

TITLE 210 – NEBRASKA DEPARTMENT OF INSURANCE

CHAPTER 55 – RULE TO DEFINE STANDARDS AND DIRECTOR’S AUTHORITY FOR COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION

001. Authority. This rule is adopted and promulgated by the Director of the Nebraska Department of Insurance pursuant to NEB. REV. STAT. §§ 44-101.01 and 44-4801 ET SEQ. of the Nebraska Insurance Code.

002. Purpose. The purpose of this rule is to set forth the standards which the Director may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to their policyholders, creditors or the general public as provided for in NEB. REV. STAT. §§ 44-4809, 44-4810, 44-4812 and 44-4817.

This rule shall not be interpreted to limit the powers granted to the Director by any laws or parts of laws of this state, nor shall this rule be interpreted to supersede any laws or parts of laws of this state.

003. Scope. This rule applies to all domestic and foreign insurers.

004. Standards. The following standards, either singly or a combination of two or more, may be considered by the Director to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to its policyholders, creditors or the general public. The Director may consider:

- 004.01 Adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports or summaries;
- 004.02 The National Association of Insurance Commissioners Insurance Regulatory Information System and its other financial analysis solvency tools and reports;
- 004.03 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;

004.04 The ability of an 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 and the classes of business written as well as the financial condition of the assuming reinsurer;

004.05 Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than fifty percent (50%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

004.06 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 policyholders in excess of the minimum required;

004.07 Whether 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 Director may affect the solvency of the insurer;

004.08 Contingent liabilities, pledges or guarantees which either individually or collectively involve a total amount which in the opinion of the Director may affect the solvency of the insurer;

004.09 Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;

004.10 The age and collectability of receivables;

004.11 Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;

004.12 Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

- 004.13 Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the Director;
- 004.14 Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released any false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;
- 004.15 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;
- 004.16 Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems;
- 004.17 Whether management has established reserves that do not comply with minimum standards established by state insurance laws, rules or regulations, statutory accounting standards, sound actuarial principles and standards of practice;
- 004.18 Whether management persistently engages in material under reserving that results in adverse development;
- 004.19 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; or
- 004.20 Any other finding determined by the Director to be hazardous to the insurer's policyholders, creditors or general public.

005. Director's authority.

- 005.01 For the purposes of making a determination of an insurer's financial condition under this rule, the Director may:
- 005.01A Disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired or otherwise subject to a delinquency proceeding;
- 005.01B Make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates consistent with the

NAIC Accounting Practices and Procedures Manual, state laws and rules;

005.01C Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

005.01D Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period.

005.02 If the Director determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to its policyholders, creditors or the general public, then the Director may, upon a determination, take such action as is authorized by the Insurers Supervision, Rehabilitation and Liquidation Act, NEB. REV. STAT. § 44-4801, ET SEQ. In addition to taking any action authorized by § 44-4801 ET SEQ. and § 44-134, the Director may issue an order requiring such insurer to:

005.02A Reduce the total amount of present and potential liability for policy benefits by reinsurance;

005.02B Reduce, suspend or limit the volume of business being accepted or renewed;

005.02C Reduce general insurance and commission expenses by specific methods;

005.02D Increase the insurer's capital and surplus;

005.02E Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;

005.02F File reports in a form acceptable to the Director concerning the market value of an insurer's assets;

005.02G Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Director deems necessary;

005.02H Document the adequacy of premium rates in relation to the risks insured;

- 005.02I File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in such format as promulgated by the Director;
- 005.02J Correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the Director;
- 005.02K Provide a business plan to the Director in order to continue to transact business in the state;
- 005.02L 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 Director considers necessary to improve the financial condition of the insurer.

If the insurer is a foreign insurer the Director's order may be limited to the extent provided by statute.

006. Administrative and Judicial Review. Any decision or order of the Director pursuant to this rule shall be subject to an administrative hearing and judicial review in accordance with the Administrative Procedure Act at the instance of any party to the proceedings whose interests are substantially affected.

007. Severability. If any provisions of this rule be held invalid, the remainder shall not be affected.

008. Effective Date. This regulation shall become effective January 1, 2011.