

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
TWELFTH AMENDMENT TO INSURANCE REGULATIONS 17, 20 AND 20-A
(11 NYCRR 125)**

CREDIT FOR REINSURANCE

I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, Sections 301, 1301(a)(9), 1301(c), 1308, and 4525(b) of the Insurance Law, and 31 U.S.C. Sections 313 and 314, do hereby promulgate the following Twelfth Amendment to Part 125 of Title 11 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (Insurance Regulations 17, 20, and 20-A), to take effect upon publication of the Notice of Adoption in the State Register, to read as follows:

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

Section 125.1 is amended as follows:

§ 125.1 [Applicability] Preamble and applicability.

(a)(1) This Part sets forth the rules governing the admitted asset status of reinsurance recoverable by domestic insurers. Most significant in this regard are rules permitting credit for reinsurance for cessions to certified assuming insurers and reciprocal jurisdiction assuming insurers. The covered agreements between the United States and the European Union and between the United States and the United Kingdom mandate credit for reinsurance ceded to reciprocal jurisdiction assuming insurers. These covered agreements also eliminate security requirements on certain European Union-domiciled and United Kingdom-domiciled assuming insurers that reinsure business from United States-domiciled ceding insurers provided that certain regulatory criteria are met.

(2) This Part implements a reciprocal jurisdiction assuming insurer framework. In connection with a reciprocal jurisdiction assuming insurer framework, the NAIC publishes a list of jurisdictions for consideration by the states as reciprocal jurisdictions. The superintendent will publish a list of jurisdictions that are reciprocal jurisdictions under this Part and in so doing will consider including any jurisdiction on the NAIC's list. The superintendent may also approve a jurisdiction that does not appear on the NAIC list by taking into consideration criteria published by the NAIC. The superintendent may remove a jurisdiction that is not a reciprocal jurisdiction from the superintendent's list upon a determination that the jurisdiction no longer meets one or more of the requirements. Upon removal of a jurisdiction from the superintendent's list, credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed if otherwise allowed pursuant to section 125.4(c), (d), (g), (h) and section 125.5(a) of this Part.

(3) The superintendent also will publish a list of assuming insurers that have satisfied the conditions set forth in section 125.4(i)(2) of this Part and to which cessions shall be granted credit in accordance with section 125.4 of this Part. If an NAIC-accredited jurisdiction has determined that the conditions set forth in section 125.4(i)(2) of this Part have been met, then the superintendent may defer to that NAIC-accredited jurisdiction's determination and add such assuming insurer to the list of assuming insurers to which cessions shall be granted

credit in accordance with section 125.4(i) of this Part. The superintendent may accept financial documentation filed with another NAIC-accredited jurisdiction or with the NAIC in satisfaction of the requirements of section 125.4(i)(2) of this Part. When requesting that the superintendent defer to another NAIC-accredited jurisdiction's determination, an assuming insurer shall submit the form prescribed by the superintendent pursuant to section 125.4(i)(2)(iv) of this Part and any additional information that the superintendent may require.

(b) This Part shall apply to insurers authorized to do business in this State, provided that [where] if the state of domicile of [a foreign] an authorized ceding insurer is an NAIC-accredited [state] jurisdiction, [has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk] a qualified jurisdiction, or a reciprocal jurisdiction, then the [foreign] authorized ceding insurer may take credit for the reinsurance.

Section 125.2 is amended as follows:

(a) *Alien group of insurers* means a group of insurers located outside the United States whose members consist of individual incorporated assuming insurers that are not engaged in any business other than underwriting as a member of the group and individual unincorporated assuming insurers, provided that 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.

(b) *Article 16 system* means an authorized domestic insurer registered or required to register under Insurance Law article 16 and all of the insurer's subsidiaries.

(c) *Article 17 system* means a parent corporation registered or required to register under Insurance Law article 17 and all of the parent corporation's subsidiaries.

(d) *Catastrophic loss* means an event designated as a catastrophe by the property claims service, or an equivalent organization as determined by the superintendent, or any successor organization and covering losses related to a natural event including wind, hail, hurricane, earthquake, winter storms (snow, ice, freezing), fire, tsunami, or flood.

(e) *Covered agreement* means an agreement entered into pursuant to 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 security 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.

[(b)] (f) GAAP means generally accepted accounting principles.

(g) *Head office* means the insurer's headquarters from which the insurer's high-level officers direct, control, and coordinate the insurer's business activities.

(h) *Holding company* shall have the meaning set forth in Insurance Law section 1501(a)(3).

