

Regulatory Impact Statement for the Twelfth Amendment to 11 NYCRR 125 (Insurance Regulations 17, 20, and 20-A)

1. Statutory authority: Financial Services Law Sections 202 and 302; Insurance Law Sections 301, 1301(a)(9), 1301(c), 1308, and 4525(b); 31 U.S.C. Sections 313 and 314.

Financial Services Law Section 202 establishes the office of the Superintendent of Financial Services (“Superintendent”).

Financial Services Law Section 302 and Insurance Law Section 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, Insurance Law, or any other law and to prescribe regulations interpreting the Insurance Law.

Insurance Law Sections 1301(a)(9) and (c) and 1308 authorize the Superintendent to prescribe, by regulation, the conditions under which an authorized ceding insurer may be allowed credit as an asset or a deduction from loss and unearned premium reserves, for reinsurance recoverable from an assuming insurer not authorized to do an insurance business in this state.

Insurance Law Section 4525(b) makes fraternal benefit societies subject to Insurance Law Article 13, including Sections 1301(a)(9) and (c) and 1308.

31 U.S.C. Section 313 established the Federal Insurance Office (“FIO”) within the Department of the Treasury, and authorizes FIO to preempt any state insurance law or regulation that results in less favorable treatment of a non-United States (“U.S.”) insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a U.S. insurer domiciled, licensed, or otherwise admitted in that state.

31 U.S.C. Section 314 authorizes the Secretary of the Treasury and the U.S. Trade Representative (“USTR”) to negotiate and enter into covered agreements on behalf of the U.S.

2. Legislative objectives: Insurance Law Sections 1301(a)(9) and (c) and 1308 authorize the Superintendent to prescribe, by regulation, the conditions under which a domestic ceding insurer, including a

fraternal benefit society, may be allowed credit as an asset or a deduction from loss and unearned premium reserves, for reinsurance recoverable from an assuming insurer not authorized to do an insurance business in this state. 31 U.S.C. Section 313 authorizes FIO to preempt any state insurance law or regulation that results in less favorable treatment of a non-U.S. insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a U.S. insurer domiciled, licensed, or otherwise admitted in that state. 31 U.S.C. Section 314 authorizes the Secretary of the Treasury and the USTR to negotiate and enter into covered agreements on behalf of the U.S. On September 22, 2017 and December 19, 2018, the federal government entered into covered agreements between the U.S. and the European Union (“E.U.”) (the “E.U. covered agreement”) and between the U.S. and the United Kingdom (“U.K.”) (the “U.K. covered agreement”) (collectively, the “covered agreements”). These covered agreements mandate credit for reinsurance ceded to reciprocal jurisdiction assuming insurers and eliminate collateral requirements on certain E.U.-domiciled and U.K.-domiciled assuming insurers that reinsure business from U.S.-domiciled ceding insurers provided that certain regulatory criteria are met.

This amendment accords with the legislative objectives of Insurance Law Sections 1301(a)(9) and (c) and 1308, 31 U.S.C. Sections 313 and 314, and the covered agreements by eliminating reinsurance collateral requirements and local presence requirements for certain E.U.-domiciled and U.K.-domiciled assuming insurers. The amendment also provides reciprocal jurisdiction status for accredited U.S. jurisdictions and qualified jurisdictions if they meet certain requirements.

3. Needs and benefits: On September 22, 2017, the U.S. Treasury Department (“Treasury”) and the USTR signed the E.U. covered agreement. On December 19, 2018, Treasury and the USTR signed the U.K. covered agreement, which extends terms nearly identical to the E.U. covered agreement to insurers and reinsurers domiciled in the U.K.

