

February 2, 2018

Superintendent Vullo, Chair
Reinsurance (E) Task Force
National Association of Insurance Commissioner
c/o Mr. Jake Stultz
Via e-mail jstultz@naic.org

Re: NAIC Notice of Public Hearing and Request for Comments to Address Covered Agreement

Dear Superintendent Vullo:

The Reinsurance Association of America (RAA) appreciates the opportunity to participate in the upcoming public hearing on February 20, 2018 in New York to address implementation of the reinsurance collateral provisions of Article 3 of the Covered Agreement. The Reinsurance Association of America is a national trade association representing reinsurance companies doing business in the United States. RAA membership is diverse, including reinsurance underwriters and intermediaries licensed in the U.S. and those that conduct business on a cross border basis. The RAA also has life reinsurance company affiliates. We respectfully submit these comments in conjunction with oral comments to be presented at the public hearing.

As an overall matter, the RAA's comments are guided by the following general principles, which we urge the NAIC to follow as it addresses implementation of the Covered Agreement:

- Amendments to the *Credit for Reinsurance Model Law #785* and the *Credit for Reinsurance Model Regulation #786* should be as streamlined and uncomplicated as possible, to maintain clarity and prevent confusion in the state implementation process.
- Any amendments that extend similar treatment to jurisdictions other than the E.U. should: (a) require recognition of U.S. group supervision authority, including solvency and capital, governance and reporting requirements; and (b) eliminate any collateral requirements or requirements that U.S. reinsurers maintain a local presence in such jurisdictions. Such amendments should also ensure that U.S. reinsurers otherwise receive the same treatment as non-U.S. reinsurers under the NAIC framework.
- The NAIC should be cautious in its evaluation of whether additional "guardrails" are needed, as many regulatory protections already exist. Any proposed regulatory changes should be tailored to a specific regulatory gap that is not otherwise addressed. For example, the NAIC's Property and Casualty Risk-Based Capital (P&C RBC) framework adequately addresses credit risk associated with reinsurance amounts recoverable. The current

framework is also well-suited to address U.S. regulatory concerns arising from the Covered Agreement.

Consistent with these general principles, the RAA believes that implementation of the Covered Agreement can best be achieved through modifications to the current Credit for Reinsurance Model Law and Regulation that: (1) effectively implement the Covered Agreement with respect to qualified reinsurers based in the E.U.; and (2) allow for similar treatment to be extended to similarly qualified reinsurers based in other jurisdictions, such as those jurisdictions that have already been granted Qualified Jurisdiction status in the U.S., subject to commitments to the obligations and requirements contained in the Covered Agreement. Such commitments should be effectuated through appropriate agreements or Memoranda of Understanding, and enforced through the threat of disruption of the jurisdiction's status. We also urge the NAIC to determine how the UK will be treated in a post-Brexit environment, given the importance of the UK as an insurance center in Europe and as an insurance market, and to take action to prevent any disruption with respect to the UK.

The RAA proposes modifications to both the Model Law and Regulation (attached) that would achieve these objectives. In brief, the proposed modifications would maintain the existing Qualified Jurisdiction framework but add a new category of "Designated Jurisdiction" (and, correspondingly, "Designated Reinsurer") to reflect necessary modifications to implement the Covered Agreement. The same provisions would apply to those jurisdictions that meet the requirements to be a Designated Jurisdiction, which would include recognizing the U.S. system of insurance supervision. This approach is necessary given the prospective nature of the Covered Agreement, although we anticipate that all of the current Qualified Jurisdictions could meet the requirements to be deemed Designated Jurisdictions under this approach on a prospective basis.

The RAA's proposal would reduce the likelihood that future covered agreements to address the collateral issue with other jurisdictions would be necessary. It also would streamline the state implementation process because it would avoid the necessity of repeated changes to the Credit for Reinsurance Model Law and Regulation to reflect new agreements with additional jurisdictions.

Overview of Proposed Modifications to Model Law/Regulation

As noted above, we have attached proposed revisions to the current Credit for Reinsurance Model Law and Regulation to bring them into compliance with the conditions of the Covered Agreement with respect to the E.U. and to create a mechanism to extend the same benefits granted under the Covered Agreement to reinsurers domiciled in jurisdictions that make enforceable commitments to be subject to those terms and conditions.

To make the process as clear as possible, we have inserted new sections in the attached proposal to revise the current Section D in the Model Law and Section 8 in the Model Regulation. The revisions include a new category of reinsurers called a "Designated Reinsurer", along with a new category of jurisdiction called a "Designated Jurisdiction". In our view, these new categories are necessary to distinguish those designations from the current Qualified Jurisdiction framework, which we think should be maintained, at least initially. As noted above, maintaining the existing Certified Reinsurer designations is necessary at least with respect to existing contracts, as the Designated Reinsurer

category will only apply prospectively. Under this new category, any Designated Jurisdiction would be required to recognize U.S. group supervision authority, including solvency and capital, governance and reporting requirements, and eliminate any requirements that U.S. reinsurers maintain a local presence or post collateral in order to do business in such jurisdictions.

Under the Designated Jurisdictions category, we have eliminated any references to credit ratings to comply with the Covered Agreement. As an alternative to the ability to rely upon ratings as part of the evaluation criteria and to justify zero collateral treatment for a Designated Reinsurer, we have added two additional requirements to the determination of whether a jurisdiction qualifies as a Designated Jurisdiction to reflect the requirements of the Covered Agreement. First, the jurisdiction must agree to eliminate any local presence or collateral requirements for reinsurers. Second, the jurisdiction must recognize U.S. group supervision authority, including solvency and capital, governance and reporting requirements. All other criteria to determine a Designated Jurisdiction remain unchanged from the Qualified Jurisdiction framework. The RAA proposed modifications also include a requirement for the NAIC to maintain a list of Designated Jurisdictions and the effective date of the corresponding Designated Jurisdiction agreement.

Designated Jurisdictions: Enforcement and Resulting Benefits

In the current model law Section 2(E)(3)(a) and regulation Section 8(C)(2), the qualified jurisdiction rules provide that the reinsurance supervisory system of the non-U.S. jurisdiction will be evaluated, “both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S.” A jurisdiction currently must submit to this ongoing review to maintain its status as a Qualified Jurisdiction. To ensure that any Designated Jurisdiction complies with its obligations as required by the designation on an ongoing basis, we believe that the NAIC must: (1) require appropriate agreement or Memoranda of Understanding with any Designated Jurisdiction (other than the E.U.); and (2) develop a more robust and immediate system to deal with non-compliance.

