

INSURANCE DIVISION[191]

Adopted and Filed

Rule making related to credit for reinsurance

The Insurance Division hereby amends Chapter 5, “Regulation of Insurers—General Provisions,” and Chapter 112, “Term and Universal Life Insurance Reserve Financing,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 505.8 and 2020 Iowa Acts, Senate File 2131, section 22.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 521B.

Purpose and Summary

This rule making amends the rules to reflect changes made pursuant to the provisions of 2020 Iowa Acts, Senate File 2131, eliminating the reinsurance collateral requirements for assuming insurers (reciprocal reinsurers) that have their head office or are domiciled in a reciprocal jurisdiction and that meet certain solvency requirements. Reciprocal jurisdictions include non-United States jurisdictions subject to an in-force covered agreement, United States jurisdictions accredited under the National Association of Insurance Commissioners Financial Standards and Accreditation Program, or qualified jurisdictions determined by the Iowa Insurance Division. The solvency requirements for reciprocal reinsurers include (1) maintaining a minimum capital and surplus; (2) maintaining a minimum solvency or capital ratio; (3) providing notice to the Division in the event of noncompliance with the minimum capital and surplus and minimum solvency requirements, serious noncompliance with applicable law, consent to service of process, consent to payment of final judgments, and nonparticipation in solvent schemes; (4) providing certain documentation specified by the Commissioner; and (5) maintaining a practice of prompt payment of claims.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 13, 2021, as **ARC 5388C**. A public hearing was held on February 4, 2021, at 10 a.m. via conference call. One person attended the hearing and voiced support for the rule making. Two written comments were received. One comment voiced support for the rule making. The other comment letter was unrelated to the rule making. Since publication of the Notice, nonsubstantive changes have been made to be consistent with capitalization, punctuation, and rule terminology.

Adoption of Rule Making

This rule making was adopted by Douglas M. Ommen, Iowa Insurance Commissioner, on February 18, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

This rule does not provide for waivers.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on April 14, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph 5.33(7)“a,” introductory paragraph, as follows:

a. 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 subrule. 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 subrules 5.33(10), 5.33(11), and 5.33(12), and 5.33(13) of this rule and 2013 Iowa Acts, Senate File 182, sections 2(5) and 3 Iowa Code sections 521B.102(5) and 521B.103. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

ITEM 2. Amend subparagraph 5.33(7)“b”(4) as follows:

(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:

1. No change.

Ratings	Best	S&P	Moody’s	Fitch
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	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

2. to 7. No change.

8. For certified reinsurers not domiciled in the United States, audited financial statements (~~audited United States GAAP basis if available; audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis; or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company~~), regulatory filings, and actuarial opinion (as filed with the non-United States jurisdiction supervisor, with a translation into English). Upon the initial application for certification, the commissioner will consider audited financial statements for the last ~~three~~ two years filed with the certified reinsurer’s non-United States jurisdiction supervisor.

9. to 11. No change.

ITEM 3. Amend subparagraph **5.33(7)“b”(7)** as follows:

(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 is not otherwise public information subject to disclosure shall be exempted from disclosure under Iowa Code chapter 22 and shall be withheld from public disclosure. The applicable information filing requirements are as follows:

1. to 3. No change.

4. Annually, the most recent audited financial statements (~~audited United States GAAP basis if available; audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis; or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company~~), regulatory filings, and actuarial opinion (as filed with the certified reinsurer’s supervisor, with a translation into English). Upon the initial certification, audited financial statements for the last ~~three~~ two years filed with the certified reinsurer’s supervisor.

5. to 7. No change.

ITEM 4. Amend subparagraph **5.33(7)“b”(8)** as follows:

(8) Change in rating or revocation of certification.

1. to 3. No change.

4. Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with subrule ~~5.33(9)~~ 5.33(10) of this rule 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 subrule 5.33(6) of this rule, 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 months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

ITEM 5. Amend paragraph **5.33(7)“e”** as follows:

e. Mandatory funding clause. In addition to the clauses required under subrule ~~5.33(13)~~ 5.33(14) of this rule, reinsurance contracts entered into or renewed under this subrule 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 subrule for reinsurance ceded to the certified reinsurer.

ITEM 6. Renumber subrules **5.33(8)** to **5.33(15)** as **5.33(9)** to **5.33(16)**.

ITEM 7. Adopt the following **new** subrule 5.33(8):

5.33(8) Credit for reinsurance—reciprocal jurisdictions.

a. Pursuant to Iowa Code section 521B.102(5A), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and which meets the other requirements of this subrule.

b. A “reciprocal jurisdiction” is a jurisdiction, as designated by the commissioner pursuant to paragraph 5.33(8)“*d*,” that meets one of the following:

(1) A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For the purposes of this subrule, a “covered agreement” is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. Sections 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a

condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

(2) A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program.

(3) A qualified jurisdiction, as determined by the commissioner pursuant to Iowa Code section 521B.102(5)“c” and paragraph 5.33(7)“c,” which is not otherwise described in subparagraph 5.33(8)“b”(1) or (2) and which the commissioner determines meets all of the following additional requirements:

1. Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction.

