

**INSURANCE**

**DEPARTMENT OF BANKING AND INSURANCE**

**OFFICE OF SOLVENCY REGULATION**

**Credit for Reinsurance**

**Proposed New Rules: N.J.A.C. 11:2-28.7A through 28.7D, 28.13, 28.14, and 11:2-28**

**Appendix Exhibits A through E**

**Proposed Amendments: N.J.A.C. 11:2-28.4, 28.6, 28.8, 28.9, 28.10 and 28.12**

Authorized By: Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, and 17:51B-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2012-033.

Submit written comments by April 21, 2012 to:

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Legislation and Regulation  
Department of Banking and Insurance  
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The agency proposal follows:

**Summary**

N.J.S.A. 17:51B-1 et seq. sets forth the requirements for a New Jersey domestic insurer (or any insurer doing business in this State not subject to similar requirements or standards) to receive credit for reinsurance, either as an asset or a deduction from liability. The Department of Banking and Insurance (Department) adopted implementing rules in 1993 at N.J.A.C. 11:2-28. The credit for reinsurance statute and rules are based on models adopted by the National Association of Insurance Commissioners (NAIC). The adoption of rules that conform to the NAIC model act and regulation is required for an insurance department to be accredited by the NAIC.

Credit is allowed where: (1) the reinsurer (assuming insurer) is licensed to transact insurance or reinsurance in this State; (2) the reinsurer is an “accredited reinsurer” in this State; (3) the reinsurer is domiciled in a state which employs standards regarding credit for reinsurance substantially similar to those applicable under N.J.S.A. 17:51B-1 et seq. and meets other specified requirements; (4) the reinsurance is ceded to an assuming insurer which maintains a trust fund; or (5) if none of the other requirements are met, the assuming insurer posts 100 percent collateral covering its United States liabilities.

N.J.S.A. 17:51B-2 was amended by P.L. 2011, c. 39, effective June 20, 2011, to include a new subsection f which provides that the Commissioner of Banking and Insurance (Commissioner) may, in his or her discretion, allow credit for reinsurance if the reinsurance is ceded to an assuming insurer not meeting the requirements of N.J.S.A. 17:51B-2a, b, c, or d, if the assuming insurer holds surplus or an equivalent in excess of \$250 million. The statute as amended also sets forth specific factors that the Commissioner shall consider in determining whether such credit should be allowed, including, but not limited to, the following:

1. The reinsurer has a secure financial strength rating from at least two nationally recognized statistical rating organizations deemed acceptable by the Commissioner;
2. The domiciliary regulatory jurisdiction of the assuming insurer;
3. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and the financial surveillance of the reinsurer; and
4. The substance of financial and operating standards for reinsurers in the domiciliary jurisdiction.

The Department is proposing new rules, N.J.A.C. 11:2-28.7A through 28.7D, to implement the amended statute by providing the standards by which a reinsurer may be deemed a certified reinsurer for purposes of insurers taking a credit, as an asset or a deduction from liability, for amounts ceded to or assumed by such a reinsurer. These proposed rules are based on recently adopted changes to the NAIC model credit for reinsurance regulation.

In addition, the Department is proposing amendments to the existing rules to more closely track the current NAIC model act and regulation in other respects as described more fully below. A summary of the proposed new rules and amendments follows.

#### **Changes to provide for certified reinsurers and implement N.J.S.A. 17:51B-2f**

Proposed N.J.A.C. 11:2-28.7A provides that the Commissioner may allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements set forth in N.J.A.C. 11:2-28.3, 28.4, 28.5, or 28.6 that has been certified as a reinsurer in this State where the ceding insurer holds security or security is held on its behalf, pursuant to the proposed rule. The credit allowed shall be based on the security held by or on behalf of the ceding insurer in accordance with the rating assigned to the certified reinsurer under the proposed rule. The amount of security in order for full credit to be allowed shall correspond with the

requirements as set forth in proposed Exhibit A to the Appendix to the subchapter, incorporated therein by reference. In addition, the proposed rule provides that affiliated reinsurance transactions will receive the same opportunity for reduced security requirements as all other reinsurance transactions.

The proposed rule requires that certified reinsurers post 100 percent security upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.

The proposed rule also provides that a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding insurer for the lines specified in the proposed rule.

The proposed rule provides that credit for reinsurance under the rule shall only apply to those contracts entered into or renewed on or after the effective date of the certification of the assuming insurer.

The proposed rule further provides that nothing set forth therein shall prohibit the parties from agreeing to provisions that establish security requirements that exceed the minimum requirements established under the rule.

The proposed rule also provides that, in addition to the clauses required under N.J.A.C. 11:2-28.12, reinsurance contracts entered into or renewed under N.J.A.C. 11:2-28.7A through 28.7D 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 these rules for reinsurance ceded to the certified reinsurer.

The proposed new rule also provides that the Commissioner will comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

Further, the proposed new rule provides that if a certified reinsurer maintains a trust to fully secure its obligations subject to N.J.A.C. 11:2-28.6, and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this rule or comparable laws of other U.S. jurisdictions and for its obligations subject to N.J.A.C. 11:2-28.6. The certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.

