

Comments on June 21, 2018, Exposure Drafts

Amendments to Credit for Reinsurance Models #785 and 786

submitted by Robert Alan Wake, Maine Bureau of Insurance

Overall, I strongly support the proposed amendments, which need to be a high priority. I do have a number of technical suggestions for the Task Force to consider. Suggested revisions to the proposed amendments follow the comments in trackmode.

Effective date (# 785, § 2(F)(7)): By its terms, the CA applies “only to reinsurance agreements entered into, amended, or renewed on or after the date on which a measure that reduces collateral pursuant to this Article takes effect.” One question is whether that means the statute or the regulation, but a more fundamental question is when collateral reduction (or rather, elimination) takes effect for a particular reinsurer. Tracking the language of the CA, the current draft provides that Subsection 2(F) applies only to post-effective-date losses incurred and reserves reported under post-effective-date treaties, and not to pre-effective date treaties or losses (redundant, but so is the CA). Beyond that, the draft is silent, leaving a significant hole, and seems to imply that regardless of when a reinsurer first requests recognition as an eligible reinsurer, it’s eligible to assume reinsurance from domestic insurers without posting security retroactive to the effective date of This State’s version of the Model Act. This makes no sense, and I don’t think it’s mandated by the CA. The Model Act and the CA do apply to all post-effective-date losses incurred and reserves reported under post-effective-date treaties, but the Model Act, consistent with the CA, applies by establishing a process for recognition as an eligible reinsurer. Collateral elimination should apply prospectively, as of the date that a particular reinsurer is recognized as eligible (subject, perhaps, to a transition process to be established by regulation allowing reinsurers that are already certified or can otherwise demonstrate that they were eligible on the effective date of the Model Act, to apply within a specified time window for a retroactive exemption from security requirements).

“preceding entry into the reinsurance agreement” (#786, §§ 9(C)(5)(a) through (d)): Again faithfully tracking the language of the CA, the Model Regulation calls for a series of filings that an eligible reinsurer must make each time it enters into a reinsurance agreement that’s exempt from security requirements. This seems to be the CA’s way of trying to make collateral elimination prospective, as discussed in the previous comment, but we should make it clearer and less burdensome, by requiring reinsurers to make only one set of filings, at the time they first request recognition as eligible reinsurers. I’ve also suggested adding language (at # 785, § 2(F)(1)(e) and # 786, § 9(E)(1)) giving the Commissioner the discretion to accept financial documentation filed with the lead state or the NAIC.

“when the reinsurance is ceded to an assuming insurer meeting each of the conditions” (# 785, § 2(F) preamble; # 786, §§ 9(A) & (C)): The conditions aren’t all conditions on the reinsurer. Some of them are conditions on a particular reinsurance agreement. I suppose that technically, they could be treated as reinsurer qualifications, but that would imply that the remedy for a defect in a reinsurance treaty would be to revoke the reinsurer’s eligibility under This Subsection, rather than to deny or reduce the credit for that particular treaty unless and until the defect is fixed. I’ve suggested a reorganization that requires the reinsurance to comply, and separates the conditions on the reinsurer (Paragraph (F)(1) of the Model Act), the jurisdiction

(Paragraph (F)(2)), and the treaty (Paragraph (F)(3)). Similarly, this draft establishes conditions that the assuming insurer must “agree to” at the time it requests recognition and listing as an eligible reinsurer, but doesn’t directly require the assuming insurer to actually do them. I’ve proposed replacing that with a general agreement to comply with the substantive requirements, coupled with substantive requirements the assuming insurer must comply with on an ongoing basis.