On June 25, 2019, the National Association of Insurance Commissioners (“NAIC”) adopted a revised Credit for Reinsurance Model Law (the “Model Law”) and a revised Credit for Reinsurance Model Regulation

(the “Model Regulation”) (collectively, the “Models”) to conform to the covered agreements. This amendment implements the Models to the extent that they are consistent with the needs of the New York insurance market in order to conform to the covered agreements. Specifically, the amendment adds a “reciprocal jurisdiction” category, which eliminates reinsurance collateral requirements and local presence requirements for certain E.U.-domiciled and U.K.-domiciled assuming insurers. The amendment also provides reciprocal jurisdiction status for accredited U.S. jurisdictions and qualified jurisdictions if they meet certain requirements in the Models.

The amendment is necessary to avoid federal preemption and maintain New York’s NAIC-accredited status. With respect to federal preemption, by March 1, 2021, FIO will begin evaluating, for possible preemption, state insurance laws and regulations that it determines are not consistent with the terms of the covered agreements. Accordingly, the amendment incorporates into New York’s regulation the provisions of the covered agreements that eliminate collateral and local presence requirements. If this amendment is not adopted, FIO is authorized under federal law to impose the provisions of the covered agreements upon New York insurers.

With respect to NAIC accreditation, the Models will become an accreditation standard effective September 1, 2022. NAIC accreditation is a certification a state receives once it demonstrates that it has met and continues to meet certain legal, financial, and organizational standards. The purpose of the NAIC accreditation program is to ensure effective insurer financial solvency regulation across the United States. As of September 2020, 14 states have adopted the Model Law and two states have adopted the Model Regulation. *See* The NAIC Credit for Reinsurance Model Law, State Legislative Brief, NAIC (September 2020).

4. Costs: The proposed amendment will impose minimal compliance costs on E.U.-domiciled and U.K.-domiciled assuming insurers or other reciprocal jurisdiction assuming insurers because certain of these insurers will need to file prescribed documents with the Superintendent annually. However, the amendment will reduce their costs overall because it eliminates collateral and local presence requirements.

The Department of Financial Services (“Department”) may incur costs to implement and continue this amendment because Department staff will need to review filings by assuming insurers evidencing their commitment to adhere to certain financial and other standards set forth in this amendment. However, any additional costs incurred should be minimal and the Department should be able to absorb such costs in its ordinary budget.

This rule does not impose compliance costs on local governments.

5. Local government mandates: This rule does not impose any program, service, duty, or responsibility upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: This amendment requires certain assuming insurers to file prescribed documents annually with the Superintendent for a domestic ceding insurer to take credit for reinsurance provided by an assuming insurer that is not secured by collateral.

7. Duplication: This amendment does not conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: There are no significant alternatives for the Department to consider because the amendment must conform to the covered agreements for the Department to avoid being preempted by the federal government.

9. Federal standards: The amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: An assuming insurer must comply with the amendment upon publication of Notice of Adoption in the State Register.

Regulatory and Flexibility Analysis for Small Businesses and Local Governments for the Twelfth Amendment to 11 NYCRR 125 (Insurance Regulations 17, 20, and 20-A)

1. Effect of rule: This proposed amendment conforms to the covered agreements entered into between the United States (“U.S.”) and the European Union (“E.U.”) and the U.S. and the United Kingdom (“U.K.”) (the “covered agreements”) by enabling domestic ceding insurers, including fraternal benefit societies, to take credit as an asset or a deduction from loss and unearned premium reserves for reinsurance recoverable from assuming insurers headquartered or domiciled in the E.U., U.K., or other reciprocal jurisdictions. As such, it should not affect local governments.

Assuming insurers are not small businesses as defined in State Administrative Procedure Act (“SAPA”) Section 102(8) because they are not resident in New York State, are not independently owned and operated, and do not employ 100 or less individuals. However, there are fraternal benefit societies acting as ceding insurers that are small businesses as defined in State Administrative Procedure Act Section 102(8). In addition, industry asserts that co-operative insurers and mutual insurers, which are subject to the amendment as ceding insurers, are small businesses. However, a domestic ceding insurer that may be a small business subject to the amendment will not incur additional costs as a result of this rule.