Further, the minimum trustee surplus requirements provided in N.J.A.C. 11:2-28.6 are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this rule, except that such trust shall maintain a minimum trustee surplus of \$10,000,000.

Finally, the proposed new rule provides that, with respect to obligations incurred by a certified reinsurer, if the security is insufficient, the Commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and may impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

Proposed N.J.A.C. 11:2-28.7B sets forth the procedures by which an insurer may become a certified reinsurer.

The proposed new rule provides that the Commissioner shall issue a written notice to an assuming insurer approved as a certified reinsurer that includes the rating assigned a certified

reinsurer in accordance with N.J.A.C. 11:2-28.7A. In addition, the Department shall publish a list of all certified reinsurers and their ratings on its website.

The requirements that an assuming insurer must meet in order to become eligible for certification are the following:

1. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined under proposed N.J.A.C. 11:2-28.7C;
2. The assuming insurer must maintain capital and surplus, or its equivalent, of no less than \$250 million, calculated in accordance with the proposed rule;
3. The assuming insurer must maintain financial strength ratings from two or more rating agencies approved by the United States Securities and Exchange Commission or other successor regulator agency. Such rating agencies include Standard and Poor's; Moody's Investors Service; Fitch Ratings; AM Best Company; and any other nationally recognized statistical rating organization approved by the United States Securities and Exchange Commission or other successor regulatory agency; and
4. The certified reinsurer must maintain satisfactory evidence that it meets the standards of solvency, including standards for capital adequacy, established by the insurer's domestic regulator.

The proposed new rule also sets forth the basis by which a certified reinsurer shall be rated, including, but not limited to, the reinsurer's financial strength rating determined pursuant to the standards in proposed Exhibit B to the Appendix to the subchapter; its business practices; a review of its NAIC Annual Statement or, for non-U.S. domiciled insurers, a review of Form CR-F (for P/C insurers) or Form CR-S (for L/H insurers), set forth as proposed new Exhibits C and D in the Appendix to the rules; the reputation of the certified reinsurer for prompt payment of

claims; the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in the rule; for certified reinsurers not domiciled in the U.S., audited financial statements (on the bases set forth in the rule), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor); the liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding; a certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers; and any other information deemed necessary by the Commissioner from a particular filer to enable the Commissioner to determine compliance with this subchapter.

The proposed new rule also provides that, based on the analysis of the certified reinsurer's reputation for prompt payment of claims, the Commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers. At a minimum, the Commissioner shall increase the security required by one rating level if the Commissioner finds that the certified reinsurer has overdue reinsurance recoverables in amounts exceeding those set forth in the proposed rule.

The proposed rule also provides that the assuming insurer shall submit a properly executed Form CR-1 (set forth as proposed Exhibit E in the Appendix to the subchapter), as evidence of its submission to the jurisdiction of this State, appointment of the Commissioner as an agent for service of process in this State, and agreement to provide security for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The proposed rule further provides that the Commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the

Commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

The proposed rule also sets forth the filing requirements for an insurer to become a certified reinsurer, which must be filed annually, including: notification within 10 days of any regulatory actions taken against the certified reinsurer; filing Forms CR-F or CR-S, as applicable; the report of an independent auditor on the financial statements of the insurance enterprise on the basis set forth in the proposed rule; an updated list of all disputed and overdue reinsurance claims; a certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of that jurisdiction's highest regulatory action level; annually, audited financial statements (on the bases set forth in the rule), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor); and any other information that the Commissioner may require from a particular filer to determine compliance with the rules.

The proposed new rule also sets forth actions to be taken in the event of a downgrade by a rating agency or other disqualifying circumstance, including that the Commissioner may suspend, revoke or otherwise modify a certified reinsurer's certification at any time if it fails to meet its obligations or security requirements under the rules, or for other specified reasons; actions to be taken if the rating of a certified reinsurer is upgraded by the Commissioner; and actions to be taken upon revocation of the certification of the certified reinsurer.

Proposed N.J.A.C. 11:2-28.7C sets forth the standards for determining whether a jurisdiction is a qualified jurisdiction under the rules. The factors to be considered in determining whether a non-U.S. jurisdiction is a qualified jurisdiction include:

1. The framework under which the assuming insurer is regulated;

2. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance;
3. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction;
4. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used;
5. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the Commissioner in particular;
6. The history of performance by assuming insurers in the domiciliary jurisdiction;
7. Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the Commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards;
8. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization; and
9. Any other matters deemed relevant by the Commissioner in consideration of the factors set forth in the rules.

United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

Proposed N.J.A.C. 11:2-28.7D provides that if an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Commissioner may defer to that jurisdiction's certification, and may defer to the rating assigned by the jurisdiction, if the

assuming insurer submits a properly executed Form CR-1 and such other additional information as the Commissioner requires to determine compliance with the rules. The proposed new rule also sets forth the procedures by which the Commissioner may withdraw recognition of the other jurisdiction's rating or certification, after notice and opportunity for a hearing.

