NEW YORK STATE
INSURANCE DEPARTMENT
PROPOSED
TENTH AMENDMENT TO REGULATIONS NO. 17, 20 AND 20-A
(11 NYCRR 125)
CREDIT FOR REINSURANCE [FROM UNAUTHORIZED INSURERS]

I, James J. Wrynn, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 110, 201, 301, 307(a), 308, 332, 1301(a)(9), 1301(c), and 1308 of the Insurance Law., do hereby promulgate the following Tenth Amendment to 11 NYCRR 125 (Regulation No. 17, 20, and 20-A), to take effect on July 1, 2011, to read as follows:

(New Matter is Underlined; Matter in Brackets is Deleted)

Sections 125.1, 125.2, and 125.3 are repealed.

A new Section 125.1 is promulgated to read as follows:

Section 125.1 Applicability.

This Part shall apply to reinsurance ceded by an insurer authorized to do business in this State, provided that where the state of domicile of a foreign ceding insurer is an NAIC-accredited state, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk, then the foreign ceding insurer may take credit for the reinsurance.

A new Section 125.2 is promulgated to read as follows:

Section 125.2 Definitions.

(a) "Catastrophic loss" means an event designated as a catastrophe by the Property Claims Service or any successor organization and covering losses related to a natural event including wind, hail, hurricane, earthquake, winter storms (snow, ice, freezing), fire, tsunami, or flood;

(b) "GAAP" means Generally Accepted Accounting Principles;

(c) "IFRS" means International Financial Reporting Standards;

(d) "NAIC" means the National Association of Insurance Commissioners.

A new Section 125.3 is promulgated to read as follows:

Section 125.3 Principles of prudent reinsurance credit risk management.

(a) An authorized insurer, hereinafter referred to as a "ceding insurer," may reinsure its risks and liabilities in any assuming insurer pursuant to section 1308 of the Insurance Law. A ceding insurer shall at all times act with financial prudence when entering into any reinsurance arrangement. The insurer shall properly consider and account for all risks associated with such an agreement, including:

(1) compliance with all applicable legal and regulatory requirements;

(2) the net risk to be retained;

(3) concentration of risk on a net and gross basis;

(4) projections as to reasonable future availability and affordability of adequate levels of reinsurance support for the ceding insurer's ongoing operations;

(5) the degree to which future reinsurance proceeds for existing and future ceded reserves are likely to be recoverable based upon best available current information;

(6) the way an assuming insurer will be selected, including how to assess its security;

(7) how the reinsurance program will be monitored (i.e. the reporting and internal control systems); and

(8) that the terms of agreements with any affiliated assuming insurer are fair and equitable.

(b) (1) A ceding insurer shall take steps to manage its reinsurance recoverable proportionate to its own book of business. A ceding insurer shall notify the superintendent within 30 days after a reinsurance recoverable from any single assuming insurer, or group of affiliated assuming insurers, exceeds 50 percent of the ceding insurer's last reported surplus to policyholders, or after it is determined that a reinsurance recoverable from any single assuming insurer, any group described in section 125.4(d)(1) of this Part, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the ceding insurer including consideration of the financial strength of the assuming insurer.

(2) A ceding insurer shall take steps to diversify its reinsurance program. A ceding insurer shall notify the superintendent within 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than 20percent of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, any group described in section 125.4(d)(1) of this Part, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the ceding insurer.

Section 125.4 is amended to read as follows:

Section 125.4 Credit for reinsurance involving risks other than life, annuity and accident and health from unauthorized insurers.

A ceding insurer may elect to take credit, as an asset or as a deduction from loss and unearned premium reserves, for reinsurance recoverable, involving risks other than life, annuity and accident and health, from an assuming insurer not authorized in this State, provided:

(a) *U.S. domiciled insurers and U.S. branches of alien insurers* - In the case of an assuming insurer, domiciled in the United States, or an alien assuming insurer entered as a United States branch in another state, such assuming insurer presents and maintains satisfactory evidence that it meets the standards of solvency required of licensed insurers of like character and otherwise complies substantially with related requirements imposed on such licensed insurers.

(b) *U.S. insurance exchanges* - In the case of an assuming underwriting member of an insurance exchange domiciled in any state or jurisdiction in the United States except this State, such assuming insurer (underwriting member) presents and maintains satisfactory evidence that it meets the standards of solvency as computed on a statutory insurance accounting basis required of authorized insurers of like character and otherwise complies substantially with related requirements imposed on such underwriting member and with such terms and conditions as prescribed by the superintendent.

