

Topic: **FITNESS AND COMPETENCY OF MANAGEMENT**

Situations that may apply:

- Form A filings
- Company licensing (initial or expansion)
- TDI inquiry (financial analysis)
- Changes in company's officer and director page, or underwriters, or attorney-in-fact
- As an abatement item for release from regulatory intervention

Examples of criteria that will cause closer scrutiny regarding competency and fitness of management include but are not limited to:

- conviction on, or pleading of nolo contendere to an indictment charging felony for embezzlement, theft, larceny, or fraud, with or without a waiver/approval pursuant to 18 USC § 1033;
- past or current involvement in an insolvent insurance or other financial services company;
- prior (in past ten years) or pending investigation of the individual by a regulatory agency (federal or state), a fine or reprimand by a regulatory agency (federal or state) (in past ten years), and/or association with any company which has had revocation of license or other regulatory action taken against it (in past ten years);
- lack of demonstrated experience in the area of proposed duties and positions;
- high level or responsible position with a company:
 - ▶ which has had denial of an application for admission, acquisition, or licensure in any state within the past ten years
 - ▶ which has had a high level of complaints or enforcement actions
 - ▶ from which there has been a lack of cooperation during financial or market conduct examinations, financial analysis inquiries, or regulatory intervention
 - ▶ which has failed to timely respond to TDI inquiries on two or more occasions
 - ▶ which has had a history of late filings of required regulatory reports
 - ▶ with a history of operating at a potentially troubled company level (reference TIC Art. 1.32 and 28 TAC 8.3 and 8.4)

- ▶ which has experienced continuing or unremediated major internal control findings by an independent auditor
- revocation of a professional license held by the individual;
- multiple lawsuits against the individual that indicates a pattern of behavior involving one or more of the conditions or concerns described above.

Statutory and Regulatory References:

- TIC § 801.101 TDI may inquire into the competency, fitness and reputation of an officer, director or person having control of an insurer.
- TIC § 823.201 Information on acquiring person
- TIC § 823.157(b)(5) Finding of fact in order to approve or deny a Form A
- TAC § 7.209(d)(1-2) Requires biographical data for certain officers/directors
- TAC § 7.209(f)(4) Requests information regarding each person who will be in charge of major areas of operations

(There are other authoritative references in the Insurance Code and applicable regulations.)