The NAIC Qualified Jurisdiction (E) Working Group has a Process document that sets forth the rules for developing and maintaining the qualified jurisdiction list. These rules provide that “[i]f the Qualified Jurisdiction Working Group finds the jurisdiction to be out of compliance at any time with the requirements to be a Qualified Jurisdiction, the specific reasons will be documented in a report to the jurisdiction under review, and the status as a Qualified Jurisdiction may be placed on probation, suspended or revoked.” The NAIC process should include timely review and enforcement of Qualified Jurisdiction and new Designated Jurisdiction rules.

The consequences to a Designated Jurisdiction that fails to comply with the terms of its status must be immediate and objective. When formulating the rules for Designated Jurisdictions, the NAIC should include a requirement that a jurisdiction’s status will be immediately suspended for prospective business upon a showing of material differential treatment of a U.S.-based reinsurer. Additionally, similar rules and procedures should be created for when a Designated Reinsurer violates any condition necessary to qualify for zero collateral. We have added revisions in the attached model regulation Section 9(A)(8) to detail procedures to follow in these circumstances. These procedures mirror the requirements of the Covered Agreement.

Consideration of Additional Guardrails

As noted above, the NAIC should exercise caution when considering additional “guardrails” relative to U.S. ceding companies, such as changes to the risk-based capital (RBC) formula or new regulatory approaches to address any perceived increased financial solvency risks caused by the elimination of reinsurance collateral. As detailed below, many regulatory protections already exist in the current solvency regime. The NAIC should identify a regulatory gap that needs to be addressed before considering what protections are necessary to address it. The NAIC’s recently revised Property and Casualty Risk-Based Capital (P&C RBC) framework adequately addresses credit risk associated with reinsurance amounts recoverable. The current framework is jurisdictionally agnostic and thus well-suited to address U.S. regulatory concerns arising from implementation of the Covered Agreement. To the extent that the NAIC considers any additional guardrails, they should apply equally to both U.S. and non-U.S. reinsurers.

The credit risk component of P&C RBC, known as “R3”, includes a risk-based charge on reinsurance amounts recoverable of U.S. ceding companies. This recently revised charge already contemplates whether the reinsurance amounts recoverable are collateralized or not, and adjusts the R3 charge accordingly. R3 is based on the current Credit for Reinsurance Model Law and Regulation requirements, and would require only slight modification to reflect the new requirements of the Covered Agreement. Specifically, we recommend the creation of a new category of Designated Reinsurer to add to the other categories of Authorized, Unauthorized and Certified Reinsurer.

R3 includes the following major features:

- The capital charges are based on the Financial Strength Ratings (FSR) of the reinsurer;
- The R3 factors are derived from historical default risk by FSR category plus an additional .03 factor for operational and other non-credit risk;
- Reinsurance collateral can reduce the reinsurance credit risk portion of R3 for lower-rated reinsurers (NAIC-4 through NAIC-7 reinsurer designation equivalents);
- R3 is jurisdictionally agnostic as to the domicile of the reinsurer;
- The charges are applied at the transaction level for each cedent/reinsurer relationship; and
- As of 2018 year-end, Schedule F—Part 3 of the NAIC’s Annual Statement will detail the R3 calculation; providing robust reporting and transparency of the credit risk associated with each ceding company’s reinsurance recoverable portfolio.

We understand that C-10 addresses similar risks in the life-based RBC formula.

Other Considerations for States’ Implementation of Covered Agreement

As an immediate indication that the NAIC and states will be implementing the Covered Agreement terms in good faith, the NAIC and the states should consider relaxing the collateral and designated reinsurer application requirements in accordance with the Covered Agreement. E.U. supervisors already have begun to provide benefits to U.S. reinsurers that are consistent with the terms of the Covered Agreement. For example, immediately after the parties signed the Covered Agreement, the German supervisor agreed to forbear from enforcing local presence requirements against U.S.

reinsurers.

The NAIC and states should consider similar actions. For example, the Covered Agreement suggests reducing the collateral requirements to 0 over 5 years by reducing the requirements by 20% each year. Another suggestion is that the state regulators, NAIC and the NAIC's Reinsurance Financial Analysis Working Group (REFAWG) can relax the requirement that designated reinsurers provide reconciled financial statements or relieve designated reinsurers from providing actuarial opinions when they are not required to provide actuarial opinions to their non-U.S. based supervisor.

The RAA has also proposed specific language for NAIC consideration that would extend the same collateral treatment to reinsurers domiciled and licensed in an NAIC accredited state. We strongly believe that U.S. domiciled reinsurers should have the same efficient access to U.S. markets that is afforded to reinsurers subject to the Covered Agreement or the proposed Designated Reinsurer category.

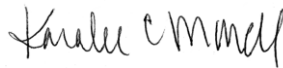
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The RAA appreciates the opportunity to offer comments and work with the NAIC to effectively implement the Covered Agreement. We look forward to continued collaboration as the NAIC process advances. Please do not hesitate to contact us with any questions or concerns.

Sincerely,



Frank Nutter
President



Karalee Morell
Vice President & Assistant General Counsel

CREDIT FOR REINSURANCE MODEL LAW

Preface to Credit for Reinsurance Models

The amendments to the NAIC Credit for Reinsurance Model Law (#785) & Regulation (#786) are part of a larger effort to modernize reinsurance regulation in the United States. The NAIC initially adopted the Reinsurance Regulatory Modernization Framework Proposal during its 2008 Winter National Meeting. The NAIC recommended that this framework be implemented through federal legislation in order to best preserve and improve state-based regulation of reinsurance, ensure timely and uniform implementation throughout all NAIC member jurisdictions, and as a more comprehensive alternative to related federal legislation. In addition to this proposed federal legislation, the framework also provided that changes to state insurance laws should be considered. For example, state laws to establish requirements under which states would regulate qualified reinsurers, and also to consider reinsurance risk diversification and notice requirements for ceding insurers.

On July 21, 2010, Congress passed and the President signed related federal legislation, the Nonadmitted and Reinsurance Reform Act, which became effective July 21, 2011. While this act does not implement the NAIC framework, it does preempt the extraterritorial application of state credit for reinsurance law and permits states of domicile to proceed forward with reinsurance collateral reforms on an individual basis if they are accredited. This federal legislation also does not prohibit the states from acting together, through the NAIC, to achieve the reinsurance modernization framework goals. In addition to the current work on the credit for reinsurance models, the NAIC will continue its efforts to implement other aspects of the framework. These efforts will continue both through work conducted by the Reinsurance Task Force and through referrals to the appropriate groups within the NAIC. In addition, the NAIC will consider a proposal to form a new group to provide advisory support and assistance to states in the review of reinsurance collateral reduction applications. Such a process with respect to the review of applications for reinsurance collateral reduction and qualified jurisdictions should strengthen state regulation and prevent regulatory arbitrage. Such an effort would be supported by NAIC staff with substantial expertise to support the functions of such a group.

Finally, the NAIC will continue to work on requirements for NAIC review and approval of qualified jurisdictions, and will undertake a re-examination of the collateral amounts within two years from the effective date of the revisions to the models.

