

**PROPOSED REGULATION OF THE  
COMMISSIONER OF INSURANCE**

**LCB File No. R030-12**

June 7, 2012

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

AUTHORITY: §§1-3, NRS 679B.130 and 680A.205.

A REGULATION relating to insurance; revising the items that the Commissioner of Insurance will consider in determining whether the financial condition of an insurer may be hazardous to policyholders, creditors or the general public; revising provisions governing the requirements that the Commissioner may impose on an insurer with regard to which the Commissioner has made such a determination; and providing other matters properly relating thereto.

**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 *as reported or summarized in examination reports, audit reports or actuarial opinions* which the Commissioner determines to be material.

(b) ~~[Information]~~ *Financial solvency analysis tools and information* and reports concerning the insurer from the Insurance Regulatory Information System of the National Association of Insurance Commissioners.

(c) 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.~~

~~—(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.~~

~~—(e) *insurer has made adequate provision in accordance with accepted actuarial standards of practice for the anticipated cash flows required by any contractual obligation or related expense of the insurer. In making that determination, the Commissioner will consider the assets held by the insurer with respect to reserves and related actuarial items, including, without limitation, the investment earnings on such assets and the financial consideration anticipated to be received and retained under such contracts.*~~

(d) 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)~~ (e) 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, excluding net capital gain, in the most previous 12-month period, or such shorter period as the Commissioner deems appropriate, is greater*

*than 20 percent of the insurer's surplus which is in excess of the statutory minimum surplus required for that insurer pursuant to NRS 680A.120.*

(g) Whether any ~~[affiliate, subsidiary or]~~ *entity within the system of the insurance holding company*, reinsurer *or obligor* of the insurer is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations ~~[.]~~ *and, in the opinion of the Commissioner, such insolvency or delinquency 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 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, unless the insurer is excused from such filing requirements for a reason deemed sufficient by the Commissioner.*

(n) 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.

~~[(n)]~~ (o) 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.

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

*(q) Whether the insurer has established reserves that do not comply with the minimum standards prescribed by specific statute or regulation, sound actuarial principles or standards of practice.*

*(r) Whether the insurer persistently maintains inadequate reserves that results in an adverse effect on the general public or on the policyholders or creditors of the insurer.*

*(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 ensure the ability of the insurer to meet its outstanding obligations as the obligations mature.*

*(t) Any other finding determined by the Commissioner to be hazardous to the general public or to the policyholders or creditors of the insurer.*

2. As used in this section ~~[(t)]~~, *unless the context otherwise requires:*

(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 or she 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]~~ *Consistent with the Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners, which has been adopted by reference in NAC 679B.033, make* an appropriate adjustment , *including a 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;

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 **1.** 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 *or creditors* of the insurer or the general public, the Commissioner will, if appropriate:

~~1.~~ **(a)** Issue an order requiring the insurer to:

~~(a)~~ **(1)** Purchase reinsurance to reduce the total amount of present or future liability for policy benefits.

~~(b)~~ **(2)** Reduce, suspend or limit the volume of business being accepted or renewed by the insurer.

~~(c)~~ **(3)** Reduce the insurer's expenses relating to general insurance and commission by methods specified by the Commissioner.

~~(d)~~ **(4)** Increase its capital and surplus.

~~(e)~~ **(5)** Suspend or limit its declaration and payment of dividends to the stockholders or policyholders of the insurer.

~~(f)~~ **(6)** File reports, in a form acceptable to the Commissioner, concerning the market value of the assets of the insurer.

~~(g)~~ **(7)** 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)~~ **(8)** Document the adequacy of its premium rates in relation to the risks insured by the insurer.

~~(9)~~ (9) 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.

~~(10)~~ (10) *Correct any corporate governance practices of the insurer which are deemed deficient by the Commissioner and adopt and use corporate governance practices acceptable to the Commissioner.*

*(11) Provide a business plan to the Commissioner.*

*(12) Unless prohibited by title 57 of NRS, adjust rates for a product other than a contract for life insurance written by the insurer that the Commissioner considers necessary to improve the financial condition of the insurer.*

(b) Take any other action deemed appropriate by the Commissioner.

*2. The provisions of subsection 1 do not apply to a foreign insurer holding a certificate of authority to transact insurance in this State, except as otherwise provided in NRS 680A.190 to 680A.220, inclusive.*