### **Changes to reflect other amendments to the NAIC models**

N.J.A.C. 11:2-28.4(b) and 28.6(a)3 are proposed to be amended to refer to the proper office designation within the Department in the mailing address for information to be filed under that section. In addition, N.J.A.C. 11:2-28.4(h), which provides that the Department shall promulgate annually by October 31, a list of accredited reinsurers, which shall be published in the New Jersey Register as a public notice, is proposed to be amended to provide that the Department instead shall maintain and publish a current list of accredited reinsurers on its website, [www.njdoji.org](http://www.njdoji.org). This proposed amendment reflects current practice.

N.J.A.C. 11:2-28.6(b)1 is proposed to be amended to provide an exception to the required trusted surplus amount of \$20 million where the assuming insurer has permanently discontinued writing new business secured by the trust for at least three full years. In this case, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusted surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The minimum required trusted surplus may not be reduced to an amount less than 30 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

This proposed amendment tracks the recent amendments to the NAIC model with respect to trust requirements where there is a single assuming insurer.

N.J.A.C. 11:2-28.6(b)2, which sets forth requirements for the trust fund for a group of insurers, is proposed to be amended to replace the phrase “group’s aggregate liabilities” to read “respective underwriters’ aggregate liabilities” to track the current NAIC model. Similarly, the word “member” is proposed to be replaced with “underwriter” for the same reason.

N.J.A.C. 11:2-28.8(b)2 is proposed to be amended, with respect to a deduction from liability for reinsurance ceded to an unauthorized assuming insurer, to provide that securities required shall be listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office. This proposed amendment reflects changes to the NAIC model.

N.J.A.C. 11:2-28.8(b)3 is proposed to be amended to change the word “company” to read “insurer” to reflect the current NAIC model.

N.J.A.C. 11:2-28.9(b)2 is proposed to be amended to reference the “current fair” market value of substitute investments as referenced therein to reflect the current NAIC model. In addition, N.J.A.C. 11:2-28.9(c)2i(1) and (2) are also proposed to be amended to reference the “current fair” market value of the assets and trust account, respectively, referenced therein to reflect the current NAIC model.

N.J.A.C. 11:2-28.10(e) regarding letters of credit is proposed to be amended to reference the currently approved document number for the referenced Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce and to also refer to the International Standby Practices of the International Chamber of Commerce Publication 590 to reflect the current documents as set forth in the NAIC model. Also, paragraph (e)1 is proposed

to be amended to change the reference to Publication 400 to refer to Publications 590 and 600. Similarly, subsection (f) is proposed to be amended to reference Publication 500 or any successor publication, and to refer to Article 17 of Publication 500, rather than Article 19 of Publication 400 for the same reasons.

N.J.A.C. 11:2-28.12(a) is proposed to be amended to add references to N.J.A.C. 11:2-28.7A through 28.7D to reflect those proposed new rules. In addition, the rule is proposed to be amended to add a requirement at new paragraph (a)3 that the reinsurance contract include a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer. Similarly, this reflects the current NAIC model.

Proposed new N.J.A.C. 11:2-28.13 provides the procedures for the suspension or revocation of the accreditation or certification of a reinsurer.

Proposed new N.J.A.C. 11:2-28.14 sets forth limits on the concentration of risk of a ceding insurer. The proposed rule requires that the ceding insurer notify the Commissioner when reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers exceed 50 percent of the domestic ceding insurer's last reported surplus to policyholders or is likely to exceed this limit; and to notify the Commissioner within 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than 20 percent of the ceding insurer's gross written premium in the prior calendar year, or after it has been determined that the reinsurance ceded to any single assuming insurer or group of affiliated assuming insurers is likely to exceed this limit.

A 60-day comment period has been provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

### **Social Impact**

As set forth in the Summary above, the proposed new rules and amendments implement N.J.S.A. 17:51B-2f to provide an additional means by which an insurer subject to that statute may take credit as an asset or a deduction from liability for reinsurance ceded to so-called “certified” reinsurers on its annual statement. The proposed new rules and amendments thus implement the intent of the Legislature to provide an additional avenue by which insurers might take credit for reinsurance ceded, thereby further opening up the insurance market to additional competition, while helping to ensure that assuming insurers are subject to scrutiny by the Department and will be in a position to pay their claims when they are due. By providing additional avenues for reinsurance available to ceding insurers, the cost for reinsurance may be stabilized or reduced, which should correspondingly control or reduce costs to insurers, and ultimately should have a corresponding effect on premiums charged to New Jersey policyholders. In general, lower insurance rates will promote economic activity and have a positive social impact.

In addition, the proposed new rules and amendments reflect the current NAIC Model Credit for Reinsurance act and regulation more closely, to reflect the national standard for the regulation of reinsurance markets by the states. Promoting uniformity helps to provide certainty to entities in these markets, thereby helping to increase efficiencies, ultimately providing lower costs as set forth above.