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CREDIT FOR REINSURANCE MODEL LAW

Table of Contents

Section 1.	Purpose
Section 2.	Credit Allowed a Domestic Ceding Insurer
Section 3.	Asset or Reduction from Liability for Reinsurance Ceded by a Domestic Insurer to an Assuming Insurer not Meeting the Requirements of Section 2
Section 4.	Qualified U.S. Financial Institutions
Section 5.	Rules and Regulations
Section 6.	Reinsurance Agreements Affected

Section 1. Purpose

The purpose of this Act is to protect the interest of insureds, claimants, ceding insurers, assuming insurers and the public generally. The legislature hereby declares its intent is to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of that state interest, the legislature hereby provides a mandate that upon the insolvency of a non-U.S. insurer or reinsurer that provides security to fund its U.S. obligations in accordance with this Act, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic U.S. insurance companies. The legislature declares that the matters contained in this Act are fundamental to the business of insurance in accordance with 15 U.S.C. §§ 1011-1012.

Section 2. Credit Allowed a Domestic Ceding Insurer

Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of Subsections A, B, C, D, E or F of this section; provided further, that the commissioner may adopt by regulation pursuant to Section 5B specific additional requirements relating to or setting forth: (1) the valuation of assets or reserve credits; (2) the amount and forms of security supporting reinsurance arrangements described in Section 5B; and/or (3) the circumstances pursuant to which credit will be reduced or eliminated.

Drafting Note: This new regulatory authority is being added in response to reinsurance arrangements entered into, directly or indirectly, with life/health insurer-affiliated captives, special purpose vehicles or similar entities that may not have the same statutory accounting requirements or solvency requirements as US-based multi-state life/health insurers. To assist in achieving national uniformity, commissioners are asked to strongly consider adopting regulations that are substantially similar in all material respects to NAIC adopted model regulations in the handling and treatment of such reinsurance arrangements.

Credit shall be allowed under Subsections A, B or C of this section only as respects cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under Subsections C or D of this section only if the applicable requirements of Subsection G have been satisfied.

- A. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

Drafting Note: A state that provides for licensing of reinsurance by line, for consistency should adopt an amended version of Subsection A requiring the assuming insurer to be “licensed to transact reinsurance in this state.”

- B. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the commissioner as a reinsurer in this state. In order to be eligible for accreditation, a reinsurer must:
- (1) File with the commissioner evidence of its submission to this state's jurisdiction;
 - (2) Submit to this state's authority to examine its books and records;
 - (3) Be licensed to transact insurance or reinsurance in at least one state, or in the case of a U.S. branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state;
 - (4) File annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and
 - (5) Demonstrate to the satisfaction of the commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than \$20,000,000 and its accreditation has not been denied by the commissioner within ninety (90) days after submission of its application.

Drafting Note: To qualify as an accredited reinsurer, an assuming insurer must meet all of the requirements and the standards set forth in Subsection B. If the commissioner of insurance determines that the assuming insurer has failed to continue to meet any of these qualifications, the commissioner may, upon written notice and hearing, revoke accreditation.

- C. (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a U.S. branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or U.S. branch of an alien assuming insurer:
- (a) Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and
 - (b) Submits to the authority of this state to examine its books and records.
- (2) The requirement of Section 2 C(1)(a) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

Drafting Note: The term "substantially similar" means standards that equal or exceed the standards of the enacting state, as determined by the commissioner of the enacting state. It is expected that the NAIC will maintain a list of states whose laws establish standards that equal or exceed the standards of this model act.

- D. (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified U.S. financial institution, as defined in Section 4B, for the payment of the valid claims of its U.S. ceding insurers, their assigns and successors in interest. To enable the commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the NAIC Annual Statement form by licensed

insurers. The assuming insurer shall submit to examination of its books and records by the commissioner and bear the expense of examination.

- (2)
 - (a) Credit for reinsurance shall not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:
 - (i) The commissioner of the state where the trust is domiciled; or
 - (ii) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.
 - (b) The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's U.S. ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner.
 - (c) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustee of the trust shall report to the commissioner in writing the balance of the trust and listing the trust's investments at the preceding year-end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.
- (3) The following requirements apply to the following categories of assuming insurer:
 - (a) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers, and, in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000, except as provided in Paragraph 3(b) of this subsection.
 - (b) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, 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. 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. The minimum required trusted surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

- (c) (i) In the case of a group including incorporated and individual unincorporated underwriters:
 - (I) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, the trust shall consist of a trusted account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group;
 - (II) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this Act, the trust shall consist of a trusted account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and
 - (III) In addition to these trusts, the group shall maintain in trust a trusted surplus of which \$100,000,000 shall be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all years of account; and
 - (ii) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members.
 - (iii) Within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the commissioner an annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.
- (d) In the case of a group of incorporated underwriters under common administration, the group shall:
 - (i) Have continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation;

- (ii) Maintain aggregate policyholders' surplus of at least \$10,000,000,000;
- (iii) Maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;
- (iv) In addition, maintain a joint trustee surplus of which \$100,000,000 shall be held jointly for the benefit of U.S. domiciled ceding insurers of any member of the group as additional security for these liabilities; and
- (v) Within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by its independent public accountant.

Drafting Note: Unless otherwise stated, "commissioner" refers to the commissioner of insurance in the state where credit or a reduction from liability is taken.

Drafting Note: Consideration was given to deferring to state capital and surplus requirements as a threshold for the trustee surplus, but it was concluded that, on the basis of risk exposure and current industry security practices, the standards for credit should be higher under Subsection D. The \$100,000,000 trustee surplus requirement for a group including incorporated and individual unincorporated underwriters reflects the higher financial standards currently found among the states for a group of this type. The \$20,000,000 trustee surplus requirement is an option available to assuming insurers that do not satisfy both the licensing and financial standards of Subsection B or C.

E. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this state and secures its obligations in accordance with the requirements of this subsection.

- (1) In order to be eligible for certification, the assuming insurer shall meet the following requirements:
 - (a) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to Paragraph (3) of this subsection;
 - (b) The assuming insurer must maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner pursuant to regulation;
 - (c) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner pursuant to regulation;
 - (d) The assuming insurer must agree to submit to the jurisdiction of this state, appoint the commissioner as its agent for service of process in this state, and agree to provide security for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment;

- (e) The assuming insurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis; and
 - (f) The assuming insurer must satisfy any other requirements for certification deemed relevant by the commissioner.
- (2) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements of Paragraph (1):
- (a) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the commissioner to provide adequate protection;
 - (b) The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and
 - (c) Within ninety (90) days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.
- (3) The commissioner shall create and publish a list of qualified jurisdictions, under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer.
- (a) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final U.S. judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner.

