Ohio Administrative Code

Rule 3901-3-04 Hazardous financial condition standards.

Effective: October 29, 2015

(A) Purpose

The purpose of this rule is to facilitate the department of insurance's surveillance of the financial condition of insurers by setting out standards which the superintendent may use for identifying insurers whose condition is such as to render the continuance of their business hazardous to their policyholders, creditors, or the general public. This rule shall not be interpreted to limit the powers granted the superintendent by any laws of this state.

(B) Authority

This rule is promulgated pursuant to the authority vested in the superintendent under sections 3901.041, 3903.09 and 3903.71 of the Revised Code.

(C) Standards

(1) The following standards, either singly or a combination of two or more, may be considered by the superintendent to determine whether the continued operation of any insurer might be deemed to be hazardous to their policyholders, creditors, or the general public. The superintendent may consider:

(a) Adverse findings reported in financial condition or market conduct examination reports, statutory audit reports, and actuarial opinions, reports or summaries;

(b) The "National Association of Insurance Commissioners (NAIC) 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 contracted 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) 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;

(e) As reported in the most recent quarterly or annual statutory financial statement filing, the insurer's net loss or negative net income in the last twelve month period or any shorter period of time, including but not limited to net unrealized capital gains or losses, change in non-admitted assets, and the payment of cash dividends to shareholders which are greater than fifty per cent of such insurer's remaining capital and surplus as regards policyholders in excess of the minimum amount required and/or;

(f) As reported in the most recent quarterly or annual statutory financial statement filing, the insurer's net decrease in capital and policyholders surplus, in the last twelve month period or any shorter period of time, is greater than fifty per cent of such insurer's remaining capital and policyholders surplus in excess of the minimum required;

(g) As reported in the most recent quarterly or annual statutory financial statement filing, whether the insurer's net loss or negative net income in the last twelve month period or any shorter period of time, excluding net realized capital gains and losses, is greater than twenty per cent of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

(h) 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 obligation and which in the opinion of the superintendent may affect the solvency of the insurer;

(i) Contingent liabilities, pledges or guarantees which either individually or collectively involve a total amount which in the opinion of the superintendent may affect the solvency of the insurer;

(j) Whether any person, exercising control of an insurer as defined in division (C) of section 3905.61 of the Revised Code is delinquent in the transmitting to, or payment of, net premiums to such insurer;

(k) The age and collectability of receivables;

(l) 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;

(m) 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;

(n) Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the superintendent;

(o) Whether management of an insurer has filed any false or misleading sworn financial statement, or has released false or misleading financial statements 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;

(p) 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;

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

(r) Whether an insurer has failed to comply with paragraph (J) of rule 3901-1-50 of the Administrative Code;

(s) Whether the insurer meets measures of capital adequacy adopted by statute or rule;

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

(u) Whether management engages in reporting inadequate reserve levels that result in material adverse development;

(v) Whether a material change during the year to the insurer's financial condition, including, but not limited to, changes in assets, liabilities, surplus, premium growth, mix of business, reinsurance, or operating performance that may adversely impact the result of the next year-end risk based capital calculation to a level that would require regulatory action;

(w) 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;

(x) Any other finding determined by the superintendent to be hazardous to the insurer's policyholders, creditors, or general public.

(2) For the purposes of making a determination of an insurer's financial condition under this rule the superintendent 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 NAIC accounting practices and procedures manual, state laws and regulations;

(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) Refuse to recognize the stated value of assets pledged or in any way hypothecated to secure a liability to the extent that they are in excess of the specific recorded liability of the insurer;

(e) 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.

(D) If the superintendent determines that the continued operation of an insurer licensed to transact business in this state may be hazardous to its policyholders, creditors or the general public, the superintendent, in lieu of placing a domestic insurer into supervision, rehabilitation or liquidation pursuant to Ohio's insurers supervision, rehabilitation or liquidation act, or suspending the license of a foreign insurer pursuant to section 3903.71 of the Revised Code, may take other action to correct the hazard, including, but not limited to, either entering into a memorandum of understanding with the insurer or issuing 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 volumes of business being accepted or renewed;

(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 its policyholders;

(6) File reports in a form acceptable to the superintendent concerning the market value of an insurer's assets;

(7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the superintendent 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 NAIC or in such format as promulgated by the superintendent;

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

(11) Provide a business plan to the superintendent in order to continue to transact business in the state; and

(12) Take any other action necessary to cure the conditions which resulted in the finding that the insurer's continued operation may be hazardous to its policyholders, creditors, or the general public.

(E) Severability

If any paragraph, term or provision of this rule is adjudged invalid for any reason, the judgment shall not affect, impair or invalidate any other paragraph, term or provision of this rule, but the remaining paragraphs, terms and provisions shall be and continue in full force and effect.