2. Does not require 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.

3. Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction.

4. Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such qualified jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

c. Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting each of the conditions set forth below.

(1) The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction.

(2) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in subparagraph 5.33(8)“c”(7) according to the methodology of its domiciliary jurisdiction, in the following amounts:

1. No less than \$250 million; or

2. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, meets both of the following:

- Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least \$250 million.

- A central fund containing a balance of the equivalent of at least \$250 million.

(3) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, one of the following:

1. If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in subparagraph 5.33(8)“b”(1), the ratio specified in the applicable covered agreement.

2. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subparagraph 5.33(8)“b”(2), a risk-based capital (RBC) ratio of 300 percent of the authorized control level, calculated in accordance with the formula developed by the NAIC.

3. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subparagraph 5.33(8)“b”(3), after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC Committee Process, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency.

(4) The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Certificate of Reinsurer Domiciled in Reciprocal Jurisdiction Form RJ-1, of its agreement to all of the following:

1. The assuming insurer must agree to provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in subparagraph 5.33(8)“c”(2) or (3), or if any regulatory action is taken against it for serious noncompliance with applicable law.

2. The assuming insurer must consent in writing to the jurisdiction of the courts in this state and to the appointment of the commissioner as agent for service of process.

- The commissioner may also require that such consent be provided and included in each reinsurance agreement under the commissioner’s jurisdiction.

- Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

3. The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

4. Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer’s liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.

5. The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state’s 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 a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of Iowa Code section 521B.103 and subrules 5.33(11), 5.33(12) and 5.33(13). For purposes of this subrule, the term “solvent scheme of arrangement” means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer’s home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer’s home jurisdiction.

6. The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in subparagraph 5.33(8)“c”(5).

(5) The assuming insurer or its legal successor must provide, if required by the commissioner, on behalf of itself and any legal predecessors, the following documentation to the commissioner:

1. For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer’s annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report.

2. For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer’s supervisor.

3. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States.

4. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in subparagraph 5.33(8) "c"(6).

(6) 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:

1. More than 15 percent of the reinsurance recoverable from the assuming insurer is overdue and in dispute as reported to the commissioner.

2. More than 15 percent of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer \$100,000, or as otherwise specified in a covered agreement.

3. The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds \$50 million, or as otherwise specified in a covered agreement.

(7) The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis that the assuming insurer complies with the requirements set forth in subparagraphs 5.33(8) "c"(2) and (3).

(8) Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

d. The commissioner shall timely create and publish a list of reciprocal jurisdictions.

(1) A list of reciprocal jurisdictions is published through the NAIC committee process. The commissioner's list shall include any reciprocal jurisdiction as defined under subparagraphs 5.33(8) "b"(1) and (2), and shall consider any other reciprocal jurisdiction included on the NAIC list. The commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, rule, or in accordance with criteria published through the NAIC committee process.

(2) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, rule, or in accordance with a process published through the NAIC committee process, except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined under subparagraphs 5.33(8) "b"(1) and (2). Upon removal of a reciprocal jurisdiction from this list credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to Iowa Code chapter 521B or rule 191—5.33(510).

e. The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with this section.

(1) If an NAIC-accredited jurisdiction has determined that the conditions set forth in paragraph 5.33(8) "c" have been met, the commissioner has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subrule. The commissioner may accept financial documentation filed with another NAIC-accredited jurisdiction or with the NAIC in satisfaction of the requirements of paragraph 5.33(8) "c."

(2) When requesting that the commissioner defer to another NAIC-accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the commissioner may require. A state that has received such a request will notify other states through the NAIC committee process and provide relevant information with respect to the determination of eligibility.

f. If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this section, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subrule.

(1) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with subrule 5.33(10).

(2) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of subrule 5.33(10).

g. Before denying statement credit or imposing a requirement to post security with respect to paragraph 5.33(8) "f" or adopting any similar requirement that will have substantially the same regulatory impact as security, the commissioner shall:

(1) Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in paragraph 5.33(8) "c."

(2) Provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection.

(3) After the expiration of 90 days or less, as set out in subparagraph 5.33(8) "g"(2), if the commissioner determines that no or insufficient action was taken by the assuming insurer, the commissioner may impose any of the requirements as set out in this subrule.

(4) Provide a written explanation to the assuming insurer of any of the requirements set out in this subrule.

h. If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

ITEM 8. Amend renumbered paragraph **5.33(10)"b"** as follows:

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 those securities qualifying as admitted assets.

ITEM 9. Amend subrule 5.33(11), introductory paragraph, as follows:

5.33(11) *Letters of credit qualified under subrule ~~5.33(9)~~ 5.33(10).*

ITEM 10. Amend renumbered subparagraph **5.33(11)"b"(3)** as follows:

(3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States, except that a bank may apply for the commissioner's permission to use a foreign branch office of such bank as trustee for trust agreements established pursuant to this subrule. If the commissioner approves the use of such foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in subparagraph ~~5.33(10)"b"(4)~~ 5.33(11)"b"(4) must also be presentable, as a matter of legal right, at the trustee's principal office in the United States.

