

**NEW YORK STATE
INSURANCE DEPARTMENT
EIGHTH AMENDMENT TO REGULATION NO. 20
(11 NYCRR 125)**

CREDIT FOR REINSURANCE FROM UNAUTHORIZED INSURERS

I, GREGORY V. SERIO, Superintendent of Insurance, pursuant to the authority granted by sections 201, 301, 1301(a)(14) and 1301(c) of the Insurance Law of the State of New York, do hereby promulgate, on an emergency basis, the following Eighth Amendment to Part 125 of Title 11 of the Official Compilation of Codes, Rules and Regulations (Regulation No. 20), to take effect upon publication in the State Register, to read as follows:

(MATTER IN BRACKETS IS DELETED, MATTER UNDERLINED IS NEW)

Section 125.4 is amended to read as follows:

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

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

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

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

(c) 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 trusteed surplus, in cash or readily marketable securities 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 trusteed amount shall be in addition to any other trust fund required by this department.

(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 regulator; or a group of individual incorporated assuming insurers located outside the United States; provided that such group:

(i) has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application with the department for the issuance of a certificate of recognition as an accredited 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 ninety 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) 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, 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 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 subparagraph "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.

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

(e) [In] With respect to reinsurance contracts entered into or renewed before September 15, 2001, in the case of cessions to nonaffiliated assuming insurers who have not complied with the

requirements of subdivision (a), (c) or (d) of this section, but are authorized in their domiciliary jurisdiction to assume the kind or kinds of insurance ceded thereto:

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

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

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

(iii) fifteen percent;

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

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

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

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

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

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

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

(vii) Any ceding insurer that has taken credit under this subdivision is required to disclose the amounts thereof in the "Other Items" section of the notes to the financial statements section of the annual statement.

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

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

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

(ii) that there is any indication or evidence that any assuming insurer, with whom the ceding insurer has a contract, [is failing to meet the acceptable standards of solvency required by this department] fails to substantially comply with the solvency requirements under the Insurance law and regulations thereunder.

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

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

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

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

(iii) fifteen percent.

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

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

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

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

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

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

(v) that the unauthorized alien assuming insurer provides to, and maintains, any acceptable funds withheld under a reinsurance agreement with such insurer as security for the payment of obligations thereunder, pursuant to the provisions of section 1301(a)(14) of the Insurance Law in an amount at least equal to 110% of the unearned premium and known case outstanding reserves for loss and allocated loss adjustment expense ceded to the unauthorized alien assuming insurer by the ceding insurer;

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

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

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

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

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

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

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

Test 2: Premium Growth: Ratio 2.3 Change in Net Premium

Standard & Poor's Standard: Between -10% and +30%

Test 3: Retention Ratio or Reinsurance Utilization Ratio: Ratio 3.1 Net / Gross Premium

Standard & Poor's Standard: Greater than 50%

Test 4: The Liquidity Ratio: Ratio 4.3 Technical Reserves / Adjusted Liquid Assets

Standard & Poor's Standard: Less than 100%

Test 5: Two-year Underwriting Profit / Investment Income: Ratio 5.3.2 Two Year Underwriting Profit / Investment Income

Standard & Poor's Standard: Greater than -25%

Test 6: Return on Equity (ROE): Ratio 5.4 Pre-tax Profit / Average Adjusted Shareholders' Funds

Standard & Poor's Standard: Greater than 5%

Test 7: Ratio 6.1 Technical Reserves and Adjusted Shareholders' Funds / Net Premium Written

Standard & Poor's Standard: Greater than 150%

Test 8: Ratio 6.3 Technical Reserves / Adjusted Shareholders' Funds

Standard & Poor's Standard: Less than 350%

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

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

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

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

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

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

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

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

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

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

(8) Any insurer that elects to take such credit under this subdivision in its annual statement filed on or after September 15, 2001 shall notify the superintendent in writing of its initial intention to take such credit at least thirty days prior thereto. Upon application of an insurer with good cause shown, an insurer may be allowed to provide such notice less than thirty days prior to taking credit

under this subdivision. Such shorter notice period will be approved by the superintendent based upon the justification stated in the insurer's application.

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

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

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

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

I, Gregory V. Serio, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the Eighth 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 20, 2003, pursuant to the authority granted by Sections 201, 301, 307(a), 308, 1301(a)(14), and 1301(c) 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 29, 2003. No other publication or prior notice is required by statute.

Gregory V. Serio
Superintendent of Insurance

March 20, 2003