- (b) A list of qualified jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification in accordance with criteria to be developed under regulations.
 - (c) U.S. jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.
 - (d) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.
- (4) The commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the commissioner pursuant to regulation. The commissioner shall publish a list of all certified reinsurers and their ratings.
- (5) A certified reinsurer shall secure obligations assumed from U.S. ceding insurers under this subsection at a level consistent with its rating, as specified in regulations promulgated by the commissioner.
- (a) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with the provisions of Section 3, or in a multibeneficiary trust in accordance with Subsection D of this section, except as otherwise provided in this subsection.
 - (b) If a certified reinsurer maintains a trust to fully secure its obligations subject to Subsection D of this section, and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other U.S. jurisdictions and for its obligations subject to Subsection D of this section. It shall be a condition to the grant of certification under Subsection E of this section that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.
 - (c) The minimum trustee surplus requirements provided in Subsection D are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing

obligations incurred under this subsection, except that such trust shall maintain a minimum trusteed surplus of \$10,000,000.

- (d) With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.
- (e) For purposes of this subsection, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100 percent of its obligations.
 - (i) As used in this subsection, the term "terminated" refers to revocation, suspension, voluntary surrender and inactive status.
 - (ii) If the commissioner continues to assign a higher rating as permitted by other provisions of this section, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.
- (6) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified reinsurer in this state.
- (7) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

F. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has its head office or is domiciled in a designated jurisdiction and secures its obligations in accordance with the requirements of this subsection (hereinafter a "designated reinsurer").

(1) In order to be eligible, the assuming insurer shall meet the following requirements:

- (a) The assuming insurer must have its head office or be domiciled and licensed to transact insurance or reinsurance in a designated jurisdiction, as determined by the commissioner pursuant to Paragraph (3) of this subsection;
- (b) The assuming insurer must maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner pursuant to regulation;

- (c) The assuming insurer must maintain an RBC or its equivalent, to be determined by the commissioner pursuant to regulation;
- (d) The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves any domestic ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide 100 percent security to the ceding insurer consistent with the terms of the scheme should the assuming insurer enter into such an arrangement;
- (d) The assuming insurer must agree to submit to the jurisdiction of this state, appoint the commissioner as its agent for service of process in this state, and agree to provide security for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment;
- (e) The assuming insurer must agree to meet applicable information filing requirements as determined by the commissioner; and
- (f) The assuming insurer must satisfy any other requirements for certification deemed relevant by the commissioner.
- (2) An association including incorporated and individual unincorporated underwriters may be a designated reinsurer. In order to be eligible, in addition to satisfying requirements of Paragraph (1):

 - (a) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the commissioner to provide adequate protection;
 - (b) The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and
 - (c) Within ninety (90) days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.
- (3) The commissioner shall create and publish a list of designated jurisdictions, under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered a designated reinsurer by the commissioner.

 - (a) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a designated

jurisdiction, the commissioner shall consider applicable agreements, evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. A designated jurisdiction must agree to share information and cooperate with the commissioner with respect to all designated reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a designated jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final U.S. judgments and arbitration awards.

(a)(b) Eligible non-U.S. jurisdictions must be subject to or enter into an agreement or memorandum of understanding (MOU) acknowledged by the commissioner that, subject to the terms and conditions in the agreement or MOU:

- (i) Provides market access rights for U.S. domiciled insurers at least equivalent to those provided hereunder;
- (ii) Eliminates any requirement for a U.S. domiciled assuming insurer to post collateral in such non-U.S. jurisdiction or on behalf of insurers subject to the regulation of such non-U.S. jurisdiction and provides accounting or other regulatory treatment for reinsurance assumed by a U.S. domiciled assuming insurer similar to the treatment afforded to reinsurance assumed by insurers domiciled in such non-U.S. jurisdiction;
- (iii) Eliminates any requirement for a U.S. domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance or credit for risk mitigation effect of such reinsurance;
- (iv) Agrees to publicly acknowledge and recognize the U.S. state based regulatory system as a competent regulatory structure that is deserving of international mutual recognition on prudential solvency, group capital, corporate governance, financial reporting, and group supervision matters for insurance groups that are domiciled or maintain their headquarters in this state or another state accredited by the National Association of Insurance Commissioners; and
- (v) Such additional factors may be considered in the discretion of the commissioner.

(c) A list of designated jurisdictions shall be published through the NAIC Committee Process. Such list shall indicate the respective effective date of each such DJ Agreement. The commissioner shall consider this list in determining designated jurisdictions. If the commissioner approves a jurisdiction as designated that does not appear on the list of designated jurisdictions, the commissioner shall provide thoroughly

documented justification in accordance with criteria to be developed under regulations.

(d) U.S. jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program shall be recognized as designated jurisdictions.

(6) If a non-U.S. jurisdiction has been deemed a designated jurisdiction by an NAIC accredited jurisdiction, the commissioner has the discretion to defer to and accept that jurisdiction's designation. Upon such acceptance by the commissioner, the non-U.S. jurisdiction shall be considered a designated jurisdiction in this state.

(7) Provided that it continues to comply with all applicable requirements of this subsection, a designated reinsurer that ceases to assume new business in this state will maintain its status and be eligible for applicable credit for reinsurance accounting treatment for its in-force business. .

F.G. Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of Subsections A, B, C, D or E of this section, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

Drafting Note: For purposes of this subsection, “jurisdiction” refers to those jurisdictions other than the United States and also to any state, district or territory of the United States. Subsection E allows credit to ceding insurers that are mandated by these jurisdictions to cede to state-owned or controlled insurance or reinsurance companies or to participate in pools, guaranty associations or residual market mechanisms.

G.H. If the assuming insurer is not licensed, accredited or certified to transact insurance or reinsurance in this state, the credit permitted by Subsections C and D of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

- (1) (a) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and
- (b) To designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding insurer.
- (2) This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

H.I. If the assuming insurer does not meet the requirements of Subsections A, B or C, the credit permitted by Subsection D or E of this section shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

- (1) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by Subsection D(3) of this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.
- (2) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.
- (3) If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.
- (4) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

I. **J.** If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation or certification.

- (1) The commissioner must give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the commissioner's order on hearing, unless:
 - (a) The reinsurer waives its right to hearing;
 - (b) The commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under Subparagraph E(6) of this section; or
 - (c) The commissioner finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action.
- (2) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with Section 3. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with Subsection E(5) or Section 3.

JK. Concentration Risk.

- (1) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the commissioner within thirty (30) days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceeds fifty percent (50%) of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.
- (2) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within thirty (30) days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty percent (20%) 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, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

Section 3. Asset or Reduction from Liability for Reinsurance Ceded by a Domestic Insurer to an Assuming Insurer not Meeting the Requirements of Section 2

An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 2 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer; provided further, that the commissioner may adopt by regulation pursuant to Section 5B specific additional requirements relating to or setting forth: (1) the valuation of assets or reserve credits; (2) the amount and forms of security supporting reinsurance arrangements described in Section 5B; and/or (3) the circumstances pursuant to which credit will be reduced or eliminated.