ITEM 11. Amend renumbered subparagraph **5.33(11)"b"(4)** as follows:

(4) The trust agreement shall provide that:

1. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;
2. No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;
3. It is not subject to any conditions or qualifications outside of the trust agreement;
4. It shall not contain references to any other agreements or documents except as provided for under subparagraph ~~5.33(10)"b"(4)~~ 5.33(11)"b"(11).

ITEM 12. Amend renumbered subparagraph **5.33(11)“b”(11)** as follows:

(11) Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, such a trust agreement may, notwithstanding any other conditions in this rule, provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

1. and 2. No change.

3. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer’s entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer, in any qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in subparagraph ~~5.33(10)“d”(1)~~ 5.33(11)“d”(1) as may remain executory after such withdrawal and for any period after the termination date.

ITEM 13. Amend renumbered subparagraph **5.33(11)“b”(12)** as follows:

(12) The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by subparagraph ~~5.33(10)“d”(1)~~ 5.33(11)“d”(1) so long as these required conditions are included in the trust agreement.

ITEM 14. Amend renumbered paragraph 5.33(11)“c” as follows:

c. Permitted conditions.

(1) and (2) No change.

(3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in ~~5.33(10)“d”(1)“2.”~~ 5.33(11)“d”(1)“2.”

(4) and (5) No change.

ITEM 15. Amend renumbered subparagraph 5.33(11)“d”(2) as follows:

(2) The reinsurance agreement may also contain provisions that:

1. Give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

- The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or

- After withdrawal and transfer, the market value of the trust account is not less than 102 percent of the required amount.

The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

2. Provide for:

- The return of any amount withdrawn in excess of the actual amounts required to comply with ~~5.33(10)“d”(1)“5,”~~ 5.33(11)“d”(1)“5,” first three bulleted paragraphs, or in the case of ~~5.33(10)“d”(1)“5,”~~ 5.33(11)“d”(1)“5,” fourth bulleted paragraph, any amounts that are subsequently determined not to be due; and

- Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to ~~5.33(10)“d”(1)“5,”~~ 5.33(11)“d”(1)“5,” third bulleted paragraph.

3. Permit the award by any arbitration panel or court of competent jurisdiction of:

- Interest at a rate different from that provided in ~~5.33(10)“d”(2)“2”~~ 5.33(11)“d”(2)“2”;

- Court of arbitration costs;

- Attorney’s fees;

- Any other reasonable expenses.

ITEM 16. Amend renumbered subparagraph **5.33(11)“d”(5)** as follows:

(5) The failure of any trust agreement to specifically identify the beneficiary as defined in paragraph ~~5.33(10)“a”~~ 5.33(11)“a” shall not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

ITEM 17. Amend renumbered subrule 5.33(12) as follows:

5.33(12) Letters of credit qualified under subrule ~~5.33(9)~~ 5.33(10).

a. The letter of credit must be clean, irrevocable and unconditional and issued or confirmed by a qualified United States financial institution. The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in subparagraph ~~5.33(11)“i”(1)~~ 5.33(12)“i”(1). As used in this paragraph, “beneficiary” means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

b. to j. No change.

ITEM 18. Amend renumbered subparagraph 5.33(12)“i”(1) as follows:

(1) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

1. and 2. No change.

3. All of the provisions required by paragraph ~~5.33(11)“i”~~ 5.33(12)“i” should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

ITEM 19. Amend renumbered subparagraph **5.33(12)“i”(2)** as follows:

(2) Nothing contained in this paragraph shall preclude the ceding insurer and assuming insurer from providing for:

1. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to ~~5.33(11)“i”(1)“2,”~~ 5.33(12)“i”(1)“2,” third bulleted paragraph.

2. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the event ~~5.33(11)“i”(1)“2,”~~ 5.33(12)“i”(1)“2,” fourth bulleted paragraph, is applicable, any amounts that are subsequently determined not to be due.

ITEM 20. Amend renumbered subparagraph **5.33(12)“i”(3)** as follows:

(3) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of ~~5.33(11)“i”(1)“2,”~~ 5.33(12)“i”(1)“2,” require that the parties enter into a “Trust Agreement” which may be incorporated into the reinsurance agreement or be a separate document.

ITEM 21. Amend renumbered subrule 5.33(14) as follows:

5.33(14) Reinsurance contract. Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of ~~subrules~~ subrule 5.33(4), 5.33(5), 5.33(6), 5.33(7), ~~5.33(8)~~ 5.33(9), or ~~5.33(10)~~ 5.33(11) after the adoption of this rule unless the reinsurance agreement:

a. to c. No change.

ITEM 22. Amend paragraph 112.7(1)“e” as follows:

e. Any trust used to satisfy the requirements of rule 191—112.7(521B) shall comply with all of the conditions and qualifications of 191—subrule ~~5.33(10)~~ 5.33(11), except that:

(1) to (3) No change.

(4) The determination of reserve credit under 191—subparagraphs ~~5.33(10) “d”(3)~~ 5.33(11) “d”(3) to ~~5.33(10) “d”(5)~~ 5.33(11) “d”(5) shall be determined according to the valuation rules set forth in subrule 112.6(2), as applicable; and

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