“all of the terms of which relevant to credit for reinsurance are in effect” (# 785, § 2(F)(1)(a)(i); # 786, § 9(B)(1)): I don’t think “in effect” is the standard we want. The CA takes effect in 2022, but it strongly encourages the states to come into compliance as soon as possible, and we’re already in the “provisional application” stage. The real point isn’t when it becomes legally binding, it’s when we’ve achieved reciprocity, which means we want to look at more than whether the terms are “effective” – we need to look at whether the jurisdiction is in compliance. Furthermore, what’s important to us for reciprocal recognition is the terms relating to reciprocity, and in the case of the EU, the biggest issues involve the group capital and group supervision terms, not the ones “relevant to credit for reinsurance.” (We can’t interpret this as meaning everything in the CA is relevant to credit for reinsurance, because the “relevant” clause is expressly phrased as words of limitation – if some terms are relevant and some are not, the most likely test for relevance that a judge will apply is whether that’s part of the subject matter of a particular term.) Finally, the requirement that “all” relevant terms must be in effect seems overbroad. It’s possible that for some reason, some relatively inconsequential provision might not be fully in effect, and by its plain language it’s relevant to credit for reinsurance, but we decide it’s not sufficiently material to sink the whole agreement. Or we don’t even have the power to make that decision, because that side term isn’t in effect but the central term requiring us to waive security requirements still is in effect. (Also, if we do keep the “all relevant terms in effect” requirement, the two drafts phrase it slightly differently and neither version really scans grammatically. It might be clearer if it were broken out as “provided that all terms of the agreement that are relevant to credit for reinsurance are in effect.”)

“jurisdiction that has entered into a treaty or international agreement” (# 785, § 2(F)(1)(a); # 786, § 9(B)(1)): The one set of jurisdictions that are nearly certain to be recognized as Reciprocal Jurisdictions are the EU member states. But, as recognized in Model Act Clause (ii), they didn’t enter into any treaty or international agreement, any more than we did, so we need to fix Clause (i) to recognize the EU.

“agreement regarding credit for reinsurance” (#785, § 2(F)(1)(a)(i); # 786, § 9(B)(1)): “Regarding” isn’t the right word. A treaty or agreement requiring reinsurers to post collateral would also be “regarding” credit for reinsurance.

“any contemporaneous statement or statements by the duly authorized department of the United States,” (# 785, § 2(F)(1)(a)(i); # 786, § 9(B)(1)): I don’t think NCOIL will be the only ones who have concerns with such a vague and open-ended incorporation by reference into state law. If we need to mention this at all, it should be a statement clarifying that the Commissioner can consider such statements in deciding whether a potential Reciprocal Jurisdiction has met its obligations (or perhaps in deciding whether the treaty or agreement in question is the kind we’re referring to in this clause). But I don’t think we need this language in order to be able to consider these statements as a guide to interpretation, and I don’t the statements can ever be

more than a guide to interpretation, especially if the forum where we need to defend our action is a federal court.

Head office, as applicable (# 785, §§ 2(F)(1)(a) & (c); # 786, §§ 9(A) & 9(C)): The phrase “as applicable” isn’t found in the Covered Agreement. I suggest deleting it from Subparagraph (1)(a), because it doesn’t seem helpful. It suggests that there are different frameworks under which a reinsurer might qualify, and whether we require a particular reinsurer to have its domicile in a reciprocal jurisdiction or to have its head office in a reciprocal jurisdiction depends on which of those frameworks is “applicable” to that reinsurer. As I read the Covered Agreement, it implies that either one will suffice, and we don’t have the duty or the power to determine which one is “applicable” in a particular case. Which begs the question what a “head office” is, when a company’s domicile and head office are different. Is it an EU thing? A Brexit-related thing? If possible, we ought to have a definition that allows us to determine what a company’s “head office” is for purposes of the Model – the Covered Agreement implies that it involves some sort of recognition and quasi-domiciliary regulatory authority exercised by the head-office regulator. On the other hand, the use of “as applicable” in Subparagraph (1)(c) and in § 9(C) of the Model Regulation makes sense, and illustrates the correct usage – if the domicile and the head office are different, the jurisdiction that’s “applicable” is the one we’ve recognized as its home regulator for purposes of Subparagraph (1)(a); however, “and is also licensed” does not belong here. This is a capital requirement – the licensing requirement is separate – and the phrase “and is also licensed” doesn’t do anything to help us identify whose capital requirement we’re incorporating by reference.

Foreign currency: Model # 786 specifies various dollar amounts, with annual exchange-rate adjustments for foreign currency. But that’s not consistent with the CA, which hardwires specific dollar and Euro figures. Other potential Reciprocal Jurisdictions might request similar treatment.

No limit on capacity of parties to agree to contractual terms (Model # 785, § 2(F)(6)): As written, this gives the parties the right to opt out of any of the mandatory contractual terms. That can’t be the intent, so I’ve added clarifying language.

Legal predecessor (# 785, § 2(F)(1)(e); # 786, § 9(C)(5)(a)): If the assuming insurer has a “legal predecessor,” that entity is unlikely to still be around for us to impose any requirements. If we need information about the predecessor, we get it from the entity that’s currently doing business and has submitted to our jurisdiction.