### **Economic Impact**

As noted in the Social Impact above, the proposed new rules and amendments implement N.J.S.A. 17:51B-2f by providing standards for the credit for reinsurance ceded to certified reinsurers reflecting the current NAIC model, and otherwise make changes to the existing credit for reinsurance rules to reflect the current NAIC models. The proposed new rules and amendments thus implement the intent of the Legislature to provide an additional avenue by which ceding insurers may obtain credit for reinsurance ceded, which may help stabilize or reduce reinsurance costs, and correspondent costs to ceding insurers and ultimately New Jersey policyholders. Other proposed amendments and new rules are intended to eliminate unnecessary filings, or otherwise reflect the current NAIC model language more closely to provide uniformity with respect to the regulation of reinsurance, thereby providing additional certainty to ceding and assuming insurers.

Ceding insurers will not directly incur any costs as a result of the proposed new rules and amendments related to certified reinsurers. Assuming insurers seeking to provide reinsurance as a certified reinsurer to ceding insurers in this State will be required to bear any costs associated with meeting the requirements associated with becoming a certified reinsurer. These costs include filing required financial information and documentation and maintaining the minimum level of surplus in an amount of \$250 million. The Department notes that the minimum capitalization level of \$250 million is expressly required by statute. In addition, the filing and compliance requirements reflect the standards adopted by the NAIC as part of its reinsurance modernization program and thus reflect the national standard for the regulation of reinsurance by the states. Information and documentation required should be readily available to any insurer. In any event, costs of compliance are optional on the part of both ceding and assuming insurers, as the proposed new rules and amendments implement N.J.S.A. 17:51B-2f, which provides an

additional option by which credit may be taken for reinsurance ceded. Professional services required to comply with the proposed new rules and amendments include actuarial, financial, and legal. Such services should already be employed in-house, or contracted for by entities providing reinsurance.

Similarly, the other proposed amendments and new rules not related to certified reinsurers do not impose substantial additional requirements, and in many cases clarify or reduce existing requirements, while maintaining adequate safeguards. New filing requirements relate to inclusion of a reinsurance intermediary clause in the reinsurance contract, if applicable, and the notification by ceding insurers when their reinsurance recoverables or gross written premium involving one assuming insurer (or group of affiliated insurers) exceeds or is likely to exceed specified amounts. In any event, the services required to comply with the other proposed amendments and new rules are the same as those currently required to comply with the rules and the proposed new rules and amendments governing certified reinsurers as set forth above.

The purpose of the proposed new rules and amendments is to help ensure that assuming certified reinsurers possess adequate financial strength, appropriate methods of operation, and are subject to regulatory oversight in the domiciliary jurisdictions so as to better assure that they will be in a position to fulfill their obligations on risks ceded to them by ceding insurers subject to the rules as they become due. Accordingly, any costs of compliance are far outweighed by the benefits to be achieved, both in security for reinsurance claims and by providing additional access to reinsurance markets. The other proposed new rules and amendments should not impose any additional costs, but to the extent any additional costs are imposed, they are outweighed by the benefits to be achieved for the same reasons set forth above.

### **Federal Standards Statement**

There is Federal law applicable to reinsurance. P.L. 111-203, enacted in 2010, provides for single state regulation of credit for reinsurance. If the domiciliary state of the ceding insurer is accredited by the NAIC, or has financial solvency requirements similar to the requirements necessary for NAIC accreditation, no other state may deny credit for reinsurance. Also, if the domiciliary state of a reinsurer is accredited by the NAIC, or has financial solvency requirements similar to the requirements necessary for NAIC accreditation, such states shall be solely responsible for regulating the financial solvency of the insurer. The proposed new rules and amendments do not exceed these Federal requirements or standards.

### **Jobs Impact**

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed new rules and amendments.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposal together with their comments on other aspects of the proposal.

### **Agriculture Industry Impact**

The proposed new rules and amendments will not have impact on the agriculture industry in New Jersey.

### **Regulatory Flexibility Analysis**

The proposed new rules and amendments will apply to “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent the proposed

new rules and amendments apply to small businesses, they will apply to New Jersey-domiciled insurers. As noted in the Economic Impact above, no costs of compliance are directly imposed on ceding insurers with respect to the proposed new rules and amendments governing certified reinsurers. Rather, costs of compliance will be incurred by assuming insurers seeking to become certified reinsurers. Domestic ceding insurers will be required to notify the Department when the concentration of risk exceeds specified standards. In addition, the reinsurance contract must contain a reinsurance intermediary clause, if applicable. These costs should be minimal. The costs of compliance and professional services required are set forth in the Economic Impact above. The proposed new rules and amendments provide no differentiation in compliance requirements based on insurer size. As noted above, the costs of compliance do not directly apply to small businesses domiciled in New Jersey, or only minimally apply. Moreover, the incurring of any costs under the proposed new rules and amendments is generally optional on the part of both ceding and assuming insurers. As noted above, the purpose of the proposed new rules and amendments is to implement the intent of the legislature as set forth in N.J.S.A. 17:51B-2f and to otherwise track more closely the current NAIC Model Credit for Reinsurance act and regulation, by providing a means by which a ceding insurer may take credit for reinsurance ceded to a certified reinsurer, and to otherwise reflect the current NAIC models. The standards established in the proposed new rules and amendments reflect standards adopted by the NAIC, and are intended to help ensure that a reinsurer is in a position to cover its reinsurance obligations to New Jersey ceding reinsurers when they are due. These goals do not vary based on business size.