(c) (1) *Alien assuming insurers* – (i) In the case of an alien assuming insurer not otherwise entered as a United States branch in another state, such assuming insurer meets the standards of solvency required of licensed insurers of like character, such terms and conditions as prescribed by the superintendent, and otherwise complies substantially with related requirements, and such assuming insurer has deposited and continues to maintain in one or more New York State banks and/or members of the Federal Reserve System located in New York State, a trust fund or trust funds, constituting a trusteed surplus, in cash, readily marketable securities, or letters of credit, in an amount of not less than $20,000,000 for the protection of the United States insurers, and United States beneficiaries under reinsurance policies (contracts) issued by such alien assuming insurers.

(ii) *(a)* Notwithstanding subparagraph (i) of this paragraph, the superintendent may approve a reduction in the trust to less than $20,000,000 if the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years and finds, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development.

*(b)*The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency.

(c) The minimum required trusteed surplus may not be reduced to an amount less than 30percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers. The trusteed amount shall be in addition to any other trust fund required by the superintendent, including a trusteed amount at least equal to the liabilities attributable to United States insurers and United States beneficiaries under reinsurance policies issued by such alien assuming insurers.

(d) As used in this paragraph, "surplus" means the balance remaining after subtracting the liabilities, attributable to reinsurance policies issued in the name of the alien assuming insurer from the total assets deposited in the trust fund or trust funds.

(2) (i) With respect to such trusts established prior to January 1, 1993, the trusteed surplus and the other trust funds shall be in cash or marketable securities.

(ii) With respect to trusts established on or after January 1, 1993, at least $10 million of the trusteed surplus shall be in the types of investments set forth in paragraphs 1, 2, and 3 of Insurance Law section 1402(b). Any other marketable securities that make up the remainder of the trusteed surplus and the other trust funds shall be of the types set forth in paragraphs 1, 2, 3, 8, and 10 of section 1404(a) of the New York Insurance Law and foreign investments complying with paragraph (3) of this subdivision. Trust funds shall not be invested in any securities of any company affiliated with the alien_assuming insurer. Letters of credit complying with paragraph (4) of this subdivision may be used to fund the remainder of the trusteed surplus and the other trust funds.

(3) Requirements for foreign investments in the trust funds.

(i) Subject to the overall limits in subparagraph (ii) of this paragraph, foreign investments in the trust funds may include:

(a) government obligations that are issued, assumed or guaranteed by the government of any country that is a member of the Organization for Economic Cooperation and Development, that are not in default as to principal or interest, that are valid and legally authorized, and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(b) obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(c) an investment made pursuant to the provisions of clauses (a) and (b) of this subparagraph shall not exceed five percent [(5%)] of the assets of the trust;

(d) investments in common shares or preferred shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(1) all its obligations are rated A or higher, or the equivalent by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(2) the equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

(*e*) an investment in or loan upon any one institution's outstanding equity interests made pursuant to clause (*d*) of this subparagraph shall not exceed one percent [(1%)] of the assets of the trust. The cost of such an investment in equity interests, when added to the aggregate cost of other such investments in equity interests then held, shall not exceed ten percent [(10%)] of the assets in the trust;

(*f*) obligations issued, assumed or guaranteed by a multinational development bank; such as the International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, Inter-American Development Bank, Asian Development Bank, African Development Bank International Finance Corporation; provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(ii) No more than [twenty] <u>20</u> percent of the total of the investments in the trust may be foreign investments authorized under subparagraph (i) of this paragraph, and no more than ten percent [(10%)] of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency.

(4) In order for a letter of credit to qualify as an asset of the trust fund:

(i) the letter of credit shall comply with Part 79 of this Title (Regulation 133);

(ii) the letter of credit shall be payable to the trustee; and

(iii) the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the superintendent), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(5) The trust agreement required by this subdivision shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

(d) (1) *Non-U.S. groups of insurers -* In the case of a group located outside the United States whose members consist of individual incorporated assuming insurers who are not engaged in any business other than underwriting as a member of the group and individual unincorporated assuming insurers, provided all the members are subject to the same level of solvency regulation and control by the group's domiciliary [regulatory]regulator; or a group of individual incorporated assuming insurers located outside the United States; provided that such group:

(i) has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application with the department for the issuance of a certificate of recognition as an accredited assuming insurer pursuant to section 125.7 of this Part;

(ii) otherwise complies substantially with related requirements imposed upon authorized insurers;

(iii) has agreed in writing, prior to receiving such certificate of recognition as an accredited assuming insurer or within 90 days of the effective date of this amendment where a certificate of recognition has previously been issued, to submit to examination by the superintendent as often as the superintendent deems it expedient with the cost of such examination to be borne by such group; and

(iv) (*a*) has deposited and continues to maintain, with one or more New York State banks and/or members of the Federal Reserve System located in New York State, a trust fund or trust funds, constituting a surplus, in cash, readily marketable securities, or letters of credit, in an amount of not less than $100,000,000 for the protection of United States ceding insurers and United States beneficiaries under reinsurance policies (contracts) issued in the name of such group. The minimum surplus amount shall be maintained on a joint and several basis. The use of such minimum surplus amount shall be limited to the payment or reimbursement of any losses and allocated loss expenses paid by a ceding insurer but not recovered from any member of such group and for unearned premiums due a ceding insurer if not otherwise recovered from any member of such group in accordance with the terms of the reinsurance policies (contracts) issued in the name of such group. The prior approval of the superintendent shall be required for any payment or reimbursement that reduces such surplus below the minimum required amount of $100,000,000. Such surplus amount shall be in addition to any other trust fund or trust funds required by this department. As used in this subdivision, *surplus* means the balance remaining after subtracting the liabilities, attributable to reinsurance policies (contracts) issued in the name of such group, from the total assets deposited in the trust fund or trust funds.