Assuming reinsurer: We refer variously to the “assuming insurer” and the “assuming reinsurer,” sometimes in the same sentence, to mean the same company. The usual terms are “assuming insurer” and “reinsurer.” We should either use one of those terms consistently, or use “reinsurer” when talking about the company in general and “assuming insurer” when in the context of a contract with a “ceding insurer” or with a “retrocessionaire.”

May require security “consistent with the provisions of Section 3” (Model # 785, § 2(F)(4); Model # 786, § 9(F) (referencing “Section 10,” meaning current Section 10, to be renumbered as Section 11)): Not necessarily. There are scenarios where a reinsurer might lose its reciprocal status but still be eligible for credit as a certified or accredited reinsurer or as a reinsurer maintaining a multibeneficiary trust.

“The commissioner may also require that such consent be provided and included in each reinsurance agreement” (# 785, § 2(F)(1)(d)(ii); # 786, § 9(C)(4)(b)(i)): The CA allows us to do it. We should do it, not just give ourselves the power to do it. (Alternatively, if there’s concern that the CA only allows the Commissioner to do it and not the Legislature, add the qualifier “if required by the Commissioner” in # 785 and then establish the requirement in # 786.) The current draft also requires a funding clause (actually multiple funding clauses which I’ve suggested consolidating) and a warranty to the cedent that it isn’t participating in a solvent scheme. We should also require all other mandatory clauses required by regulation – *i.e.*, the insolvency clause and the intermediary clause. This requirement is consistent with the CA because it doesn’t discriminate between US and EU reinsurers.

“Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.” (# 785, § 2(F)(1)(h); # 786, § 9(C)(8)): This seems to answer a question we’re better off not even asking. I can see why the negotiators decided to include it in the CA, which regulates us, but in a regulation that regulates reinsurers, I don’t see why this would even be in doubt unless we raise the subject.

Model Act (#785)

F. ~~(1)~~—Credit shall be allowed when the reinsurance is ceded in accordance with the requirements of this subsection to an assuming insurer ~~meeting that has been recognized by the commissioner under Paragraph (1) as eligible for credit by reciprocity~~each of the conditions set forth below.

(1) The commissioner shall create and publish a list of assuming insurers that have satisfied the conditions set forth in this subsection and to which cessions shall be granted credit in accordance with this subsection. The commissioner may add an assuming insurer to such list if an NAIC accredited jurisdiction has added such assuming insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the commissioner as required under Paragraph (1)(d) of this subsection and complies with any additional requirements that the commissioner may impose by regulation.~~Credit shall be allowed when the reinsurance is ceded to an assuming insurer meeting each of the conditions set forth below.~~

(a) The assuming insurer must have its domicile or head office ~~or be domiciled in, as applicable~~, and be licensed in a jurisdiction that has been recognized as a reciprocal jurisdiction by the commissioner pursuant to ~~Paragraph (2) of this subsection. A “Reciprocal Jurisdiction” is a jurisdiction that meets one of the following:~~

~~(i) A non-U.S. jurisdiction that has entered into a treaty or international agreement with the United States regarding credit for reinsurance, all of the terms of which relevant to credit for reinsurance are in effect, and which the commissioner has recognized as a Reciprocal Jurisdiction in accordance with the terms and conditions of such treaty or agreement, any contemporaneous statement or statements by the duly authorized~~

Comment [RAW1]: “Such” means “that kind,” not “that specific thing.”

Comment [RAW2]: The rule seems to be that “this section (*etc.*)” takes lowercase but “Section (*etc.*) N” takes a capital, but if that’s the rule, it isn’t quite followed consistently.