### **Housing Affordability Impact Analysis**

The proposed new rules and amendments will not have an impact on housing affordability in this State in that the proposed new rules and amendments relate to credit for reinsurance.

### **Smart Growth Development Impact Analysis**

The Department believes that there is an extreme unlikelihood that the proposed new rules and amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, because the proposed new rules and amendments relate to credit for reinsurance.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

11:2-28.4 Reinsurer accredited in New Jersey

- (a) (No change.)
- (b) The above information shall be filed with the Commissioner at:

Office of [Financial Examinations] **Solvency Regulation**

Attention: Reinsurance Accreditation

Department of Banking and Insurance

20 West State Street

PO Box 325

Trenton, New Jersey 08625-0325

- (c) – (g) (No change.)

(h) The Department shall [promulgate annually on October 31, a list of accredited reinsurers. The list shall be published in the New Jersey Register as a public notice] **maintain and publish a current list of accredited reinsurers on the Department's website: [www.njdobi.org](http://www.njdobi.org).**

(i) (No change.)

11:2-28.6 Reinsurer maintaining trust funds

(a) An insurer shall be permitted to take a credit for reinsurance ceded to an assuming insurer where as of the date of the ceding insurer's statutory financial statement the assuming insurer meets the standards set forth in (a)1 and 2 below, in accordance with the procedures set forth in (a)3 through 8 below:

1. – 2. (No change.)

3. The information in (a)1 and 2 above shall be filed with the Commissioner

at:

Office of [Financial Examinations] **Solvency Regulation**

Attention: Reinsurance Trust Fund

New Jersey Department of Banking and Insurance

20 West State Street

PO Box 325

Trenton, New Jersey 08625-0325

4. - 8. (No change.)

(b) In order to qualify as a reinsurer as provided in (a) above, an assuming insurer shall establish a trust fund. The trust fund established by the assuming insurer shall meet the following standards based upon the following category of assuming insurer into which it falls:

1. The trust fund for a single assuming insurer shall consist of a trustee account in an amount not less than the assuming insurer's liabilities attributable to business written in the United States, and, in addition, a trustee surplus of not less than \$20,000,000, **except as provided in (b)1i below.**

**i. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than 30 percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.**

2. The trust fund for a group of insurers, which group includes individual unincorporated underwriters, shall consist of a trustee account in an amount not less than the [group's] **respective underwriters'** aggregate liabilities attributable to business written

in the United States and, in addition, the group shall maintain a trusteed surplus of which not less than \$100,000,000 shall be held jointly for the benefit of the United States ceding insurers of any [member] **underwriter** of the group. The group shall make available to the Commissioner an annual certification of the solvency of each underwriter for the fiscal period immediately preceding, which fiscal period shall not be less than one year, by the group's domiciliary regulator and its certified public accountant.

3. (No change.)

(c) (No change.)

**11:2-28.7A Credit for reinsurance from certified reinsurers**

(a) Pursuant to N.J.S.A. 17:51B-2f, the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements set forth in N.J.A.C. 11:2-28.3, 28.4, 28.5, or 28.6 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 section. 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 pursuant to this section. The security shall be in a form consistent with the provisions of N.J.S.A. 17:51B-2f and this subchapter. The amount of security required in order for full credit to be allowed shall correspond with the requirements as set forth in Exhibit A in the Appendix to this subchapter, incorporated herein by reference.

(b) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(c) The Commissioner shall require the certified reinsurer to post 100 percent security, for the benefit of the ceding insurer or its estate, upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.

(d) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the Commissioner. The one-year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

1. Line 1: Fire;
2. Line 2: Allied Lines;
3. Line 3: Farmowners multiple peril;
4. Line 4: Homeowners multiple peril;
5. Line 5: Commercial multiple peril;
6. Line 9: Inland Marine;
7. Line 12: Earthquake; and
8. Line 21: Auto physical damage.

(e) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date

of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(f) Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

(g) In addition to the clauses required under N.J.A.C. 11:2-28.12, reinsurance contracts entered into or renewed under this section through N.J.A.C. 11:2-28.7D 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 section for reinsurance ceded to the certified reinsurer.

(h) The Commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

(i) If a certified reinsurer maintains a trust to fully secure its obligations subject to N.J.A.C. 11:2-28.6, and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other United States jurisdictions and for its obligations subject to N.J.A.C. 11:2-28.6. It shall be a condition to the grant of certification that the certified

reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.

