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**IDAPA 18
TITLE 01
CHAPTER 66**

**18.01.66 - DIRECTOR'S AUTHORITY FOR COMPANIES DEEMED TO BE
IN HAZARDOUS FINANCIAL CONDITION**

000. LEGAL AUTHORITY.

This rule is adopted and promulgated by the Director pursuant to Idaho Code Sections 41-211, 41-327 and 41-3309, and Title 67, Chapter 52, Idaho Code. (10-1-93)

001. TITLE AND SCOPE.

01. Title. This rule shall be cited as IDAPA 18.01.66, "Director's Authority for Companies Deemed to be in Hazardous Financial Condition." (4-7-11)

02. Scope. 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 the public or to holders of their policies or certificates of insurance. This rule shall not be interpreted to limit the powers granted 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. (4-7-11)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of this rule, or to the documentation of compliance with this rule. These documents will be available for public inspection and copying in accordance with the Idaho Public Records Law, Title 9, Chapter 3, Idaho Code. (4-7-11)

003. ADMINISTRATIVE APPEALS.

All administrative appeals shall be governed by Title 41, Chapter 2, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General -- General Provisions." (4-7-11)

004. INCORPORATION BY REFERENCE.

This rule incorporates by reference the full text of the National Association of Insurance Commissioners Financial Condition Examiners Handbook and the National Association of Insurance Commissioners Annual Statement Instructions and Accounting Practices and Procedures Manual, pursuant to Sections 41-223 and 41-335, Idaho Code. Copies may be viewed at: (4-7-11)

01. Department. Idaho Department of Insurance, 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. (4-7-11)

02. Industry Documents. NAIC Executive Headquarters, 2301 McGee Street, Suite 800, Kansas City, MO 64108-2662. NAIC website at <http://www.naic.org>. (4-7-11)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS, AND WEB SITE.

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except weekends and legal holidays. (4-7-11)

02. Mailing Address. The Department's mailing address is Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (4-7-11)

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. (4-7-11)

04. Web Site Address. The department's website is <http://www.doi.idaho.gov>. (4-7-11)

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with this rule are subject to the provisions of the Idaho Public Records Law, Title 9, Chapter 3, Idaho Code. (4-7-11)

007. -- 010. (RESERVED)

011. STANDARDS.

The following standards, either singly or in combination of two (2) or more, may be considered by the Director to determine whether the continued operation of any insurer transacting insurance business in this state might be deemed to be hazardous to its policyholders or creditors or to the general public. The Director may consider: (4-7-11)

01. Examination Reports. Adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports or summaries. (4-7-11)

02. NAIC Insurance Regulatory Information System. The National Association of Insurance Commissioners Insurance Regulatory Information System and its other financial analysis solvency tools and reports. (4-7-11)

03. Adequate Cash Provision. 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. (4-7-11)

04. Reinsurance Program. The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company'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. (10-1-93)

05. Operating Loss (50% of Surplus). Whether the insurer's operating loss in the last twelve (12) 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. (4-7-11)

06. Operating Loss (20% of Surplus). Whether the insurer's operating loss in the last twelve (12) 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. (4-7-11)

07. Insolvency of Affiliate, Subsidiary or Reinsurer. 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. (4-7-11)

08. Contingent Liabilities. Contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the Director may affect the solvency of the insurer. (10-1-93)

09. Controlling Person. Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer. (10-1-93)

10. Receivables. The age and collectibility of receivables. (10-1-93)

11. Competence of Management. 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. (10-1-93)

12. Failure to Respond to Inquiries. 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. (10-1-93)

13. Failure to Meet Filing Requirements. Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the Director. (4-7-11)

14. False or Misleading Financial Statements. 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. (10-1-93)

15. Extensive Growth. 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. (10-1-93)

16. Cash Flow. Whether the company has experienced or will experience in the foreseeable future cash flow and/or liquidity problems. (10-1-93)

17. Reserves Compliance with Minimum Standards. 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. (4-7-11)

18. Material Under-Reserving. Whether management persistently engages in material under-reserving that results in adverse development. (4-7-11)

19. Transactions Among Affiliates. Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets, 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. (4-7-11)

20. Any Other Finding. Any other finding determined by the Director to be hazardous to the insurer's policyholders or creditors or to the general public. (4-7-11)

012. DIRECTOR'S AUTHORITY.

01. Determination of Financial Condition. For the purposes of making a determination of an insurer's financial condition under this rule, the Director may: (10-1-93)

a. Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding; (10-1-93)

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 Policies and Procedures Manual, state laws, and regulations; (4-7-11)

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; (10-1-93)

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 (12) month period. (10-1-93)

02. Issuance of Order. If the Director determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders or creditors or to the general public, then the Director may, upon a determination, issue an order requiring the insurer to: (4-7-11)

a. Reduce the total amount of present and potential liability for policy benefits by reinsurance; (10-1-93)

- b.** Reduce, suspend or limit the volume of business being accepted or renewed; (10-1-93)
 - c.** Reduce general insurance and commission expenses by specified methods; (10-1-93)
 - d.** Increase the insurer's capital and surplus; (10-1-93)
 - e.** Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders; (10-1-93)
 - f.** File reports in a form acceptable to the Director concerning the market value of an insurer's assets; (10-1-93)
 - g.** Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Director deems necessary; (10-1-93)
 - h.** Document the adequacy of premium rates in relation to the risks insured; (10-1-93)
 - i.** 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; (10-1-93)
 - j.** Correct corporate governance practice deficiencies and adopt and utilize governance practices acceptable to the Director; (4-7-11)
 - k.** Provide a business plan to the Director in order to continue to transact business in the state; or (4-7-11)
 - l.** 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. (4-7-11)
- 03. Hearing.** Any insurer subject to an order under Subsection 012.02 may request a hearing to review that order pursuant to Title 41, Chapter 2, Idaho Code. (4-7-11)
- 013. SEVERABILITY.**
If any provisions of this rule are held to be invalid, the remainder shall not be affected. (4-7-11)
- 014. -- 999. (RESERVED)**

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