(*b*) At least $50 million of the trusteed surplus shall be in the types of investments set forth in paragraphs 1, 2, and 3 of section 1402(b) of the New York Insurance Law. Any other marketable securities that make up the trust funds and the surplus shall be of the types set forth in paragraphs 1, 2, 3, 8, and 10 of Insurance Law section 1404(a) and foreign investments complying with [paragraph (3) of subdivision (c)] subdivision (c)(3) of this section. Letters of credit complying with clause (*c*) of this subparagraph may be used to fund the remainder of the trust funds and the surplus.

(*c*) In order for a letter of credit to qualify as an asset of the trusts:

(*1*) the letter of credit shall comply with Part 79 of this Title (Regulation 133);

(*2*) the letter of credit shall be payable to the trustee; and

(*3*) the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the superintendent), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(*d*) *(1)* The trust agreement required by this subdivision shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

(2) Credit permitted under this subdivision shall apply only to reinsurance policies (contracts) issued in the name of the group.

(e) With respect to reinsurance contracts entered into or renewed before September 15, 2001, in the case of cessions to nonaffiliated assuming insurers who have not complied with the requirements of subdivision (a), (c) or (d) of this section, but are authorized in their domiciliary jurisdiction to assume the kind or kinds of insurance ceded thereto:

(1) The ceding insurer shall establish an unauthorized reinsurance reserve which shall be a percentage of all reinsurance recoverable, including unearned premiums, from such assuming insurers described in this subdivision, after reducing such recoverable for any acceptable funds withheld under a reinsurance agreement with such an insurer as security for the payment of obligations thereunder, pursuant to the provisions of section [1301(a)(14)] 1301(a)(9) of the Insurance Law, which percentage shall be equal to the greater of:

(i) the largest percentage of all uncollectible unauthorized reinsurance recoverables during any one of the last five full calendar years, as measured by dividing the amount of reinsurance recoverables due and payable to the ceding insurer for that calendar year from the unauthorized assuming insurers, over 90 days past due and not in dispute, by the amount of reinsurance recoverables due and payable to the ceding insurer plus amounts actually collected by the ceding insurer for that same calendar year from unauthorized assuming insurers;

(ii) the largest percentage of unearned premiums in any one unauthorized insurer to the total unearned premiums on cessions to all unauthorized insurers; or

(iii) [fifteen] 15 percent;

(2) It is further provided that the allowance of any credit applicable under this subdivision shall be subject, but not limited, to the following conditions:

(i) that the assuming insurer meets the standards of solvency, on a substantial compliance basis, as required by the superintendent;

(ii) that the assuming insurer maintains the greater of a policyholder's surplus of $3,000,000 or the surplus required to be maintained by a domestic insurer organized to do the same or similar kinds of insurance;

(iii) that the assuming insurer maintains an acceptable level of premium writings in relation to its surplus to policyholders;

(iv) that the ceding insurer has limited the maximum amount of liability for loss, with respect to any one risk ceded to any one assuming insurer, to ten percent of the assuming insurer's policyholder's surplus and has limited the aggregate premium cession to any one assuming insurer to [twenty] 20 percent of the assuming insurer's policyholder's surplus;

(v) that credit claimed for reinsurance recoverable under this subdivision is to be supported by proper and appropriate records maintained by the ceding [company] insurer both as to the solvency of the assuming insurer and the record on which the review was based, and a record of the amount of reinsurance ceded subject to examination at any reasonable time by any person appointed to do so by the superintendent; and

(vi) that a report be filed quarterly, with the ceding insurer's annual or quarterly statement, and certified to by the ceding insurer, within 90 days of the statement date, on prescribed Form #1, incorporated in Appendix 16 of this Title;

(vii) any ceding insurer that has taken credit under this subdivision is required to disclose the amounts thereof in the “other items” section of the notes to the financial statements section of the annual statement; and

(viii) that the credit allowed by this subdivision shall be an amount not to exceed, in the aggregate, ten percent of the ceding insurer's [policyholders] policyholders ’ surplus.