Drafting Note: This new regulatory authority is being added in response to reinsurance arrangements entered into, directly or indirectly, with life/health insurer-affiliated captives, special purpose vehicles or similar entities that may not have the same statutory accounting requirements or solvency requirements as US-based multi-state life/health insurers. To assist in achieving national uniformity, commissioners are asked to strongly consider adopting regulations that are substantially similar in all material respects to NAIC adopted model regulations in the handling and treatment of such reinsurance arrangements.

The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified U.S. financial institution, as defined in Section 4B. This security may be in the form of:

- A. Cash;
- B. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

- C. (1) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified U.S. financial institution, as defined in Section 4A, effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement;
- (2) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

Drafting Note: Providing for the continuing acceptability of letters of credit whose issuers were acceptable when the credit support facility was first obtained is intended to avoid abrupt interruptions in the acceptability of credit support arrangements that run for specific periods of time, and thus unnecessary disruptions in the marketplace, on account of the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability (whether by virtue of a change in the issuing institution's ability to qualify under the original standards or as a result of revisions to the applicable standards). The provision stipulates that letters of credit acceptable when first obtained will, in the event of the subsequent nonqualification of the issuing (or confirming) institution, continue to be acceptable as security until the account party and beneficiary would first have, in the normal course of business, an opportunity to replace the credit support facility.

- D. Any other form of security acceptable to the commissioner.

Drafting Note: There is no implication in the requirement that the security for the payment of obligations must be held under the exclusive control of the ceding insurer that either the reserve liability or the assets held in relation to the reserve liability have not been transferred for the purposes of statutory accounting by the ceding insurer to the reinsurer.

Section 4. Qualified U.S. Financial Institutions

- A. For purposes of Section 3C, a "qualified U.S. financial institution" means an institution that:
 - (1) Is organized or (in the case of a U.S. office of a foreign banking organization) licensed, under the laws of the United States or any state thereof;
 - (2) Is regulated, supervised and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies; and
 - (3) Has been determined by either the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

Drafting Note: The NAIC's Securities Valuation Office (SVO) maintains, on a current basis, a list of all U.S. financial institutions that have, upon application to the SVO, been determined to meet the eligibility standards of its *Purposes and Procedures Manual*. These standards, developed by the NAIC's Letter of Credit (EX4) Study Group, make use of nationally recognized ratings services, and are more rigorous in the case of foreign banking organizations (whose standby letters of credit must be issued or confirmed by a qualified U.S. financial institution) than those that are applicable to domestic financial institutions whose standby letters of credit would be considered acceptable.

- B. A "qualified U.S. financial institution" means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

- (1) Is organized, or, in the case of a U.S. branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and
- (2) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

Drafting Note: Because assets held in a fiduciary capacity are not subject to the claims of the trustee's creditors, and because the trust departments of all U.S. financial institutions (including U.S. branch or agency offices of foreign banking organizations having fiduciary powers in the U.S.) are regulated, supervised and examined by the institution's primary U.S. bank regulatory authority (federal or state), there is no need to apply additional standards measuring the financial condition or standing of the institution, as in the case of determining those institutions whose standby letter of credit obligations will be considered acceptable.

Section 5. Rules and Regulations

- A. The commissioner may adopt rules and regulations implementing the provisions of this law.

Drafting Note: It is recognized that credit for reinsurance also can be affected by other sections of the enacting state's code, e.g., a statutory insolvency clause or an intermediary clause. It is recommended that states that do not have a statutory insolvency clause or an intermediary clause consider incorporating such clauses in their legislation.

- B. The commissioner is further authorized to adopt rules and regulations applicable to reinsurance arrangements described in Paragraph (1) of this Section 5B.

Drafting Note: This new regulatory authority is being added in response to reinsurance arrangements entered into, directly or indirectly, with life/health insurer-affiliated captives, special purpose vehicles or similar entities that may not have the same statutory accounting requirements or solvency requirements as US-based multi-state life/health insurers. To assist in achieving national uniformity, commissioners are asked to strongly consider adopting regulations that are substantially similar in all material respects to NAIC adopted model regulations in the handling and treatment of such policies and reinsurance arrangements.

- (1) A regulation adopted pursuant to this Section 5B, may apply only to reinsurance relating to:
 - (a) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;
 - (b) Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;
 - (c) Variable annuities with guaranteed death or living benefits;
 - (d) Long-term care insurance policies; or
 - (e) Such other life and health insurance and annuity products as to which the NAIC adopts model regulatory requirements with respect to credit for reinsurance.
- (2) A regulation adopted pursuant to Paragraph 1(a) or 1(b) of this Section 5B, may apply to any treaty containing (i) policies issued on or after January 1, 2015, and/or (ii) policies issued prior to January 1, 2015, if risk pertaining to such pre-2015 policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.

Drafting Note: The NAIC's Actuarial Guideline XLVIII (AG 48) became effective January 1, 2015, and covers policies ceded on or after this date unless they were ceded as part of a reserve financing arrangement as of December 31, 2014. One regulation contemplated by this revision to the NAIC Credit for Reinsurance Model Law is intended to substantially replicate the requirements for the amounts and forms of security held under the rules provided in AG 48. AG 48 was written to sunset upon a state's adoption (pursuant to the enabling authority of the preceding paragraph) of a regulation with terms substantially similar to AG 48. The preceding paragraph is intended to provide continuity of rules applicable to those policies and reinsurance arrangements, including continuity as to the policies covered by such rules. The preceding paragraph is not intended to change the scope of, or collateral requirements for policies and treaties covered under AG 48.

- (3) A regulation adopted pursuant to this Section 5B may require the ceding insurer, in calculating the amounts or forms of security required to be held under regulations promulgated under this authority, to use the Valuation Manual adopted by the NAIC under Section 11B(1) of the NAIC Standard Valuation Law, including all amendments adopted by the NAIC and in effect on the date as of which the calculation is made, to the extent applicable.
- (4) A regulation adopted pursuant to this Section 5B shall not apply to cessions to an assuming insurer that:
 - (a) Is certified in this state or, if this state has not adopted provisions substantially equivalent to Section 2E of the Credit for Reinsurance Model Law, certified in a minimum of five (5) other states; or
 - (b) Maintains at least \$250 million in capital and surplus when determined in accordance with the NAIC *Accounting Practices and Procedures Manual*, including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices; and is
 - (i) licensed in at least 26 states; or
 - (ii) licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.
- (5) The authority to adopt regulations pursuant to this Section 5B does not limit the commissioner's general authority to adopt regulations pursuant to Section 5A of this law.

