REGULATION TO DEFINE STANDARDS AND COMMISSIONER'S AUTHORITY FOR COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION

Section

120-2-54-.01 Authority

This regulation is adopted and promulgated by the Commissioner pursuant to the authority granted by O.C.G.A. §§ 33-2-9, 33-3-17, 33-3-18, 33-37-11, and 33-37-16.

120-2-54-.02 Purpose

The purpose of this regulation is to set forth the standards which the Commissioner 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.

This regulation shall not be interpreted to limit the powers granted the Commissioner by any laws or parts of laws of this State, nor shall this regulation be interpreted to supersede any laws or parts of laws of this State.

120-2-54-.03 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 its policyholders, creditors, or the general public. The Commissioner may consider:

(a) Averse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports or summaries;
(b) The National Association of Insurance Commissioners Insurance Regulatory Information System and its other financial analysis solvency tools and reports;
(c) 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 expense 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) The ability of an assuming reinsurer to perform and whether the insurers 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;

(e) 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;

(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 policyholders in excess of the minimum required;

(g) 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 Commissioner may affect the solvency of the insurer;

(h) Contingent liabilities, pledges or guarantees which 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 controlling person of any insurer is delinquent in the transmitting to, or payment of, net premiums to the insurer;

(j) The age and collectability of receivables;

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

(l) Whether the 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;

(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) Whether the 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 a material amount in the books of the insurer;

(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;

(p) Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems;

(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.

120-2-54-.04 Commissioner's Authority

(a) For the purposes of making a determination of an insurer's financial condition under this regulation, the Commissioner may:

(1) Disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding;

(2) 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 regulations;

(3) 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

(4) 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.

(b) If the Commissioner 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 Commissioner may, upon a determination, issue an order requiring the insurer to:

(1) Reduce the total amount of present and potential liability for policy benefits by reinsurance;

(2) Reduce, suspend, or limit the volume of business being accepted or renewed; or

(3) Reduce general insurance and commission expenses by specified methods;

(4) Increase the insurer's capital and surplus;

(5) Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;

(6) File reports in a form acceptable to the Commissioner concerning the market value of a security;

(7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Commissioner deems necessary;

(8) Document the adequacy of premium rates in relation to the risks insured;

(9) 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 Commissioner;

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

(11) Provide a business plan to the Commissioner in order to continue to transact business in the State; or

(12) Notwithstanding any of the other provisions 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.

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

(c) An insurer subject to an order under paragraph (b) may request a hearing to review that order. All requests for hearings and all hearings shall be conducted in a manner consistent with O.C.G.A. § 33-2-17.