(3) Notwithstanding the provisions and conditions of this subdivision, the ceding insurer shall be required to give immediate notice to the superintendent and provide for the necessary increased reserves with respect to any reinsurance recoverables applicable, in the event:

(i) that any assuming insurer fails to meet its obligations under any contractual agreements or treaties between the parties; or

(ii) that there is any indication or evidence that any assuming insurer, with whom the ceding insurer has a contract, fails to substantially comply with the solvency requirements under the Insurance Law and regulations thereunder.

(f) With respect to reinsurance contracts entered into or renewed on or after September 15, 2001, and prior to July 1, 2011, in the case of cessions to nonaffiliated assuming insurers [who] that have not complied with the requirements of subdivision (a), (c) or (d) of this section, but are

authorized in their domiciliary jurisdiction to assume the kind or kinds of insurance ceded thereto:

(1) The ceding insurer shall establish an unauthorized reinsurance reserve which shall be a percentage of all reinsurance recoverable, including unearned premiums, from such assuming insurers described in this subdivision, after reducing such recoverable for any acceptable funds withheld under a reinsurance agreement with such an insurer as security for the payment of obligations thereunder, pursuant to the provisions of section [1301(a)(14)] 1301(a)(9) of the Insurance Law, which percentage shall be equal to the greater of:

(i) the largest percentage of all uncollectible unauthorized reinsurance recoverables during any one of the last five full calendar years, as measured by dividing the amount of reinsurance recoverables due and payable to the ceding insurer for that calendar year from the unauthorized assuming insurers, over 90 days past due and not in dispute, by the amount of reinsurance recoverables due and payable to the ceding insurer plus amounts actually collected by the ceding insurer for that same calendar year from unauthorized assuming insurers;

(ii) the largest percentage of unearned premiums in any one unauthorized insurer to the total unearned premiums on cessions to all unauthorized insurers; or

(iii) [fifteen] 15 percent.

(2) The credit allowed by this subdivision and subdivision (e) of this section shall be an amount not to exceed, in the aggregate, ten percent of the ceding insurer's policyholders surplus.

(3) It is further provided that the allowance of any credit applicable under this subdivision shall be subject, but not limited, to the following conditions:

(i) that the assuming insurer meets the standards of solvency, on a substantial compliance basis, as required by the superintendent;

(ii) that the assuming insurer maintains the greater of a policyholder's surplus of $20,000,000 or the surplus required to be maintained by a domestic insurer organized to do the same or similar kinds of insurance (in the case of an alien assuming insurer, the policyholder's surplus is equivalent to the adjusted shareholders funds and must be maintained in a like amount);

(iii) that the assuming insurer maintains an acceptable level of premium writings in relation to its surplus to policyholders that does not exceed a ratio of 3:1;

(iv) that the ceding insurer has limited the maximum amount of liability for loss, with respect to any one risk ceded to any one assuming insurer, to ten percent of the assuming insurer's policyholder's surplus and has limited the aggregate premium cession to any one assuming insurer to [twenty] 20 percent of the assuming insurer's policyholders surplus;

(v) that the unauthorized alien assuming insurer provides to, and maintains, any acceptable funds withheld under a reinsurance agreement with such insurer as security for the payment of

obligations thereunder, pursuant to the provisions of section [1304(a)(14)] 1301(a)(9) of the Insurance Law in an amount at least equal to 110 [%] percent of the unearned premium and known case outstanding reserves for loss and allocated loss adjustment expense ceded to the unauthorized alien assuming insurer by the ceding insurer;

(vi) that credit claimed for reinsurance recoverable under this subdivision is to be supported by proper and appropriate records maintained by the ceding insurer both as to the solvency of the assuming insurer and the record on which the review was based, and a record of the amount of reinsurance ceded subject to examination at any reasonable time by any person appointed to do so by the superintendent;

(vii) that a report be filed quarterly, with the ceding insurer's annual or quarterly statement, and certified to by the ceding insurer, on prescribed Form #1, incorporated in Appendix 16 of this Title;

(viii) that the unauthorized alien assuming insurer is included in the Standard & Poor's classic database and satisfies at least four of the eight Standard & Poor's tests, as set forth below. The tests are as follows with their ratio numbers:

Standard & Poor's Performance Tests for International Insurers and Reinsurers (formerly known as "ISI Performance Tests from the CLASSIC Data Base")

Test 1: The Solvency Ratio: Ratio 2.1 Net Premium/Adjusted Shareholders' Funds

Standard & Poor's Standard: Less than 200% to less than 330%, depending on the size of the company's net written premium, as per the following table:

Net premium written (US $ million)	(Standard & Poor's STANDARD)
Up to 5	< 200%
Above 5 but not above 7	< 220%
Above 7 but not above 15	< 250%
Above 15 but not above 30	< 280%
Above 30 but not above 70	< 300%
Above 70	< 330%

Test 2: Premium Growth: Ratio 2.3 Change in Net Premium
Standard & Poor's Standard: Between -10% and +30%