2. Compliance requirements: A local government will not have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the rule because it does not apply to a local government. The amendment does not impose any reporting, recordkeeping, or other requirements on a domestic ceding insurer that may be a small business.

3. Professional services: A local government will not need any professional services to comply with this rule because the rule does not apply to any local government. A domestic ceding insurer that may be a small business will not need any professional services to comply with the rule.

4. Compliance costs: A local government will not incur any costs to comply with this rule because the rule does not apply to any local government. A domestic ceding insurer that may be a small business will not incur any costs to comply with this rule.

5. Economic and technological feasibility: There should not be any issues pertaining to the economic and technological feasibility of complying with the rule with respect to a local government because the rule does not apply to any local government. There should not be any issues pertaining to the economic and technological feasibility of complying with the rule with respect to a domestic ceding insurer that may be a small business.

6. Minimizing adverse impact: There will not be any adverse impact on a local government because the rule does not apply to any local government. There will not be any adverse impact on a domestic ceding insurer that may be a small business.

The Department of Financial Services (“Department”) considered the approaches suggested in SAPA Section 202-b(1) for minimizing adverse impacts, but none apply in the context of this rule because adoption of the amendment is required to conform to the covered agreements and to avoid preemption under federal law.

7. Small business and local government participation. The Department will comply with SAPA Section 202-b(6) by publishing the proposed amendment in the State Register and posting the proposed amendment on the Department’s website.

Rural Area Flexibility Analysis for the Twelfth Amendment to 11 NYCRR 125 (Insurance Regulations 17, 20, and 20-A)

1. Types and estimated numbers of rural areas: Domestic ceding insurers, including fraternal benefit societies, and assuming insurers headquartered or domiciled in the European Union, United Kingdom, or other reciprocal jurisdictions do business in every county in this state, including rural areas as defined in State Administrative Procedure Act Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: This proposed amendment imposes reporting, recordkeeping, and other compliance requirements on certain assuming insurers by requiring them to file prescribed documents annually with the Superintendent of Financial Services (“Superintendent”). The proposed amendment does not impose reporting, recordkeeping, or other compliance requirements on ceding insurers.

A ceding insurer and an assuming insurer, including those doing business in a rural area, will not need to retain professional services to comply with this proposed amendment.

3. Costs: The proposed amendment will impose minimal compliance costs on assuming insurers because certain of these insurers will need to file prescribed documents with the Superintendent annually. However, the amendment will reduce their costs overall because it eliminates collateral and local presence requirements. The proposed amendment imposes no additional compliance costs on domestic ceding insurers, including those in rural areas.

4. Minimizing adverse impact: This proposed amendment uniformly affects ceding insurers and assuming insurers that are doing business in both rural and non-rural areas of New York State. The amendment should not have an adverse impact on rural areas.

5. Rural area participation: The Department of Financial Services (“Department”) contacted insurers, trade groups, and other interested parties, including those doing business in rural areas. Ceding and assuming

insurers also will have an opportunity to participate in the rule making process when the proposed amendment is published in the State Register and posted on the Department's website.

Statement Setting Forth the Basis for the Finding that the Twelfth Amendment to 11 NYCRR 125 (Insurance Regulations 17, 20, And 20-A) Will Not Have a Substantial Adverse Impact on Jobs and Employment Opportunities

The proposed amendment should not adversely impact jobs or employment opportunities in New York State. The amendment conforms to the covered agreements entered into between the United States (“U.S.”) and the European Union (“E.U.”) and the U.S. and the United Kingdom (“U.K.”) by eliminating reinsurance collateral requirements and local presence requirements for certain E.U.-domiciled and U.K.-domiciled assuming insurers. The amendment also provides reciprocal jurisdiction status for accredited U.S. jurisdictions and qualified jurisdictions if they meet certain requirements. Thus, the proposed amendment should not adversely impact jobs or employment opportunities in New York State.