(i) *Holding company system* shall have the meaning set forth in Insurance Law section 1501(a)(6).

[(c)] (j) *IFRS* means international financial reporting standards.

(k) *Jurisdiction* means any foreign country or self-governing political subdivision thereof, the United States, or any state, territory, or commonwealth of the United States.

[(d)] (l) *NAIC* means the National Association of Insurance Commissioners.

[(e) *Alien group of insurers* means 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.]

(m) *NAIC-accredited jurisdiction* means any state, territory, or commonwealth of the United States that meets the requirements for accreditation under the NAIC financial standards and accreditation program.

(n) *Reciprocal jurisdiction* means a jurisdiction, designated by the superintendent, that is:

(1) a non-United States 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, a member state of the European Union;

(2) an NAIC-accredited jurisdiction; or

(3) a qualified jurisdiction, as determined by the superintendent pursuant to section 125.4(h)(8) of this Part, that is not otherwise described in paragraphs (1) or (2) of this subdivision and that the superintendent determines meets each of the following additional requirements:

(i) provides that an insurer that has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a United States-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

(ii) does not require a United States-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-United States jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

(iii) recognizes the United States' state regulatory approach to group supervision and group capital, by providing written confirmation by a relevant regulatory authority in such qualified jurisdiction that insurers that are domiciled or maintain their headquarters in this State or another NAIC-accredited jurisdiction shall be subject only to group supervision, including group governance, and group capital, and reporting, as applicable, by the superintendent or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the ultimate parent of the holding company system by the qualified jurisdiction; and

(iv) provides written confirmation by the relevant regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the superintendent pursuant to a memorandum of understanding or similar document between the superintendent and such qualified jurisdiction, including the international association of insurance supervisors multilateral memorandum of understanding or other multilateral memorandum of understanding.

(o) 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 domiciliary jurisdiction either to finally commute liabilities of duly noticed class 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 that may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's domiciliary jurisdiction.

(p) Statutory or regulatory compromise procedure means a judicial method prescribed by statute or regulation whereby a debtor may settle its obligations to creditors.

Section 125.4(h)(7)(iv)(h) is amended as follows:

(h) for a certified reinsurer not domiciled in the United States, audited financial statements, [(i.e., audited United States GAAP basis if available; audited IFRS basis statements including an audited footnote reconciling equity and net income to a United States GAAP basis; or with the permission of the superintendent, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company),] regulatory financial statement filings, and an actuarial opinion as filed with the [non-United States jurisdiction supervisor] certified reinsurer's domestic regulator, which shall be accompanied by a translation into the English language as appropriate. Upon the initial application for certification, the insurer shall provide the superintendent with audited financial statements filed with its non-United States jurisdiction [supervisor] regulator for at least the previous [three] two years;

Section 125.4(h)(7)(vii)(d) is amended as follows:

(d) submit annually on July 1st, audited financial statements; [(i.e., audited United States GAAP basis statements if available and audited International Financial Reporting Standards basis statements, including an audited footnote reconciling equity and net income to a United States GAAP basis, except that the superintendent may in his or her discretion accept audited International Financial Reporting Standards statements with reconciliation to United States GAAP certified by an officer of the insurer, provided that the capital and surplus of the insurer exceeds \$275 million);] regulatory financial statement filings; an actuarial opinion as filed with the certified reinsurer's domestic regulator, which shall be accompanied by a translation into the English language as appropriate; and, upon the initial certification, audited financial statements for the prior [three] two years filed with the certified reinsurer's domestic regulator;

A new section 125.4(h)(11) is added as follows:

(11) Multibeneficiary Trusts. A certified reinsurer may secure property/casualty insurance obligations incurred as a certified reinsurer under this subdivision by the establishment and funding of a multibeneficiary trust. Such multibeneficiary trust shall maintain a minimum trustee surplus of \$10 million.

A new section 125.4(i) is added as follows:

(i) Alternative credit for cessions to reciprocal jurisdiction assuming insurers. (1) A domestic ceding insurer may take credit for reinsurance from an assuming insurer that is authorized to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and that meets the other requirements of this subdivision.