Test 3: Retention Ratio or Reinsurance Utilization Ratio: Ratio 3.1 Net/Gross Premium
Standard & Poor's Standard: Greater than 50%

Test 4: The Liquidity Ratio: Ratio 4.3 Technical Reserves/Adjusted Liquid Assets
Standard & Poor's Standard: Less than 100%

Test 5: Two-year Underwriting Profit/Investment Income: Ratio 5.3.2 Two Year Underwriting Profit/Investment Income
Standard & Poor's Standard: Greater than -25%

Test 6: Return on Equity (ROE): Ratio 5.4 Pre-tax Profit/Average Adjusted Shareholders' Funds
Standard & Poor's Standard: Greater than 5%

Test 7: Ratio 6.1 Technical Reserves and Adjusted Shareholders' Funds/Net Premium Written
Standard & Poor's Standard: Greater than 150%

Test 8: Ratio 6.3 Technical Reserves/Adjusted Shareholders' Funds Standard & Poor's Standard: Less than 350%

(ix) that the reinsurance agreements between the unauthorized alien assuming insurer and the ceding insurer contain:

(*a*) an agreement by the unauthorized alien assuming insurer that, in the event of the failure of the unauthorized alien assuming insurer to perform its obligations under the terms of the reinsurance agreement, the unauthorized alien assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in a state in the United States, comply with requirements necessary to give that court jurisdiction and abide by the final decision of that court or of an appellate court in the event of an appeal. The provision does not override an agreement between the ceding insurer and the unauthorized alien assuming insurer to arbitrate;

(*b*) an agreement by the unauthorized alien assuming insurer to designate a person as its true and lawful agent upon whom may be served any lawful process in an action, suit or proceeding instituted by or on behalf of the ceding insurer; and

(*c*) an insolvency clause as provided for in section 1308(a)(2)(A)(i) of the Insurance Law.

(4) Notwithstanding the provisions and conditions of this subdivision, the ceding insurer shall give immediate notice to the superintendent and provide for the necessary increased reserves with respect to any reinsurance recoverables applicable, in the event:

(i) that obligations of an unauthorized assuming insurer for which credit for reinsurance was taken under this section are more than 90 days past due and not in dispute; or

(ii) that there is any indication or evidence that any assuming insurer, with whom the ceding insurer has a contract, fails to substantially comply with the solvency requirements under the Insurance Law and regulations thereunder.

(5) Subparagraphs [(3)](ii), (iii), (v), (viii) and (ix) <u>of paragraph (3)</u> of this subdivision do not apply when reinsurance cessions are made by ceding insurers to unauthorized alien assuming insurers of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(6) As used in this subdivision, [adjusted shareholders' funds] "adjusted shareholders' funds" shall be as reported by Standard & Poor's or other recognized national rating agency as the superintendent may, from time to time, approve for purposes of compliance with this section.

(7) Any ceding insurer that has taken credit under this subdivision and subdivision (e) of this section is required to disclose the amounts thereof in the "other items" section of the notes to the financial statements section of the annual statement.

(8) Any insurer that elects to take such credit under this subdivision in its annual statement filed on or after September 15, 2001 shall notify the superintendent in writing of its initial intention to take such credit at least [thirty] 30 days prior thereto. Upon application of an insurer with good cause shown, an insurer may be allowed to provide such notice less than [thirty] 30 days prior to taking credit under this subdivision. Such shorter notice period will be approved by the superintendent based upon the justification stated in the insurer's application.

(g) Parental funding - In the case of cessions to nonaffiliated assuming insurers [who] that have not complied with the requirements of subdivision (a), (c) or (d) of this section, but [who] that are authorized in their domiciliary jurisdiction to assume the kind or kinds of insurance ceded thereto:

(1) The noninsurer parent corporation of the ceding insurer provides the ceding insurer with funds, in lieu of the funds to be withheld by the ceding insurer under a reinsurance treaty with such unauthorized insurer as security for the payment of obligations thereunder, if such funds are held subject to withdrawal by, and under the control of, the ceding insurer. This transaction, including the type, amount and form of such funds, shall require the prior approval of the superintendent and shall be subject to the laws of the State of New York unless waived by the superintendent for good cause shown.

(2) Reinsurance recoverable credit taken under the provisions of subdivision (e) of this section shall not be eligible for additional credit under the provisions of this subdivision.

(3) A ceding insurer which elects to take credit under this subdivision for cessions to a nonaffiliated assuming insurer may not thereafter take credit for any recoverables due from such assuming insurer under the provisions of subdivision (e) of this section.