~~department of the United States, and pursuant to regulations issued by the commissioner; or~~

- ~~(ii) A qualified jurisdiction, as determined by the commissioner pursuant to [Subsection 2E(3) of Credit for Reinsurance Model Law], which is not also a party to a treaty or international agreement referred to in subsection (i) above (or in the case that the European Union is a party to such treaty or international agreement, is a member state thereof) and which meets certain additional requirements as specified by the commissioner in regulation.~~
- (b) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary or head office jurisdiction, in an amount to be determined by the commissioner pursuant to regulation. If the assuming reinsurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis minimum capital and surplus equivalents (net of liabilities), calculated according to the methodology applicable in its domiciliary or head office jurisdiction, and a central fund containing a balance in amounts to be determined by the commissioner pursuant to regulation.
- (c) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, to be determined by the commissioner pursuant to regulation. ~~If the assuming reinsurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis a minimum solvency or capital ratio in the territory where the assuming reinsurer has its head office or is domiciled, as applicable, and is also licensed.~~
- (d) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process. The commissioner may also require that such consent be provided and included in each reinsurance agreement under the commissioner's jurisdiction. Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms;
- (e) The assuming insurer must agree and provide adequate assurance to the commissioner, in a form specified by the commissioner pursuant to regulation, as follows: that it will comply with the requirements of this subsection.
- (f) The assuming insurer must provide prompt written notice and explanation to the commissioner if:
- (i) -it falls below the minimum requirements set forth in Subparagraphs (b) and (c);-

(ii) it enters into a solvent scheme of arrangement which involves this state's ceding insurers;

or

(iii) -if any regulatory action is taken against it for serious noncompliance with applicable law as ~~determined~~ defined by the commissioner in regulation;

~~(ii) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process. The commissioner may also require that such consent be provided and included in each reinsurance agreement under the commissioner's jurisdiction. Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms;~~

~~(iii)g) The assuming insurer must ~~consent in writing to~~ pay all final judgments obtained by a ceding insurer, wherever enforcement is sought, ~~obtained by a ceding insurer~~, that have been declared enforceable in the territory where the judgment was obtained;~~

~~(iv) Each reinsurance agreement must include a provision requiring the assuming reinsurer to provide security in an amount equal to one hundred percent (100%) of the assuming reinsurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming reinsurer resists enforcement of a final judgment that is enforceable under the law of the territory in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its resolution estate, if applicable; and~~

~~(v) Each reinsurance agreement must include a representation by the assuming insurer that it is not then presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide security in an amount equal to one hundred percent (100%) of liabilities attributable to the ceding insurer consistent with the terms of the scheme should the assuming reinsurer enter into such an arrangement.~~

(eh) The assuming insurer, or its legal ~~predecessor or~~ successor, where applicable, must provide certain documentation to the commissioner as specified by the commissioner in regulation. The commissioner shall have the discretion to accept documentation filed with another state or with the National Association of Insurance Commissioners in compliance with this requirement.

- (fi) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth in regulation.
- (gi) The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis, at a time determined by the commissioner, that the assuming ~~reinsurer~~ insurer complies with the requirements set forth in ~~s~~Subparagraphs (b) and (c).
- (kh) The assuming insurer must satisfy any other requirements deemed relevant by the commissioner. To the extent that information or agreement is not required by a treaty or international agreement referred to in Subsection F(1)(a)(i), the failure to satisfy such other requirements will not alter the ability of the ceding insurer to take credit for such reinsurance. Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

(2) The commissioner shall create and publish a list of Reciprocal Jurisdictions.

- (a) A "Reciprocal Jurisdiction" is a jurisdiction that meets one of the following is either:
 - (i) A non-U.S. jurisdiction that has entered into a treaty or international agreement with the United States regarding credit for reinsurance, that entitles certain assuming insurers regulated in that jurisdiction to assume all of the terms of which relevant to credit for reinsurance from United States ceding insurers without providing security are in effect, or in the case of a treaty or international agreement between the United States and the European Union, is a member state of the European Union, and which the commissioner has recognized as a Reciprocal Jurisdiction in accordance with the terms and conditions of such treaty or agreement, any contemporaneous statement or statements by the duly authorized department of the United States, and pursuant to regulations issued by the commissioner determined that the jurisdiction is in substantial compliance with all material terms of the agreement, including those requiring reciprocal treatment of United States insurers and reinsurers; or
 - (ii) A qualified jurisdiction, as determined by the commissioner pursuant to [Subsection 2E(3) of Credit for Reinsurance Model Law], which is not also a party to a treaty or international agreement referred to in subsection (i) above (or in the case that the European Union is a party to such treaty or international agreement, is a member state thereof) and which meets certain additional requirements as specified by the commissioner in regulation.

(b) A list of recommended Reciprocal Jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining whether to recognize a jurisdiction as a Reciprocal Jurisdictions, and the commissioner has the discretion to defer to this list. The commissioner may approve a jurisdiction that does not appear on the list of Reciprocal Jurisdictions in accordance with criteria ~~to be developed~~ underspecified regulations issued by the commissioner in regulation.