(2) An insurer shall be allowed to take credit for reinsurance when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting the following conditions:

(i) the assuming insurer is licensed to transact reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction;

(ii) the assuming insurer has and maintains 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 (vii) of this paragraph according to the methodology of its domiciliary jurisdiction, in the following amounts:

(a) no less than \$250,000,000; or

(b) if the assuming insurer is an association, including incorporated and individual unincorporated underwriters, then:

(1) minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least \$250,000,000; and

(2) a central fund containing a balance of the equivalent of at least \$250,000,000;

(iii) the assuming insurer has and maintains on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

(a) if the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in section 125.2(o)(1) of this Part, then the ratio specified in the applicable covered agreement;

(b) if the assuming insurer is domiciled in a reciprocal jurisdiction as defined in section 125.2(o)(2) of this Part, then a risk-based capital ratio of 300% of the authorized control level, calculated in accordance with the formula developed by the NAIC; or

(c) if the assuming insurer is domiciled in a reciprocal jurisdiction as defined in section 125.2(o)(3) of this Part, then after consultation with the reciprocal jurisdiction and considering any applicable recommendations published by the NAIC, such solvency or capital ratio as the superintendent determines to be an effective measure of solvency;

(iv) the assuming insurer agrees to and provides adequate assurance, on a form prescribed by the superintendent, of its commitment as follows:

(a) the assuming insurer agrees to provide prompt written notice and explanation to the superintendent if it falls below the minimum requirements set forth in subparagraphs (ii) or (iii) of this paragraph, or if any regulatory action is taken against it for material noncompliance with applicable law;

(b) the assuming insurer consents in writing to the jurisdiction of the courts of this State and to the appointment of the superintendent as agent for service of process; provided that:

(1) the superintendent may require that the assuming insurer provide and include such consent in each reinsurance agreement under the superintendent's jurisdiction; and

(2) nothing in this subparagraph 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;

(c) the assuming insurer consents in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the jurisdiction where the judgment was obtained;

(d) each reinsurance agreement shall include a provision requiring the assuming insurer to provide security in an amount equal to 100% 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;

(e) the assuming insurer confirms 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 superintendent and to provide 100% 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 one of the forms enumerated in section 125.6(b)(1), (2), or (3) of this Part; and

(f) the assuming insurer agrees in writing to meet the applicable information filing requirements as set forth in subparagraph (v) of this paragraph;

(v) the assuming insurer or its legal successor provides, if requested by the superintendent, on behalf of itself and any legal predecessors, the following documentation to the superintendent:

(a) 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;

(b) 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 domestic regulator;

(c) 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; and

(d) 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 (vi) of this paragraph;

(vi) the assuming insurer maintains a practice of prompt payment of claims under reinsurance agreements; provided that the lack of prompt payment will be evidenced if:

(a) more than 15% of the reinsurance recoverables from the assuming insurer are overdue and in dispute, as reported to the superintendent;

(b) more than 15% of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more that are not in dispute and that exceed for each ceding insurer \$100,000, or as otherwise specified in a covered agreement; or

(c) the aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds \$50,000,000, or as otherwise specified in a covered agreement; and

(vii) the assuming insurer's domestic regulator confirms to the superintendent in writing annually that the assuming insurer complies with the requirements set forth in subparagraphs (ii) and (iii) of this paragraph.

(3) Nothing in paragraph (2) of this subdivision precludes an assuming insurer from providing the superintendent with information on a voluntary basis.

(4) If the superintendent determines that an assuming insurer no longer meets one or more of the requirements under this subdivision, then the superintendent may revoke or suspend the eligibility of the assuming insurer for recognition as a reciprocal jurisdiction assuming insurer under this subdivision.

(i) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed on or 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 by one of the alternative methods enumerated in section 125.6(b)(1), (2), or (3) of this Part.

(ii) If an assuming insurer's eligibility is revoked, then no credit for reinsurance may be granted on or 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 by one of the alternative methods enumerated in section 125.6(b)(1), (2), or (3) of this Part.

(5) Before denying statement credit or imposing a requirement to post security in accordance with paragraph (4) of this subdivision or adopting any similar requirement that will have substantially the same regulatory impact as security, the superintendent shall:

(i) communicate with the ceding insurer, the assuming insurer, and the assuming insurer's domestic regulator that the assuming insurer no longer satisfies one of the conditions listed in paragraph (2) of this subdivision;

(ii) provide the assuming insurer with 30 days from the initial communication to submit to the superintendent a plan to remedy the defect, and provide 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary to protect the interests of policyholders, contract holders, or the people of this State;

(iii) after the expiration of 90 days or less, as set forth in subparagraph (ii) of this paragraph, if the superintendent determines that the assuming insurer took no action or insufficient action, then the superintendent may deny a statement credit or impose a requirement to post security in accordance with paragraph (2) of this subdivision; and

(iv) provide a written explanation to the assuming insurer of this paragraph.