(h) Alternative credit for cessions to unauthorized assuming insurers-

(1) With respect to reinsurance contracts entered into or renewed on or after July 1, 2011, a ceding insurer may elect to take credit, as an asset or deduction from reserves, for reinsurance recoverable from any unauthorized assuming insurer or any group described in subdivision (c)(1) or (d)(1) of this section that maintains, on a stand-alone basis separate from its parent or any affiliates, an interactive financial strength rating from at least two of the rating agencies indicated in subparagraphs (i) through (v) of this paragraph. The credit shall be subject to the limitations set forth in paragraph (2) of this subdivision and the requirements set forth in paragraphs (3) through (8) of this subdivision. The rating agencies are:

(i) Standard & Poor's (S&P);

(ii) Moody's Investors Service (Moody's);

(iii) Fitch Ratings (Fitch);

(iv) A.M. Best Company (Best); or

(v) any other rating agency acceptable to the superintendent.

(2) The superintendent will assign an assuming insurer one of five ratings (Secure-1, Secure-2, Secure-3, Secure-4 or Vulnerable-5). The rating and corresponding collateral calculation shall be as follows:

Ratings	**Cedent Credit Allowed (gross of collateral)**
Secure-1	100 percent
Secure-2	90 percent
Secure-3	80 percent
Secure-4	25 percent
Vulnerable-5	0 percent

(3) The amount of credit allowed shall be no greater than the percentage specified for the lowest rating as indicated in the following table except as set forth in paragraph (4) of this subdivision and to the extent of amounts withheld as set forth in section 125.4(b) of this Part:

Ratings	**Best**	**S&P**	**Moody's**	**Fitch**
Secure-1	A++	AAA	Aaa	AAA
Secure-2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure-3	A, A-	A+, A, A-	A1, A2, A3	A+, A, A-
Secure-4	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable-5	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R, NR	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CCC, CCC-, DD

(4) As part of the evaluation process, the superintendent may consider the following factors in determining the appropriate rating of an assuming insurer:

(i) the assuming insurer's compliance with reinsurance contractual terms and obligations (including mandatory contractual clauses);

(ii) the assuming insurer's business practices in dealing with its ceding insurers;

(iii) the assuming insurer's most recent applicable NAIC Filing Blank, either Schedule F or Schedule S;

(iv) the assuming insurer's reputation for prompt payment of claims under reinsurance agreements, including the proportion of the assuming insurer's obligations that are more than 90 days past due or are in dispute, with particular attention to receivable payables to insurers that are under administrative supervision or in receivership;

(v) regulatory actions against the assuming insurer;

(vi) an independent audit opinion of the assuming insurer;

(vii) the assuming insurer's audited financial statements, regulatory filings, and actuarial opinions except as provided in paragraph (6)(i)*(c)* of this subdivision;

(viii) the liquidation preference of obligations to a ceding insurer in the assuming insurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(ix) an assuming insurer's participation in any solvent scheme of arrangement, or similar procedure that involves U.S. cedents. Entrance into such an arrangement or procedure that involves one or more U.S. cedents will result in an assignment of a Vulnerable-5 rating;

(x) any other information deemed relevant by the superintendent.

(5) With respect to reinsurance ceded by an authorized property/casualty insurer for short-tailed lines due to a catastrophic loss, the superintendent may approve that any collateral required to be posted may be subject to no more than a one-year deferral from the date of the first instance of a liability reserve entry as a result of a catastrophic loss. The one-year deferral period is contingent upon the assuming insurer continuing to pay claims in a timely manner.

(6) A ceding insurer may not take credit pursuant to this subdivision unless:

(i) the unauthorized assuming insurer:

(*a*) meets the standards of solvency, including standards for capital adequacy, established by its domiciliary regulator;

(*b*) is authorized in its domiciliary jurisdiction to assume the kind or kinds of reinsurance ceded by the ceding insurer; and

(*c*) maintains a policyholders' surplus or equivalent in excess of $250,000,000, which is calculated on the basis of U.S. GAAP or U.S. statutory accounting principles; or in the case of a group including incorporated and individual unincorporated underwriters, the group has minimum capital and surplus or equivalents (net of liabilities) of at least $ 250 million and a central fund containing a balance of at least $ 250 million.

(ii) the applicant for determination of eligibility under this subdivision, the assuming insurer, files with the superintendent:

(*a*) an application for a rating pursuant to paragraph (2) of this subdivision, which shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee of $10,000;

(*b*) within 30 days:

(*1*) notification of any change in domiciliary license status;

(*2*) notification of any change in its rating status;

(*c*) on an annual basis:

(1) audited financial statements of the unauthorized assuming insurer, from inception or for the last three years, whichever is less, and actuarial opinion filed with its domiciliary regulator by the assuming insurer. The statements should include U.S. GAAP basis if available, or audited IFRS basis that includes an audited footnote reconciling equity and net income to U.S. GAAP basis;

(2) a report in the form of the most recent applicable NAIC Annual Filing Blank, either Schedule F or Schedule S;

(3) a list of all disputed or overdue recoverables, regardless of whether the claims are in litigation or arbitration;

(4) a certification from the domiciliary regulator of the assuming insurer that the assuming insurer is in good standing and that the regulator will provide financial and operational information to the superintendent;

(*d*) the renewal application for the rating, which shall be made on an annual basis and on such forms and supplements as prescribed by the superintendent, shall be accompanied by a non-refundable fee of $5,000.

