10/5/09

PROPOSED RULES

NORTH DAKOTA ADMINISTRATIVE CODE
CHAPTER 45-03-13
REGULATION OF AND STANDARDS FOR COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION

Section
45-03-13-01 Standards
45-03-13-02 Commissioner's Authority

45-03-13-01. Standards. The following standards, either singly or a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to the policyholders, creditors, or the general public. The commissioner may consider:

1. Adverse findings reported in financial condition and market conduct examination reports, audit reports, actuarial opinions, reports, or summaries.

2. The national association of insurance commissioners insurance regulatory information system and its ~~related reports~~ other financial analysis solvency tools and reports.

3. ~~The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus.~~

4. ~~The insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they 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 the reserves and related actuarial items including the investment earnings on the assets, and considerations anticipated to be received and retained under the policies and contracts.

~~5.~~ 4. The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the ~~company's~~

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.

~~6.~~ 5. 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 nonadmitted assets, and cash dividends paid to shareholders, is greater than fifty percent of such insurer's remaining surplus as regards policyholders in excess of the minimum required.

6. 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 of the insurer's remaining surplus as regards policyholders in excess of the minimum required.

7. Whether a reinsurer, obligor, or any ~~affiliate, subsidiary, or reinsurer~~ entity within the insurer's insurance holding company system is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligation and which may affect the solvency of the insurer.

8. Contingent liabilities, pledges, or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer.

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

10. The age and collectibility of receivables.

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.

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.

13. Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner.

14. Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released 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.

~~14.~~ 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.

~~15.~~ 16. Whether the ~~company~~ insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems, or both.

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

18. Whether management persistently engages in material under reserving that results in adverse development.

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.

20. Any other finding determined by the commissioner to be hazardous to the insurer's policyholders, creditors, or the general public.

History: Effective January 1, 1992; amended effective _____.
General Authority: NDCC 28-32
Law Implemented: NDCC 26.1-01-03.1, 26.1-05-04, 26.1-05-32, 26.1-06.1-01(3)(a), 26.1-06.1-11

45-03-13-02. Commissioner's authority.

1. For the purposes of making a determination of an insurer's financial condition under this chapter, the commissioner may:

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

   b. Make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates consistent with the national association of insurance commissioners accounting policies and procedures manual, state laws, and rules.

c. 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.

d. 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.

2. If the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to ~~the~~ its policyholders, creditors, or the general public, then the commissioner may, upon his determination, issue an order requiring the insurer to:

a. Reduce the total amount of present and potential liability for policy benefits by reinsurance.

b. Reduce, suspend, or limit the volume of business being accepted or renewed.

c. Reduce general insurance and commission expenses by specified methods.

d. Increase the insurer's capital and surplus.

e. Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders.

f. File reports in a form acceptable to the commissioner concerning the market value of an insurer's assets.

g. Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary.

h. Document the adequacy of premium rates in relation to the risks insured.

i. File, in addition to regular annual statements, interim financial reports on the form adopted by the national association of insurance commissioners or on such format as promulgated by the commissioner. If the insurer is a foreign insurer, the commissioner's order may be limited to the extent provided by statute.

j. Correct corporate governance practice deficiencies and adopt and use 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 adjustment, 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.

3. Any insurer subject to an order under subsection 2 may request a hearing to review that order. The notice of hearing must be served upon the insurer pursuant to North Dakota Century Code chapter 28-32. The notice of hearing must state the time and place of hearing, and the conduct, condition, or ground upon which the commissioner based the order. Unless mutually agreed between the commissioner and the insurer, the hearing must occur not less than ten days nor more than forty-five days after notice is served and must be in the place to be designated by the commissioner. The commissioner shall hold all hearings under this subsection privately, unless the insurer requests a public hearing, in which case the hearing must be public.

History: Effective January 1, 1992; amended effective _____.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-01-03.1, 26.1-05-04, 26.1-05-32, 26.1-06.1-01(3)(a), 26.1-06.1-11(1)