(j) The minimum trustee surplus requirements provided in N.J.A.C. 11:2-28.6 are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this section, except that such trust shall maintain a minimum trustee surplus of \$10,000,000.

(k) With respect to obligations incurred by a certified reinsurer under this section, if the security is insufficient, the Commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and may impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

#### **11:2-28.7B Certification procedure**

(a) The Commissioner shall issue a written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with N.J.A.C. 11:2-28.7A. The Department shall publish a list on its website of all certified reinsurers and their ratings.

(b) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

**1. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined under N.J.A.C. 11:2-28.7C;**

**2. The assuming insurer must maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with this section. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250,000,000 and a central fund containing a balance of at least \$250,000,000;**

**3. The assuming insurer must maintain financial strength ratings from two or more rating agencies approved by the United States Securities and Exchange Commission or other successor regulatory agency. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the Commissioner in determining the rating that is assigned to the assuming insurer. Rating agencies that meet the requirements set forth above include the following:**

- i. Standard & Poor's;**
- ii. Moody's Investors Service;**
- iii. Fitch Ratings;**
- iv. A.M. Best Company; and**

v. Any other nationally recognized statistical rating organization approved by the United States Securities and Exchange Commission or other successor regulatory agency; and

4. The certified reinsurer must maintain satisfactory evidence that it meets the standards of solvency, including standards for capital adequacy, established by its domestic regulator.

(c) 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. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in Exhibit B to the Appendix to this subchapter, incorporated herein by reference. The Commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification;

2. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

3. For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

4. For certified reinsurers not domiciled in the United States, a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) (attached as Exhibits C and D, respectively, in the Appendix to this subchapter, incorporated herein by reference);

5. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

6. Regulatory actions against the certified reinsurer;

7. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in (c)8 below;

8. For certified reinsurers not domiciled in the United States, audited financial statements (audited United States GAAP basis if available, audited International Financial Reporting Standards (IFRS) basis statements are allowed but shall include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the approval of the 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). Upon the initial

application for certification, the Commissioner will consider audited financial statements for the last three years filed with its non-United States jurisdiction supervisor;

9. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

10. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The Commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

11. Any other information deemed necessary by the Commissioner from a particular filer to enable the Commissioner to determine compliance with this subchapter.

(d) Based on the analysis conducted under (c)5 above of a certified reinsurer's reputation for prompt payment of claims, the Commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the Commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under (c)1 above if the Commissioner finds that:

1. More than 15 percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed \$100,000 for each cedent; or

2. The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by 90 days or more exceeds \$50,000,000.

(e) The assuming insurer shall submit a properly executed Form CR-1 (set forth as Exhibit E in the Appendix to this subchapter, incorporated herein by reference) as

evidence of its submission to the jurisdiction of this State, appointment of the Commissioner as an agent for service of process in this State, and agreement to provide security for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The Commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the Commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

(f) The certified reinsurer shall 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 not be considered a government record subject to public inspection and copying under the Open Public Records Act, N.J.S.A. 17:1A-1 et seq. The applicable information filing requirements are, as follows:

1. Notification within 10 days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefor;
2. Annually, Form CR-F or CR-S, as applicable (per the instructions to be developed by the NAIC);
3. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in (f)4 below;

4. **Annually, 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 approval of the 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). Upon application for initial certification, audited financial statements for the last three years filed with the certified reinsurer's supervisor;**

5. **At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;**

6. **A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and**

7. **Any other information that the Commissioner may require from a particular filer to determine compliance with this subchapter.**

(g) **In the case of a downgrade by a rating agency or other disqualifying circumstance, the Commissioner shall, upon written notice, assign a new rating to the certified reinsurer in accordance with the requirements of (c)1 above.**

(h) **The Commissioner may suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this subchapter, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified**

reinsurer, lead the Commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(i) If the rating of a certified reinsurer is upgraded by the Commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis. The Commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the Commissioner, the Commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(j) Upon revocation of the certification of a certified reinsurer by the Commissioner, the assuming insurer shall be required to post security in accordance with N.J.A.C. 11:2-28.8 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 N.J.A.C. 11:2-28.6, 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.

**11:2-28.7C Qualified jurisdictions**

(a) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-United States assuming insurer, the Commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the Commissioner shall publish notice and evidence of such recognition on its website. The Commissioner may, after notice and opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, withdraw recognition of any jurisdiction he or she finds is no longer qualified under this subchapter.

(b) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the Commissioner shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The Commissioner shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the Commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the Commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the Commissioner, include, but are not limited to, the following:

1. The framework under which the assuming insurer is regulated;

**2. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance;**

**3. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction;**

**4. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used;**

**5. The domiciliary regulator's willingness to cooperate with United States regulators in general and the Commissioner in particular;**

**6. The history of performance by assuming insurers in the domiciliary jurisdiction;**

**7. Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the Commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards;**

**8. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization; and**

**9. Any other matters deemed relevant by the Commissioner in consideration of the factors set forth in (b)1 through 8 above.**

**(c) A list of qualified jurisdictions shall be published through the NAIC Committee Process. The Commissioner shall consider this list in determining qualified**

jurisdictions. If the Commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Commissioner shall provide justification with respect to the criteria set forth in (b) above.