Section 6. Reinsurance Agreements Affected

This Act shall apply to all cessions after the effective date of this Act under reinsurance agreements that have an inception, anniversary or renewal date not less than six (6) months after the effective date of this Act.

Drafting Note: The enacting state may wish to provide a delay in the applicability greater than six (6) months to allow time for the insurance commissioner to promulgate regulations and to allow reinsurers to prepare and submit qualifying data.

Chronological Summary of Actions (All references are to the Proceedings of the NAIC).

1984 Proc. II 9, 29, 822, 836, 837-839 (adopted).

1986 Proc. I 9-10, 24, 799, 811, 812 (corrected).

1987 Proc. II 15, 24, 444-448, 832, 854, 856 (amended and reprinted).

1990 Proc. I 12-14, 851, 857-861 (amended at special plenary session September 1989 and reprinted).

1990 Proc. I 6, 30, 840, 872, 875-878 (technical amendments adopted at winter plenary and reprinted).

Model Regulation Service—1st Quarter 2016

1990 Proc. II 7, 18, 748, 766, 780-783 (amended).
1993 Proc. 4th Quarter 6, 31, 835-836, 874, 891 (amended).
1996 Proc. 2nd Quarter 12, 12-17, 24, 862 (amended and reprinted).
2011 Proc. 3rd Quarter 113-114, 131-137, 222-236, 289-298 (amended).
2016 Proc. 1st Quarter Vol. I 111, 131, 138, 141, 145, 150-171 (amended).

Section 8. Credit for Reinsurance—Certified Reinsurers

A. Pursuant to [cite state law equivalent of Section 2E of the Credit for Reinsurance Model Law], the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of [cite state law equivalent of Section 2E and Section 3 of the Credit for Reinsurance Model Law] and 11, 12 or 13 of this Regulation. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

(1)	Ratings	Security Required
	Secure – 1	0%
	Secure – 2	10%
	Secure – 3	20%
	Secure – 4	50%
	Secure – 5	75%
	Vulnerable – 6	100%

(2) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(3) The commissioner shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(4) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

- (a) Line 1: Fire
- (b) Line 2: Allied Lines
- (c) Line 3: Farmowners multiple peril
- (d) Line 4: Homeowners multiple peril
- (e) Line 5: Commercial multiple peril
- (f) Line 9: Inland Marine
- (g) Line 12: Earthquake
- (h) Line 21: Auto physical damage

- (5) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.
- (6) Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

B. Certification Procedure.

- (1) The commissioner shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty (30) days after posting the notice required by this paragraph.

Drafting Note: States that do not wish to make the internet the required mechanism for providing public notice should modify this provision accordingly. This provision was intended to provide a less formal notice requirement than is typically called for under state Administrative Procedure Acts.

- (2) The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with Subsection A of this section. The commissioner shall publish a list of all certified reinsurers and their ratings.
- (3) In order to be eligible for certification, the assuming insurer shall meet the following requirements:
 - (a) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the commissioner pursuant to Subsection C of this section.
 - (b) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with Subparagraph (4)(h) of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250,000,000 and a central fund containing a balance of at least \$250,000,000.
 - (c) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the

rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

- (i) Standard & Poor's;
 - (ii) Moody's Investors Service;
 - (iii) Fitch Ratings;
 - (iv) A.M. Best Company; or
 - (v) Any other Nationally Recognized Statistical Rating Organization.
- (d) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.
- (4) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:
- (a) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

Credit for Reinsurance Model Regulation

<u>Ratings</u>	<u>Best</u>	<u>S&P</u>	<u>Moody's</u>	<u>Fitch</u>
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

- (b) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;
- (c) For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);
- (d) For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) (attached as exhibits to this regulation);
- (e) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;
- (f) Regulatory actions against the certified reinsurer;
- (g) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph (h) below;

- (h) For certified reinsurers not domiciled in the U.S., audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor). Upon the initial application for certification, the commissioner will consider audited financial statements for the last three (3) years filed with its non-U.S. jurisdiction supervisor;
 - (i) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
 - (j) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and
 - (k) Any other information deemed relevant by the commissioner.
- (5) Based on the analysis conducted under Subparagraph (4)(e) of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under Subparagraph (4)(a) if the commissioner finds that:
- (a) More than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed \$100,000 for each cedent; or
 - (b) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds \$50,000,000.
- (6) The assuming insurer must submit a properly executed Form CR-1 (attached as an exhibit to this regulation) as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

Credit for Reinsurance Model Regulation

- (7) The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under [cite state law equivalent of Freedom of Information Act] and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:
- (a) Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;
 - (b) Annually, Form CR-F or CR-S, as applicable [per the instructions to be developed as an exhibit to this model];
 - (c) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in Subsection (d) below;
 - (d) Annually, audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three (3) years filed with the certified reinsurer's supervisor;
 - (e) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;
 - (f) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and
 - (g) Any other information that the commissioner may reasonably require.
- (8) Change in Rating or Revocation of Certification.
- (a) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of Subparagraph (4)(a).

- (b) The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.
- (c) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.
- (d) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with Section 10 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section 7, the commissioner may allow additional credit equal to the ceding insurer's *pro rata* share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

C. Qualified Jurisdictions.

- (1) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of such recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.
- (2) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The commissioner shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for

certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include but are not limited to the following:

- (a) The framework under which the assuming insurer is regulated.
 - (b) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
 - (c) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.
 - (d) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.
 - (e) The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular.
 - (f) The history of performance by assuming insurers in the domiciliary jurisdiction.
 - (g) Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.
 - (h) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.
 - (i) Any other matters deemed relevant by the commissioner.
- (3) A list of qualified jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under Subsections 8.C(2)(a) to (i).
- (4) U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

D. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

- (1) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 and such additional information as the commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state.
- (2) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within 10 days after receiving notice of the change.
- (3) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with Subsection B(8) of this section.
- (4) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with Subsection B(8) of this section, the certified reinsurer's certification shall remain in good standing in this state for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

E. Mandatory Funding Clause. In addition to the clauses required under Section 14, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

F. The commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

Section 89. Credit for Reinsurance—~~Certified Reinsurers~~Designated Reinsurer in a Designated Jurisdiction

A. Pursuant to [cite state law equivalent of Section ~~2E2F~~ [cite to new section of model law] of the Credit for Reinsurance Model Law], the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has ~~been certified as a reinsurer in this state~~ its head office or is domiciled in a designated jurisdiction (hereinafter a "designated reinsurer") at all times for which statutory financial statement credit for reinsurance is claimed under this section. ~~The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of [cite state law equivalent of Section 2E and Section 3 of the Credit for Reinsurance Model Law] and 11, 12 or 13 of this Regulation. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:~~

(1) Ratings Security Required

Secure 1	0%
Secure 2	10%
Secure 3	20%
Secure 4	50%
Secure 5	75%
Vulnerable 6	100%