(6) If the assuming insurer is subject to a legal process of rehabilitation, liquidation, or conservation then 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.

(7) Nothing in this subdivision shall limit or in any way alter the capacity of a ceding insurer and an assuming insurer to agree on requirements for security, or any other terms in a reinsurance agreement except as may be expressly prohibited by this Part or other applicable provisions of the Insurance Law or the regulations promulgated thereunder.

(8) A ceding insurer may take credit under this subdivision for reinsurance agreements entered into, amended, or renewed on or after the effective date of this subdivision with respect to losses incurred and reserves reported on or after the later of the date on which the assuming insurer has met the eligibility requirements of section 125.4(i)(2) of this Part and the effective date of the new, amended, or renewed reinsurance agreement. This paragraph does not alter or impair the ability of a ceding insurer, to the extent that credit for reinsurance is not available under this subdivision, to take credit for reinsurance under any other applicable provision of this Part.

(9) Nothing in this subdivision authorizes an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement, except as permitted by the terms of the agreement.

(10) Nothing in this subdivision shall limit or alter the capacity of a ceding insurer and an assuming insurer to renegotiate the terms of a reinsurance agreement.

Section 125.5(a) is amended as follows:

(a) A ceding insurer may elect to take credit, as an asset or as a deduction from reserves, for reinsurance recoverable involving life, annuity and accident and health risks from an assuming insurer not authorized in this State, provided such assuming insurer complies with provisions of section 125.4(a), (b), [or] (h), or (i) of this Part. The provisions of section 125.4(c), (d), (e), (f) and (g) of this Part are inappropriate for and shall be inapplicable to reinsurance of life, annuity and accident and health risks.

Section 125.5(b)(4) is amended as follows:

(4)(i) The report referred to in paragraph (1) of this subdivision shall be obtained by the ceding insurer from:

[(i)] (a) the assuming insurer, if accredited in this State, or if certified under the provisions of section 125.4(h) of this Part, or if domiciled in a reciprocal jurisdiction under the provisions of section 125.4(i) of this Part, as to the total net reserves held by it and by all retrocessionaires; or

[(ii)] (b) the assuming insurer and from each of the retrocessionaires with respect to the net reserves held by each of them.

(ii) Each such report shall be in writing, signed by an officer of the assuming insurer or the retrocessionaire [which] that provided it and obtained by the ceding insurer prior to the filing date of ceding insurer's annual and quarterly statement. Such reports shall be maintained by the ceding insurer for three years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later. The superintendent may approve a plan of compliance submitted by an accredited reinsurer [which] that would permit a certification to be attached to a reinsurance agreement with a ceding insurer in lieu of obtaining such reports.

Section 125.6(b) is amended as follows:

(b) Other than as permitted pursuant to sections 125.4(e), (f) and (g) for risks other than life, annuity and accident and health, or section 125.4(h) and (i) of this Part, credit taken by a ceding insurer for reinsurance ceded to an unauthorized assuming insurer, which is not an accredited, [or] certified, or reciprocal jurisdiction assuming insurer, shall not exceed the amounts withheld under a reinsurance treaty with such unauthorized insurer as security for the payment of obligations thereunder, provided such funds are held subject to withdrawal by, and under the control of, the ceding insurer. Amounts withheld include:

(1) funds withheld for which the ceding insurer has set up a liability;

(2) letters of credit complying with Part 79 of this Title (Insurance Regulation 133); and

(3) funds deposited in trust agreements complying with Part 126 of this Title (Insurance Regulation 114).

Section 125.7 is amended as follows:

The superintendent may issue a certificate of recognition as an accredited reinsurer to each assuming insurer that is complying with the provisions of section 125.4(a), (b), (c) or (d) of this Part. The superintendent may issue a certificate of recognition as a certified [insurer] reinsurer to each assuming insurer that is complying with the provisions of section 125.4(h) of this Part. The superintendent may issue a certificate of recognition as a reciprocal jurisdiction reinsurer to each assuming insurer that complies with section 125.4(i) of this Part. No ceding insurer shall take credit for reinsurance recoverables from such an assuming insurer unless such assuming insurer has a valid certificate of recognition in force. Such certificate shall have a continuous term until revoked, suspended or otherwise terminated by the superintendent.

Section 125.8 is amended as follows:

Each assuming insurer issued a certificate of recognition as either an accredited reinsurer, [or] certified reinsurer, or reciprocal jurisdiction reinsurer shall pay to the [Superintendent of Financial Services] superintendent an annual filing and processing charge of [\$1,000] \$2,000, to be paid on or before the first day of July.