(d) United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

**11:2-28.7D Recognition of certification issued by an NAIC accredited jurisdiction**

(a) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Commissioner may defer to that jurisdiction's certification, and may defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 and such additional information as the Commissioner requires to determine compliance with the subchapter. Upon approving such an application, the assuming insurer shall be considered to be a certified reinsurer in this State.

(b) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this State as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the Commissioner of any change in its status or rating within 10 days after receiving notice of the change.

(c) The Commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with N.J.A.C. 11:2-28.7B.

(d) The Commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer, after notice and

**opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, upon finding that the jurisdiction is no longer qualified under this subchapter. Unless the Commissioner suspends or revokes the certified reinsurer's certification in accordance with N.J.A.C. 11:2-28.7B, the certified reinsurer's certification shall remain in good standing in this State for a period of three months, which shall be extended for good cause if additional time is necessary to consider the assuming insurer's application for certification in this State.**

11:2-28.8 Reduction from liability for reinsurance ceded to an unauthorized assuming insurer

(a) (No change.)

(b) The security shall be in the form of:

1. (No change.)

2. Securities listed by the Securities Valuation Office of the NAIC, **including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office**, and qualified as admitted assets;

3. Clean, irrevocable, evergreen, unconditional letters of credit issued or confirmed by a qualified United States institution no later than December 31st of the year for which filing is being made, and in the possession of the ceding [company] **insurer** on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming qualified United States financial institution's subsequent failure to meet applicable

standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs, unless the issuer has been declared insolvent under applicable statutory or regulatory provisions; or

4. (No change.)

11:2-28.9 Trust agreements qualified pursuant to N.J.A.C. 11:2-28.8

(a) (No change.)

(b) The trust agreement may provide for the following conditions:

1. (No change.)

2. That the trustee may have the authority to invest and accept substitutions of any funds in the account, provided that no investment or substitution may 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 **current fair** market value to the assets withdrawn and that are consistent with the restrictions in (c)1ii below;

3. – 4. (No change.)

(c) A reinsurance agreement may provide provisions to be included in a trust agreement and the trust account established thereunder.

1. (No change.)

2. The reinsurance agreement may also contain provisions that:

i. The assuming insurer may 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, and the ceding insurer shall not unreasonably or arbitrarily withhold its approval provided:

(1) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a **current fair** 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

(2) After withdrawal and transfer, the **current fair** market value of the trust account is no less than 102 percent of the required amount;

ii. – iv. (No change.)

3. (No change.)

(d) – (f) (No change.)

11:2-28.10 Letters of credit qualified pursuant to N.J.A.C. 11:2-28.8 and 28.9

(a) – (d) (No change.)

(e) The letter of credit shall state whether it is subject to and governed by the laws of this State or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, Publication [400] **600 (UCP 600)**, or the **International Standby Practices of the International Chamber of Commerce, Publication 590 (ISP 98)**, or any subsequent revisions, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

1. Publications [400] **590 and 600** can be obtained by contacting ICC Publishing, Inc. at (212) 206-1150 or by writing to it at 156 Fifth Avenue, STE 820, New York, New York 10010 and remitting the appropriate fees.

(f) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, Publication [400] **500, or any successor publication**, then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article [19] **17** of Publication [400] **500** occur.

(g) – (j) (No change.)

#### 11:2-28.12 Reinsurance contract

(a) Credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of N.J.A.C. 11:2-28.3, 28.4, 28.5, 28.6, **28.7A through 28.7D**, or 28.8 [of this subchapter] unless the reinsurance agreement meets the following standards:

1. Includes a provision that if the assuming insurer is an unauthorized assuming insurer[;]:

i. – iii. (No change.)

iv. It has agreed to abide by the final decision of such court or panel; [and]

2. Includes an insolvency clause which shall provide the following:

i. – ii. (No change.)

iii. Payments by the reinsurer shall be made directly to the receiver of the ceding insurer except where the contract of insurance or reinsurance specifically provides another payee for such reinsurance in the event of the insolvency of the ceding insurer; **and**

3. Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

**11:2-28.13 Suspension or revocation of accreditation or certification**

(a) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the Commissioner may, after notice and opportunity for hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, suspend or revoke the reinsurer's accreditation or certification.

(b) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with N.J.A.C. 11:2-28.7. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with N.J.A.C. 11:2-28.7 or 28.7A.

**11:2-28.14 Concentration of risk**

(a) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the Commissioner within 30 days after reinsurance recoverables from any single assuming

insurer, or group of affiliated assuming insurers, exceeds 50 percent of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(b) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the Commissioner within 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than 20 percent of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

## APPENDIX

FORM AR-1

(No change.)