~~(2) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.~~

~~(3) The commissioner shall require the ~~certified~~designated reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, [resolution], liquidation [receivership] or conservation [winding-up proceedings] against the ceding insurer.~~

~~(4) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:~~

- ~~(a) Line 1: Fire~~
- ~~(b) Line 2: Allied Lines~~
- ~~(c) Line 3: Farmowners multiple peril~~
- ~~(d) Line 4: Homeowners multiple peril~~
- ~~(e) Line 5: Commercial multiple peril~~
- ~~(f) Line 9: Inland Marine~~
- ~~(g) Line 12: Earthquake~~
- ~~(h) Line 21: Auto physical damage~~

(3) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the later of (i) the effective date of the certification of the assuming insurer agreement or memorandum of understanding (MOU) that resulted in the non-U.S. jurisdiction being deemed a designated jurisdiction agreement ("DJ Agreement" or "DJA"); (ii) if applicable, the date the commissioner finds the non-U.S. jurisdiction to be a designated jurisdiction or (iii) the effective date of this regulation. Any reinsurance contract entered into prior to the applicable effective date of ~~the certification of the assuming insurers subsection~~ that is subsequently amended ~~after the effective date of the certification of the assuming insurer~~, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the later of (i) the effective date of this regulation, (ii) the DJA, or (iii) the effective date of the amendment or new contract.

- (64) Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified designated reinsurers under this section.

~~B. Certification Procedure.~~

- (1) ~~The commissioner shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty (30) days after posting the notice required by this paragraph.~~

Drafting Note: States that do not wish to make the internet the required mechanism for providing public notice should modify this provision accordingly. This provision was intended to provide a less formal notice requirement than is typically called for under state Administrative Procedure Acts.

- (2) ~~The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with Subsection A of this section. The commissioner shall publish a list of all certified reinsurers and their ratings.~~

- (3) (5) In order for the ceding insurer to be eligible for certification financial statement credit for reinsurance under this section, the assuming insurer shall meet the following requirements:

- (a) ~~The assuming insurer must be~~ Be domiciled and/or maintain its head office and be licensed to transact insurance or reinsurance in a Qualified Designated Jurisdiction, as ~~determined by the commissioner pursuant to Subsection C of this section, set forth in (i) an enforceable treaty or regulatory agreement between the United States of America and the non-U.S. jurisdiction designated in such agreement; or (ii) a Memorandum of Understanding (MOU) acknowledged by the commissioner (a Designated Jurisdiction Agreement).~~
- (b) ~~The assuming insurer must maintain~~ Maintain capital and surplus, or its equivalent, of no less than \$250,000,000 or the local currency equivalent in the assuming insurer's Designated Jurisdiction, calculated in accordance with Subparagraph (4)(h) of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250,000,000 or currency equivalent in the assuming insurer's Designated Jurisdiction and a central fund containing a balance of at least \$250,000,000 or currency equivalent in the assuming insurer's Designated Jurisdiction.
- (c) Maintain an RBC of 300 percent Authorized Control Level or equivalent requirement in the assuming insurer's Designated Jurisdiction. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having an RBC of 300 percent Authorized Control Level or equivalent requirement in the assuming insurer's Designated Jurisdiction. -The

Credit for Reinsurance Model Regulation

~~assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:~~

- ~~(i) Standard & Poor's;~~
- ~~(ii) Moody's Investors Service;~~
- ~~(iii) Fitch Ratings;~~
- ~~(iv) A.M. Best Company; or~~
- ~~(v) Any other Nationally Recognized Statistical Rating Organization.~~

~~(d) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.~~

~~(4) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part having an RBC of the evaluation process include, but are not limited to, the following:~~

~~(a) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined 300 percent Authorized Control Level or equivalent requirement in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:~~

<u>Ratings</u>	<u>Best</u>	<u>S&P</u>	<u>Moody's</u>	<u>Fitch</u>
Secure—1	A++	AAA	Aaa	AAA
Secure—2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure—3	A	A+, A	A1, A2	A+, A
Secure—4	A-	A-	A3	A-
Secure—5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable—6	B, B-C++, C+, C-, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

- ~~(b) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;~~
- ~~(c) For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);~~
- ~~(d) For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) (attached as exhibits to this regulation);~~
- ~~(e) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;~~
- ~~(f) Regulatory actions against the certified reinsurer;~~
- ~~(g) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph (h) below;~~
- ~~(h) For certified reinsurers not domiciled in the U.S., audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis~~

Credit for Reinsurance Model Regulation

~~statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non U.S. jurisdiction supervisor). Upon the initial application for certification, the commissioner will consider audited financial statements for the last three (3) years filed with its non U.S. jurisdiction supervisor;~~

~~(i) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;~~

(d) Provide prompt written notice and explanation to the commissioner of the domestic insurer if:

(i) The assuming insurer falls below the minimum capital and surplus, or its equivalent, as applicable, specified in Section 9(A)(5)(b), or the requirement specified in Section 9(A)(5)(c); or

(ii) Any regulatory action is taken against the assuming insurer for serious noncompliance with applicable law.

(e) Confirm that the assuming insurer is not presently participating in any solvent scheme of arrangement, which involves any domestic ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide 100 percent security to the ceding insurer consistent with the terms of the scheme should the assuming insurer enter into such an arrangement. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. any domestic ceding insurers. The, and agrees to notify the ceding insurer and the commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent and to provide 100 percent security to the ceding insurer consistent with the terms of the scheme of should the assuming insurer enter into such an arrangement; and

~~(k) Any other information deemed relevant by the commissioner.~~

~~(5) Based on the analysis conducted under Subparagraph (4)(c) of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under Subparagraph (4)(a) if the commissioner finds that:~~

~~(a) More than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed \$100,000 for each cedent; or~~

~~(b) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds \$50,000,000.~~

~~(6)(f) The assuming insurer must submit a properly executed Form CR-1 (attached as an exhibit to this regulation) as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, consent to pay all final judgments obtained by U.S. ceding insurers that have been declared enforceable, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment.~~

~~(7)(g) The ~~certified~~designated reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under [cite state law equivalent of Freedom of Information Act] and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:~~

~~(a) Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;~~

~~(i) ~~(b) Annually~~ At least annually, but not more than semi-annually, and prior to entry into the reinsurance agreement, Form CR-F or CR-S, as applicable [per the instructions to be developed as an exhibit to this model];~~

~~(e) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in Subsection (d) below;~~

~~(ii) ~~(d) Annually~~ With respect to two years preceding entry into the reinsurance agreement and annually thereafter, audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings in accordance with the applicable law of the Designated Jurisdiction of the assuming insurer's head office, external audit report, and solvency and financial condition report or actuarial opinion in each case (as filed with the certified reinsurer's assuming insurer's supervisor, if any). Upon the initial certification, audited financial statements for~~

