

**NEW YORK STATE
INSURANCE DEPARTMENT**

NINTH AMENDMENT TO REGULATION NO. 20

(11 NYCRR 125)

CREDIT FOR REINSURANCE FROM UNAUTHORIZED INSURERS

I, Gregory V. Serio, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 307(a), 308, 1301(a)(14), 1301(c), and 1308 of the Insurance Law, do hereby promulgate the following ninth amendment to 11 NYCRR 125 (Regulation 20), to take effect upon publication in the State Register to read as follows:

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

Subdivisions (c) and (d) of Section 125.4 are hereby amended to read as follows:

(c)(1) In the case of an alien assuming insurer, not otherwise entered as a United States branch in another state, such assuming insurer meets the standards of solvency required of license insurers of like character, such terms and conditions as prescribed by the superintendent, and otherwise complies substantially with related requirements, and such assuming insurer has deposited and continues to maintain in one or more New York state banks and/or members of the Federal Reserve System located in New York state, a trust fund or trust funds, constituting a trustee surplus, in cash [or], readily marketable securities, or letters of credit, in an amount of not less than \$20,000,000 for the protection of the United States insurers, and United States beneficiaries under reinsurance policies (contracts) issued by such alien assuming insurers. Such trustee amount shall be in addition to any other trust fund required by this department, including, but not limited to, a trustee amount at least equal to the liabilities attributable to United States insurers and United States beneficiaries under reinsurance policies (contracts) issued by such alien assuming insurers. As used in this subdivision, surplus means the balance remaining after subtracting the liabilities, attributable to reinsurance policies (contracts) issued in the name of such alien assuming insurer from the total assets deposited in the trust fund or trust funds.

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

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

securities of any company affiliated with the alien assuming insurer. Letters of credit complying with paragraph (4) of this subdivision may be used to fund the remainder of the trustee surplus and the other trust funds.

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

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

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

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

(c) An investment made pursuant to the provisions of clause (a) and (b) shall not exceed five percent (5%) of the assets of the trust;

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

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

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

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

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

(ii) No more than twenty percent of the total of the investments in the trust may be foreign investments authorized under subparagraph (i) of this paragraph, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign

currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency.

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

(i) the letter of credit shall comply with Part 79 of this Title (Regulation No. 133);

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

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

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

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

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

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

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

(iv)(a) has deposited and continues to maintain, with one or more New York State banks and/or members of the Federal Reserve System located in New York State, a trust fund or trust funds, constituting a surplus, in cash [or], readily marketable securities, or letters of credit, in an amount of not less than \$100,000,000 for the protection of United States ceding insurers and United States beneficiaries under reinsurance policies (contracts) issued in the name of such group. The minimum surplus amount shall be maintained on a joint and several basis. The use of such minimum surplus amount shall be limited to the payment or reimbursement of any losses and allocated loss expenses paid by a ceding insurer but not recovered from any member of such group and for unearned premiums due a ceding insurer if not otherwise recovered from any member of such group in accordance with the terms of the reinsurance policies (contracts) issued in the name of such group. The prior approval of the superintendent

shall be required for any payment or reimbursement [which] that reduces such surplus below the minimum required amount of \$100,000,000. Such surplus amount shall be in addition to any other trust fund or trust funds required by this department. As used in this [paragraph] subdivision, surplus means the balance remaining after subtracting the liabilities, attributable to reinsurance policies (contracts) issued in the name of such group, from the total assets deposited in the trust fund or trust funds.

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

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

(1) the letter of credit shall comply with Part 79 of this Title (Regulation No. 133);

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

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

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

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

I, Gregory V. Serio, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the Ninth Amendment to Part 125 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 20), entitled "Credit For Reinsurance From Unauthorized Insurers", promulgated by me on March 13, 2003, pursuant to the authority granted by Sections 201, 301, 307(a), 308, 1301(a)(14), 1301(c), and 1308 of the Insurance Law, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on January 8, 2003. No other publication or prior notice is required by statute.

Gregory V. Serio
Superintendent of Insurance

March 13, 2003