

PROPOSED REGULATION OF THE COMMISSIONER OF INSURANCE

LCB File No. R030-12

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ NRS 679B.130, and 680A.205.

A REGULATION relating to insurance; setting additional standards for the identification of financial condition of insurers that may indicate that the insurer's continuance of their business may be hazardous to their policyholders, creditors, or the general public; identification of the actions that the Commissioner may take when an insurer is determined to be displaying hazardous financial conditions.

Section 1. NAC 680A.220 is hereby amended to read as follows:

680A.220 1. The Commissioner of Insurance will consider the following to determine whether the continued operation of an insurer transacting the business of insurance in this State is hazardous to the general public or the policyholders or creditors of the insurer:

(a) Adverse findings reported in ~~examinations concerning the insurer's~~ financial condition or market conduct *examination reports, audit reports, and actuarial opinions, reports or summaries* which the Commissioner determines to be material.

(b) ~~Information and reports concerning the insurer from the~~ *The National Association of Insurance Commissioners* Insurance Regulatory Information System ~~of the National Association of Insurance Commissioners~~ *and its other financial analysis solvency tools and reports.*

~~Whether the ratios of the expenses for commissions and for general insurance, policy benefits and increases in reserve of the insurer compared to its annual premium and net investment income indicate that the capital and surplus of the insurer could be impaired.]~~

~~(c) [(d) Whether the insurer's portfolio of assets when considered in light of the current economic conditions is of sufficient value, liquidity or diversity to ensure the insurer's ability to meet its outstanding obligations as those obligations mature.]~~ *Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts.*

(d) ~~[(e)]~~ If the insurer has reinsurance, the ability of the assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow, the classes of insurance written by the insurer and the financial condition of the assuming reinsurer.

(e) ~~[(f)]~~ Whether the insurer's operating loss in the most previous 12-month period, or such shorter period as the Commissioner deems appropriate, is greater than 50 percent of the insurer's surplus which is in excess of the statutory minimum surplus required for that insurer pursuant to NRS 680A.120.

(f) Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, excluding net capital gains, is greater than twenty percent (20%) of the insurer's remaining surplus as regards to policyholders in excess of the minimum required.

(g) Whether ~~[any affiliate, subsidiary or reinsurer of the insurer]~~ *a reinsurer, obligor or any entity within the insurer's insurance holding company system* is insolvent, threatened with

insolvency or delinquent in payment of its monetary or other obligations *and which, in the opinion of the Commissioner, may affect the solvency of the insurer.*

(h) Whether the contingent liabilities, pledges or guaranties of the insurer, either individually or collectively, involve a total amount which, in the opinion of the Commissioner, may affect the solvency of the insurer.

(i) Whether any person who directly or indirectly controls the insurer is delinquent in the transmission to, or payment of, a net premium to the insurer.

(j) The age and ~~collectibility~~ *collectability* of the accounts receivable of the insurer.

(k) Whether any person involved in the management of the insurer fails to possess and demonstrate the competence, fitness and reputation deemed necessary by the Commissioner to serve the insurer in such a position.

(l) Whether the management of the insurer has failed to respond to any inquiry concerning the condition of the insurer, or has provided false or misleading information in response to such an inquiry.

(m) Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the Commissioner.

(n) ~~(m)~~ Whether the management of the insurer has ~~intentionally~~:

(1) Filed a false or misleading sworn financial statement with the Division or the insurance regulatory authority of any other state;

(2) Released a false or misleading statement to a lending institution or the general public;
or

(3) Made a false or misleading entry, or has omitted an entry of a material amount, in the books of the insurer.

(o) ~~(n)~~ Whether 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.

(p) ~~(o)~~ Whether the insurer has experienced, or will likely experience in the foreseeable future, problems with its cash flow or liquidity.

(q) Whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice.

(r) Whether management persistently engages in material under reserving that results in adverse development.

(s) Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature.

(t) Any other finding determined by the Commissioner to be hazardous to the insurer's policyholders, creditors or general public.

2. As used in this section:

(a) "Management of the insurer" includes officers, directors and any other person who directly or indirectly controls the operation of the insurer.

(b) "Operating loss" includes, but is not limited to:

(1) Net capital gain or loss;

(2) Change in assets which are not allowed as assets in a determination of the financial condition of the insurer pursuant to NRS 681B.020; and

(3) Cash dividends paid to shareholders.

Sec. 2. NAC 680A.222 is hereby amended to read as follows:

680A.222 To determine the financial condition of an insurer for the purposes of NAC 680A.220 to 680A.226, inclusive, the Commissioner may, if he deems it appropriate:

1. Disregard any credit or amount receivable resulting from the transactions of the insurer with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;

2. Make an appropriate adjustment *including disallowance* to the value of the insurer's assets which are attributable to the insurer's investments in or transactions with any parent, subsidiary or affiliate of the insurer, *consistent with the NAIC Accounting Policies And Procedures Manual, state laws and regulations*;

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

4. Increase the insurer's liability in an amount equal to any contingent liability, pledge or guaranty not otherwise included in the annual statements or financial statements of the insurer if there is a substantial risk that the insurer will be called upon to meet the liability, pledge or guaranty undertaken within the following 12-month period.

Sec. 3. NAC 680A.224 is hereby amended to read as follows:

680A.224 If the Commissioner determines that the continued operation of an insurer licensed to transact the business of insurance in this State may be hazardous to the policyholders *and creditors* of the insurer or the general public, the Commissioner will, if appropriate:

1. Issue an order requiring the insurer to:

(a) Purchase reinsurance to reduce the total amount of present or future liability for policy benefits.

(b) Reduce, suspend or limit the volume of business being accepted or renewed by the insurer.

(c) Reduce the insurer's expenses relating to general insurance and commission by methods specified by the Commissioner.

(d) Increase its capital and surplus.

(e) Suspend or limit its declaration and payment of dividends to the stockholders or policyholders of the insurer.

(f) File reports, in a form acceptable to the Commissioner, concerning the market value of the assets of the insurer.

(g) Limit or withdraw from any of its investments, or discontinue any part of its practices relating to investments, to the extent deemed necessary by the Commissioner.

(h) Document the adequacy of its premium rates in relation to the risks insured by the insurer.

(i) File with the Commissioner, in addition to its regular annual statements, interim financial reports. The interim reports must be on the appropriate form adopted by the National Association of Insurance Commissioners, or in a format approved by the Commissioner.

(j) Correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the Commissioner.

(k) Provide a business plan to the Commissioner in order to continue to transact business in the state.

(l) Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written by the insurer that the Commissioner considers necessary to improve the financial condition of the insurer.

2. Take any other action deemed appropriate by the Commissioner.

3. If the insurer is a foreign insurer the Commissioner's order may be limited to the extent provided pursuant NRS 680A.190 to 680A.220, inclusive.