Credit for Reinsurance Model Regulation

~~the last three (3) years filed with the certified reinsurer's supervisor;~~

- ~~(iii) (e) — At least annually, but not more than semi-annually, and prior to entry into the reinsurance agreement, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from U.S. domestic ceding insurers;~~
 - ~~(f) — A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and~~
 - ~~(g) — Any other information that the commissioner may reasonably require.~~
 - ~~(h) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:
 - ~~(i) More than fifteen percent (15%) of the reinsurance recoverables are overdue and in dispute as reported to the commissioner;~~
 - ~~(ii) More than fifteen percent (15%) of the assuming insurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed \$100,000 or currency equivalent in the assuming insurer's Designated Jurisdiction for each cedent; or~~
 - ~~(iii) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds \$50,000,000 or currency equivalent in the assuming insurer's Designated Jurisdiction.~~~~
- (8) Change in ~~Rating or Revocation of Certification~~Designated Reinsurer Status.
- (a) In the case of a ~~downgrade by a rating agency or other~~ disqualifying circumstance under this section, the commissioner shall upon written notice to the designated reinsurer provide such reinsurer 30 days from the initial notice to submit a plan to remedy the disqualifying event and 90 days from the initial notice to remedy the disqualifying event, and inform the supervisory authority of the corresponding designated jurisdiction.

- ~~(b) After expiration of the 90 day period referenced in section 8(a) or less under exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection, the commissioner may, subject to any applicable treaty or agreement, require the designated reinsurer to post collateral as a condition to allow a ceding insurer to take credit for reinsurance or for risk mitigation effects of reinsurance agreements or to maintain or adopt any requirement to have a local presence.~~
- ~~(b) The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.~~
- ~~(c) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.~~
- ~~(d) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with Section 10 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section 7, the commissioner may allow additional credit equal to the ceding insurer's *pro rata* share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.~~

~~C.B. Qualified Designated Jurisdictions.~~

- (1) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, ~~and the entry of an applicable agreement or MOU that meets the requirements of Section [2.F.(3) of the NAIC Credit for Reinsurance Model Law (a designated jurisdiction or DJ agreement),~~ the commissioner determines that the jurisdiction qualifies to be recognized as a ~~qualified~~designated jurisdiction, the commissioner shall publish notice and evidence of such recognition in an appropriate manner. The commissioner may establish a procedure to withdraw

recognition of those jurisdictions that are no longer ~~qualified~~designated.

- (2) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a ~~qualified~~designated jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The commissioner shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers ~~may be approved by the commissioner as eligible for certification. A qualified~~would qualify as “designated reinsurers”. A ~~designated~~designated jurisdiction must agree to share information and cooperate with the commissioner with respect to all ~~certified~~designated reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a ~~qualified~~designated jurisdiction, in the discretion of the commissioner, include but are not limited to the following:

- (a) The framework under which the assuming insurer is regulated.
- (b) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
- (c) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.
- (d) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.
- (e) The domiciliary regulator’s willingness to cooperate with U.S. regulators in general and the commissioner in particular.
- (f) The history of performance by assuming insurers in the domiciliary jurisdiction.
- (g) Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a ~~qualified~~designated jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.
- (h) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.
- (i) The elimination, under specified conditions, of local presence requirements imposed by the domiciliary jurisdiction on a U.S.-based assuming reinsurer, as a condition for entering into any reinsurance agreement with a ceding insurer which has its head office or is domiciled in the non-U.S. jurisdiction or for allowing the ceding insurer

to recognize credit for reinsurance or credit for risk mitigation effects of such reinsurance agreement.

(j) The elimination of prudential insurance solvency and capital, governance, and reporting requirements for a U.S.-based assuming reinsurer by a non-U.S. jurisdiction and establishing that the commissioner of a U.S.-based assuming reinsurer that has its head office or is domiciled in this state will exercise worldwide prudential insurance group supervision for that reinsurer.

(k) Any other matters deemed relevant by the commissioner.

(3) Notwithstanding the foregoing, these conditions and qualifications do not apply to any jurisdiction that has entered into an enforceable treaty or regulatory agreement with the United States of America that establishes their eligibility for designated jurisdiction status or its equivalent. The eligibility of such jurisdictions for the designated jurisdiction status shall be determined in accordance with the terms and conditions of such treaty or agreement.

(4) A list of ~~qualified~~designated jurisdictions shall be published through the NAIC Committee Process. Such list shall indicate the respective effective date of each such DJ Agreement. The commissioner shall consider this list in determining ~~qualified~~designated jurisdictions. If the commissioner approves a jurisdiction as ~~qualified~~designated that does not appear on the list of ~~qualified~~designated jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under Subsections 8.C(2)(a) to (k).

(4) U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as ~~qualified~~designated jurisdictions.

DC. Recognition ~~of Certification Issued as a Designated Jurisdiction~~ by an NAIC Accredited Jurisdiction.

(1) If ~~an applicant for certification a non-U.S. jurisdiction~~ has been ~~certified as a reinsurer in deemed a designated jurisdiction pursuant to Section 9.B. by~~ an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that NAIC accredited jurisdiction's ~~certification, and to defer to the rating assigned by that jurisdiction designation,~~ if the ~~assuming insurer designated jurisdiction~~ submits ~~a properly executed Form CR 1 and~~ such additional information as the commissioner requires. The ~~assuming insurer jurisdiction~~ shall be considered to be a ~~certified reinsurer~~ designated jurisdiction in this state.

(2) Any change in the ~~certified reinsurer's designated jurisdiction's~~ status ~~or rating~~ in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The ~~certified designated~~ reinsurer shall notify the commissioner of any change in its status ~~or rating~~ within 10 days after receiving notice of the change.

- (3) The commissioner may withdraw recognition of the other jurisdiction's ~~rating~~ designated jurisdiction determination at any time ~~and assign a new rating~~ in accordance with Subsection B~~(8)~~ of this section.
- (4) The commissioner may withdraw recognition of the other jurisdiction's ~~certification determination~~ at any time, with written notice to the ~~certified designated~~ reinsurer, ~~in accordance with Subsection A(8) of this section~~. Unless the commissioner suspends or revokes the ~~certified designated~~ reinsurer's ~~certification status~~ in accordance with Subsection B~~A~~(8) of this section, the ~~certified designated~~ reinsurer's ~~certification status~~ shall remain in good standing in this state for a period of three (3) months, which shall be extended if additional time is necessary to ~~consider the assuming insurer's application for certification~~ determine whether the designated reinsurer qualifies in this state.

~~E. — Mandatory Funding Clause. In addition to the clauses required under Section 14, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.~~

~~FD.~~ The commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to ~~certified designated~~ reinsurers and ~~qualified designated~~ jurisdictions.