**EXHIBIT A**

<b>Rating (Per Exhibit B)</b>	<b>Security Required</b>
<b>Secure – 1</b>	<b>0 percent</b>
<b>Secure – 2</b>	<b>10 percent</b>
<b>Secure – 3</b>	<b>20 percent</b>
<b>Secure – 4</b>	<b>50 percent</b>
<b>Secure – 5</b>	<b>75 percent</b>
<b>Vulnerable – 6</b>	<b>100 percent</b>

**EXHIBIT B**

The maximum rating that a certified reinsurer shall be assigned will correspond to the financial strength rating from an approved rating agency as indicated below, or from any other rating agency approved by the United States Securities and Exchange Commission or any successor regulatory agency. The Commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer:

<b>Collateral Required</b>	<b>Best</b>	<b>S&amp;P</b>	<b>Moody's</b>	<b>Fitch</b>
<b>Secure 1</b>	<b>A++</b>	<b>AAA</b>	<b>Aaa</b>	<b>AAA</b>
<b>Secure 2</b>	<b>A+</b>	<b>AA+, AA, AA-</b>	<b>Aa1, Aa2, Aa3</b>	<b>AA+, AA, AA-</b>
<b>Secure 3</b>	<b>A</b>	<b>A+, A</b>	<b>A1, A2</b>	<b>A+, A</b>
<b>Secure 4</b>	<b>A-</b>	<b>A-</b>	<b>A3</b>	<b>A-</b>
<b>Secure 5</b>	<b>B++, B+</b>	<b>BBB+, BBB, BBB-</b>	<b>Baa1, Baa2, Baa3</b>	<b>BBB+, BBB, BBB-</b>
<b>Vulnerable 6</b>	<b>B, B-, C++, C+, C, C-, D, E, F</b>	<b>BB+, BB, BB-, B+, B, B-, , CCC, CC, C, D, R</b>	<b>Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C</b>	<b>BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD</b>

Exhibit C

Form CR-F - PART 1  
Assumed Reinsurance as of December 31, Current Year (000 Omitted)

1 Company Code or ID Number	2	3 Name of Reinsured	4 Demographic Jurisdiction	5 Assumed Premium	6 Paid Losses Less Adjustment Expenses	7 Reinsurance On		8 Code 6 + 7	9 Contingent Commission Payable	10 Assumed Premiums Receivable	11 Unearned Premium	12 Funds Held By or Deposited Reinsured Companies	13 Letters of Credit Posted	14 Amount of Assets Comprising Reinsured Securities of Credit	15 Amount of Assets Reinsured Companies Held in Trust
						7	8								
9999999	Totals														

**Form CR-F - PART 2**  
Ceded Reinsurance as of December 31, Current Year (000 Omitted)

1 Company Code or ID Number	2	3 Name of Reinsurer	4 Domestic or Jurisdiction	5 Reinsurance Contract Ceiling, % of Direct Premiums Written	6 Reinsurance Premiums Ceded	Reinsurance Recoverable On													Reinsurance Payable		19 Bonds Held by Company Under Reinsurance Treaties
						7 Paid Losses	8 Paid LAE	9 Known Case Loss Reserves	10 Known Case LAE Reserves	11 IBNR Loss Reserves	12 IBNR LAE Reserves	13 Unearned Premiums	14 Ceded Commissions	15 Costs 7 through 14 Totals	16 Ceded Expenses Payable	17 Other Amounts Due to Reinsurers	18 Net Amount Recoverable From Reinsurers Cols. 15-17				
99999999	TOTALS																				











**Exhibit E**  
**FORM CR-1**  
**CERTIFICATE OF CERTIFIED REINSURER**

I, \_\_\_\_\_,

(name of officer)

(title of officer)

of \_\_\_\_\_, the assuming insurer

(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in

\_\_\_\_\_, in order to be considered for

(name of state)

approval in this state, hereby certify that

\_\_\_\_\_(“Assuming Insurer”):

(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in \_\_\_\_\_

(ceding insurer’s state of domicile)

for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer’s rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of \_\_\_\_\_

(ceding insurer’s state of domicile)

as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Agrees to provide security in an amount equal to 100% of liabilities attributable to U.S. ceding insurers if it resists enforcement of a final U.S. judgment or properly enforceable arbitration award.

4. Agrees to provide notification within 10 days to the Insurance Commissioner in Paragraph 2 of any regulatory actions taken against it, any change in the provisions of its domiciliary license or any change in its rating by an approved rating agency, including a statement describing such changes and the reasons therefor.

5. Agrees to annually file information comparable to relevant provisions of the NAIC financial statement for use by insurance markets in accordance with N.J.A.C. 11:2-28.

6. Agrees to annually file the report of the independent auditor on the financial statements of the insurance enterprise.

7. Agrees to annually file audited financial statements, regulatory filings, and actuarial opinion in accordance with N.J.A.C. 11:2-28.

8. Agrees to annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.

9. Is in good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction.

Dated: \_\_\_\_\_

\_\_\_\_\_

(name of assuming insurer)

BY: \_\_\_\_\_

(name of officer)

\_\_\_\_\_