(iii) with respect to a cession to an unauthorized alien assuming insurer:

(*a*) the superintendent and the domiciliary regulator of the unauthorized alien assuming insurer have executed a memorandum of understanding pursuant to this Part that addresses

matters that the superintendent deems relevant for proper oversight of reinsurance transactions; and

(*b*) the domiciliary jurisdiction of the unauthorized alien assuming insurer allows U.S. assuming insurers access to the market of the domiciliary jurisdiction on terms and conditions that are at least as favorable as those provided by the laws of this State for unauthorized alien assuming insurers;

(iv) the reinsurance contract between the ceding insurer and the unauthorized assuming insurer:

(*a*) includes an insolvency clause as provided for in Insurance Law section 1308(a)(2)(A);

(*b*) requires any unauthorized assuming insurer to designate a person in this State or the state of domicile of the ceding insurer as its true and lawful agent upon whom may be served any lawful process in a dispute, action, suit, or proceeding instituted by, or on behalf of, the ceding insurer; and

(*c*) provides that if, pursuant to Article 74 of the Insurance Law or the equivalent law of another state, an order of rehabilitation, liquidation or conservation against the ceding insurer is entered, an unauthorized alien assuming insurer shall, within 30 days of entry of the order, fund the entire amount for which the ceding insurer has taken credit, as an asset or deduction from its reserves for reinsurance recoverable, from the unauthorized alien assuming insurer.

(*d)* includes the following provisions:

(*1*) "Any dispute, suit, action or proceeding under the contract, or any dispute, suit, action or proceeding arising out of, directly, indirectly, or incidentally, or related to the contract or of the transactions and actions arising from performance of the contract are to be subject to the jurisdiction, and resolved in the courts, of the United States or any state thereof, and that the assuming insurer submits to the personal jurisdiction of such court, complies with the requirements necessary to give that court jurisdiction, abides by the final decision of that court or of an appellate court in the event of an appeal, and consents to any effort to enforce the final decision of the court in the home jurisdiction of the alien assuming insurer, including the granting of full faith and credit or comity in the home jurisdiction of the assuming insurer or any other jurisdiction where the assuming insurer is subject to jurisdiction. This provision does not override an agreement between the ceding insurer and the unauthorized alien assuming insurer to arbitrate, in accordance with the laws of the U.S. or any state thereof;" and

(*2*) "Any dispute, suit, action or proceeding under the contract, or any dispute, suit, action or proceeding arising out of, directly, indirectly, or incidentally, or related to the contract or of the transactions and actions arising from performance of the contract are to be governed by and construed in accordance with [choose one option] the laws of the State of New York or the laws of the state in which the ceding insurer is domiciled or the laws of any state chosen by ceding insurer. This provision does not override an agreement between the ceding insurer and the

unauthorized alien assuming insurer to arbitrate, in accordance with the laws of the U.S. or any state thereof."

(7) (i) If the rating of an unauthorized assuming insurer is or falls below that required in paragraph (2) of this subdivision for the respective amount of credit, the existing credit to the ceding insurer shall be adjusted accordingly unless the reduced credit is funded pursuant to section 125.6(b) of this Part. Notwithstanding the change or withdrawal of an unauthorized assuming insurer's rating, the superintendent may, in the interest of ensuring market stability and the solvency of the ceding insurer, upon request by the ceding insurer, authorize the ceding insurer to continue to take credit for the reinsurance recoverable, or part thereof, relating to the rating change or withdrawal for some specified period of time following such change or withdrawal, unless the reinsurance recoverable is deemed uncollectible.

(ii) If the ceding insurer's experience in collecting recoverables from any assuming insurer indicates that the credit to the ceding insurer should be lower, the ceding insurer shall adjust the credit accordingly.

(8) An unauthorized alien assuming insurer that fails to comply on a timely basis with the funding requirement of paragraph (6)(iv)(c) of this subdivision, and any member of the unauthorized alien assuming insurer holding company system, shall not meet the standards for any ceding insurer to qualify for credit with respect to any reinsurance contracts entered into or renewed by the unauthorized alien assuming insurer on or after the first day of such failure to comply unless the superintendent determines that it is in the public interest to allow the credit in whole or in part.

Section 125.5 is amended to read as follows:

Section 125.5 Credit for reinsurance involving the risks of life, annuity and accident and health from unauthorized insurers.

