreement;

(b) The minimum surplus or "floor" shall exceed the sum of (i) 10% of the face amount of the surplus note plus, (ii) the greater of the statutory minimum capital and surplus required by statute, rule, or regulation applicable to the issuing insurer or the total stated capital and surplus of the insurer immediately before the issuance of the surplus note; or, the Commissioner may approve a different amount if the Commissioner is satisfied such amount is appropriate, considering the financial condition of the insurer;

(c) All payments of principal and interest shall be subject to the prior approval of the Commissioner;

(d) In the event of liquidation, payment of interest and repayment of principal under the written agreement are subordinated to policyholder and beneficiary claims.

Author: Commissioner of Insurance

Statutory Authority: Ala. Code §§ 27-27-40, 27-2-7, 27-2-17, 27-27-1, 27-27-2

History: New December 18, 1992, Effective January 1, 1993

Rule 482-1-094-.07 Filing Requirements.

(1) All surplus notes issued by an insurer are subject to the prior approval of the Commissioner, regardless of amount, and shall be filed at least 30 days prior to the proposed date of the loan.

(2) The payment of interest or repayment of principal is subject to the prior approval of the Commissioner, regardless of amount, and shall be filed at least 30 days prior to the date of the proposed payment.

(3) The written application for approval of the issuance of a surplus note shall include at least the following:

(a) The nature and purpose of the transaction;

(b) The identities of all parties to the transaction;

(c) A statement that no officers or directors of a party are pecuniarily interested in the transaction (neither stock ownership in, nor serving as an officer or director of the creditor shall constitute a prohibited pecuniary interest, but should not be disclosed);

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- (d) A copy of any agreement between the parties relating to the transaction; and,
 - (e) Evidence that the transaction will not adversely affect the interests of policyholders.
- (4) The written application for approval of the payment of interest or the repayment of principal shall include at least the following:
- (a) The amounts of any payments between the parties to the transaction;
 - (b) The identities of all parties to the transaction; and
 - (c) Evidence that the repayment or payment is appropriate considering the financial condition of the insurer.
- (5) A current financial statement dated not earlier than 60 days before the application date must be filed with the application for approval of the payment of interest or repayment of principal which demonstrates the existence of sufficient surplus in excess of the minimum surplus, and a statement by the chief executive officer of the insurer that the insurer's current total surplus is in such amount that payment or repayment as of the payment date will be only from surplus in excess of minimum surplus and will not adversely affect the insurer's current financial condition.
- (6) Applications for approval of the issuance or payment of interest or the repayment of principal must meet the following standards:
- (a) The terms shall be fair and equitable;
 - (b) The books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transaction; and,
 - (c) Minimum surplus and the insurer's surplus as regards policyholders following such payment of interest or repayment of principal shall be reasonable in relation to the insurer's outstanding liabilities and adequate to satisfy its financial needs.
- (7) Applications for the approval of surplus notes, or for the approval of the payment of interest or repayment of principal, shall be filed with the Chief Examiner, Alabama Department of Insurance, 135 South Union Street, Montgomery, Alabama 36130-3350.

Author: Commissioner of Insurance

Statutory Authority: Ala. Code §§ 27-27-40, 27-2-7, 27-2-17, 27-27-1, 27-27-2

History: New December 18, 1992, Effective January 1, 1993

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Rule 482-1-094-.08 Accounting Requirements.

(1) All financial statements published by any insurer or filed with the Commissioner must show as a liability that portion of the insurer's surplus that exceeds the minimum surplus as defined in the written agreement to the extent of the unpaid principal balance thereon.

(2) All agreements shall be clearly reported in an insurer's "Notes to Financial Statements" of the Annual Statement indicating that payment of interest and repayment of principal are subject to the prior approval of the Commissioner.

Author: Commissioner of Insurance

Statutory Authority: Ala. Code §§ 27-27-40, 27-2-7, 27-2-17, 27-27-1, 27-27-2

History: New December 18, 1992, Effective January 1, 1993

Rule 482-1-094-.09 Separability. If any provision of this chapter or the application thereto to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstance shall not be affected thereby.

Author: Commissioner of Insurance

Statutory Authority: Ala. Code §§ 27-27-40, 27-2-7, 27-2-17, 27-27-1, 27-27-2

History: New December 18, 1992, Effective January 1, 1993

Rule 482-1-094-.10 Effective Date. This chapter shall become effective on January 1, 1993.

Author: Commissioner of Insurance

Statutory Authority: Ala. Code §§ 27-27-40, 27-2-7, 27-2-17, 27-27-1, 27-27-2

History: New December 18, 1992, Effective January 1, 1993