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§9–102.

(a) In determining whether the continued operation of an authorized insurer engaging in insurance business in the State would be hazardous to policyholders or creditors of the authorized insurer or the general public, the Commissioner may consider:

(1) adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports, or summaries;

(2) the Insurance Regulatory Information System and other financial analysis solvency tools and reports of the National Association of Insurance Commissioners;

(3) whether the authorized 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;

(4) the ability of an assuming reinsurer to perform, including whether the reinsurance program of the authorized insurer provides sufficient protection for its remaining surplus, after taking into account the cash flow of the authorized insurer and classes of business written by the authorized insurer and the financial condition of the assuming reinsurer;

(5) whether in the last 12–month period or any shorter period, the authorized insurer's operating loss, calculated to include net capital gain or loss, change in non–admitted assets, and cash dividends paid to stockholders, is greater than 50% of that part of the authorized insurer's policyholder surplus that is in excess of the minimum required surplus;

(6) whether the authorized insurer's operating loss in the last 12–month period or any shorter period, excluding net capital gains, is greater than 20% of the authorized insurer's policyholder surplus that is in excess of the minimum required surplus;

(7) whether a reinsurer, obligor, or any entity within the authorized insurer's insurance holding system is insolvent, threatened with insolvency, or delinquent in the payment of a monetary or other obligation, and which, in the opinion of the Commissioner, may affect the solvency of the insurer;

(8) contingent liabilities, pledges, or guarantees that, either individually or collectively, involve a total amount that the Commissioner believes may affect the solvency of the authorized insurer;

(9) whether a controlling person of the authorized insurer is delinquent in transmission or payment of net premiums to the insurer;

(10) the age and collectibility of receivables;

(11) whether the management of the authorized insurer, including an officer, director, or any other person that has direct or indirect control over operation, fails to possess and demonstrate the competence, fitness, and reputation considered necessary to serve the authorized insurer in a position of control;

(12) whether the management of the authorized insurer has failed to respond to inquiries about the condition of the authorized insurer or has responded to an inquiry with false or misleading information;

(13) whether the authorized insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the Commissioner;

(14) whether the management of the authorized insurer has:

(i) filed a false or misleading sworn financial statement;

(ii) released a false or misleading financial statement to a lending institution or the general public;

(iii) made a false or misleading entry in the books of the authorized insurer; or

(iv) omitted an entry of a material amount in the books of the authorized insurer;

(15) whether the authorized insurer has grown so rapidly that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(16) whether the authorized insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems;

(17) whether the management of an authorized insurer has established reserves that do not comply with minimum standards established by the State's insurance laws, statutory accounting standards, sound actuarial principles, and standards of practice;

(18) whether the management of an authorized insurer 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 authorized insurer's ability to meet its outstanding obligations as they mature; or

(20) any other finding determined by the Commissioner to be hazardous to policyholders, creditors of the authorized insurer, or the general public.

(b) In determining whether the financial condition of an authorized insurer would cause its continued operation in the State to be hazardous to policyholders or creditors of the authorized insurer or the general public, the Commissioner may:

(1) disregard a 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, consistent with the National Association of Insurance Commissioners Accounting Policies and Procedures Manual and State laws and regulations, to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates of the authorized insurer;

(3) refuse to recognize the stated value of accounts receivable if the ability to collect the receivables is highly speculative because of the age of the account or financial condition of the debtor; or

(4) increase the liability of the authorized insurer in an amount equal to any contingent liability, pledge, or guarantee not otherwise included in the statement of liability if there is a substantial risk that the authorized insurer will have to discharge the liability, pledge, or guarantee within the next 12–month period.

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