(a) A ceding insurer may elect to take credit, as an asset or as a deduction from reserves, for reinsurance recoverable involving life, annuity and accident and health risks from an assuming insurer not authorized in this State, provided such assuming insurer complies with provisions of subdivision (a)[or], (b), or (h) of section 125.4 of this Part. The provisions of subdivisions (c), (d), (e),[and] (f) and (g) of section 125.4 are inappropriate for and shall be inapplicable to reinsurance of life, annuity and accident and health risks.

(b) (1) Notwithstanding the provisions of subdivision (a) of this section or the amounts of funds withheld under a reinsurance agreement from an unauthorized insurer on behalf of such reinsurance, credit taken by a ceding insurer for reinsurance ceded to an unauthorized insurer shall not exceed the aggregate of the net amount of reserves plus the liability for any unallocated amounts which has been set up and reported to the ceding insurer as being held by the assuming unauthorized insurer and by each subsequent retrocessionaire on behalf of such reinsurance.

(2) Paragraph (1) of this subdivision shall not apply to situations where the total reserve credit that may be granted under a reinsurance agreement is based solely upon:

(i) the establishment of a liability by the ceding insurer for funds withheld under a reinsurance agreement with such unauthorized assuming insurer as security for the payment of obligations thereunder; and/or

(ii) the establishment of a trust agreement which complies with Part 126 of this Title (Regulation 114).

(3) Compliance with paragraphs (1) and (2) of this subdivision shall be on an agreement by agreement basis.

(4) The report referred to in paragraph (1) of this subdivision shall be obtained by the ceding insurer from:

(i) the assuming insurer, if accredited in this State, or if qualified under the provisions of section 125.4(h) of this Part, as to the total net reserves held by it and by all retrocessionaires, or

(ii) the assuming insurer and from each of the retrocessionaires with respect to the net reserves held by each of them.

Each such report shall be in writing, signed by an officer of the assuming insurer or the retrocessionaire which provided it and obtained by the ceding insurer prior to the filing date of ceding insurer's annual and quarterly statement. Such reports shall be maintained by the ceding insurer for three years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later. The superintendent may approve a plan of compliance submitted by an accredited assuming insurer which would permit a certification to be attached to a reinsurance agreement with a ceding insurer in lieu of obtaining such reports.

(c) Notwithstanding the provisions of subdivisions (a) and (b) of this section, credit taken by a ceding insurer for reinsurance ceded to an unauthorized insurer shall not exceed the amount of the reserve the ceding insurer would have set up if it had retained the business.

(d) Notwithstanding the effective date of this amendment and the provisions of subdivision (b) of this section, any reserve credit taken under reinsurance agreements executed prior to the effective date of this Part which had previously been granted by the department:

(1) will continue to be granted, provided no new business is ceded under the reinsurance agreement after December 31, 1988, or

(2) will continue to be granted through December 31, 1988 after which time credit will only be granted in accordance with the provisions of this Part.

Section 125.6 is amended to read as follows:

Section 125.6 Additional conditions for credit.

In addition to the conditions specified in section 125.4 and 125.5 of this Part:

(a) Where a ceding insurer obtains reinsurance through a "reinsurance intermediary," as defined in section 2101(f) of the Insurance Law, from an assuming insurer which is neither licensed in this State nor has placed funds with the ceding insurer pursuant to section [1301(a)(14)] 1301(a)(9) of the Insurance Law, the ceding insurer shall not be allowed credit unless:

(1) the reinsurance agreement includes a provision whereby the assuming insurer assumes all credit risks of the intermediary related to payments to the intermediary; and

(2) in the case of a reinsurance intermediary acting outside this State, the ceding insurer obtains a written agreement from the reinsurance intermediary that [he] the intermediary will comply with all of the provisions of Part 32 of this Title (Regulation No. 98) [Regulation No. 98 (11 NYCRR Part 32)] and the intermediary agrees to be subject to examination by the superintendent as often as [he] the superintendent may deem it expedient; except such intermediary may deposit funds received in a bank or banks not authorized to do business in this State, if:

(i) such bank is chartered within the United States; or

(ii) such bank, as designated by a non-United States reinsurance intermediary, is located outside of the United States; provided written consent is obtained from the ceding insurer.

(b) Other than as permitted pursuant to sections 125.4(e), (f) [or] and (g)[,] for risks other than life, annuity and accident and health, or section 125.4(h) of this Part, credit taken by a ceding insurer for reinsurance ceded to an unauthorized assuming insurer, which is not an accredited assuming insurer, shall not exceed the amounts withheld under a reinsurance treaty with such unauthorized insurer as security for the payment of obligations thereunder, provided such funds are held subject to withdrawal by, and under the control of, the ceding insurer. Amounts withheld include:

(1) funds withheld for which the ceding insurer has set up a liability;

(2) letters of credit complying with Part 79 of this Title (Regulation 133); and

(3) funds deposited in trust agreements complying with Part 126 of this Title (Regulation 114).