(bc) The commissioner may remove a jurisdiction from the list of Reciprocal Jurisdictions upon a determination that the jurisdiction no longer meets the requirements ~~effor~~ a Reciprocal Jurisdiction in accordance with a process set forth in regulations issued by the commissioner. Upon removal of a Reciprocal Jurisdiction from this list, credit for reinsurance ceded to an assuming insurer which has its home office or is domiciled in that jurisdiction shall be allowed, ~~if only as~~ otherwise allowed pursuant to [cite to state law equivalent to Credit for Reinsurance Model Law].

(3) All reinsurance agreements eligible for credit under this subsection must include the following provisions:

(a) A provision agreeing to submit to the jurisdiction of the courts of this state and to appoint the commissioner as agent for service of process;

~~(ivb) Each reinsurance agreement must include a~~ A provision requiring the assuming reinsurer to provide security in an amount equal to one hundred percent (100%) of the assuming reinsurer's liabilities attributable to reinsurance ceded pursuant to that agreement if

(i) an order of rehabilitation, liquidation or conservation is entered against the ceding insurer;

(ii) the assuming insurer enters into any solvent scheme of arrangement which involves the ceding insurer; or

(iii) the assuming reinsurer resists enforcement of a final judgment that is enforceable under the law of the territory in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its resolution estate, if applicable; and

~~(c*)~~ Each reinsurance agreement must include a representation by the assuming insurer that it is not then presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and that it agrees to notify the ceding insurer and the commissioner and to provide security in an amount equal to one hundred percent (100%) of liabilities attributable to the ceding insurer consistent with the terms of the scheme should the assuming reinsurer enter into such an arrangement; and

(d) Any other provisions required by the commissioner in regulation.

~~The commissioner shall create and publish a list of assuming insurers that have satisfied the conditions set forth in this subsection and to which cessions shall be granted credit in accordance with this subsection. The commissioner may add an assuming insurer to such list if an NAIC accredited jurisdiction has added such assuming insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the commissioner as required under Paragraph (1)(d) of this subsection and complies with any additional requirements that the commissioner may impose by regulation.~~(4) If the commissioner determines that an assuming insurer no longer meets ~~the~~ one or more of the requirements under this subsection, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection in accordance with procedures set forth in regulation. Revocation of an assuming insurer's eligibility by the commissioner will require the assuming insurer maintain security in a form acceptable to the commissioner and consistent with the provisions of Section 3 or with other provisions of this section, as applicable.

- (5) ~~The commissioner shall require a~~An assuming insurer eligible for credit by reciprocity under this subsection ~~to shall~~ post one hundred percent (100%) 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.
- (6) Nothing in this subsection shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement not inconsistent with this subsection.
- (7) This subsection shall apply only to reinsurance agreements entered into, amended, or renewed on or after the [effective] date of ~~adoption of~~ model # 785 revisions], and only with respect to losses incurred and reserves reported from and after the later of (i) the [Model # 785 effective date of adoption], or (ii) the effective date of such new reinsurance agreement, amendment, or renewal. ~~This Reinsurance is not eligible for credit under this subsection if it is ceded under shall not apply to a~~ reinsurance agreements entered into before the ~~subsection's application~~assuming insurer was recognized by the commissioner under Paragraph (1) as eligible for credit by reciprocity, or if the to-ceded losses were incurred or to-reserves were posted before the assuming insurer was recognized by the commissioner under Paragraph (1) as eligible for credit by reciprocity subsection's application.

Comment [RAW3]: Effective date and date of adoption are usually different.

Model Regulation (#786)

Section 9. Credit for Reinsurance—Reciprocal Jurisdictions

- A. Pursuant to [cite state law equivalent of Section 2F of the Credit for Reinsurance Model Law], the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has its domicile or head office ~~or is~~

~~domiciled in, as applicable,~~ and is licensed in a jurisdiction that has been recognized as a Reciprocal Jurisdiction by the commissioner, in compliance with this section and ~~which meets~~ the other requirements of this regulation.

B. A “Reciprocal Jurisdiction” is a jurisdiction that ~~meets one of the following~~ is either:

- (1) A non-U.S. jurisdiction that has entered into a treaty or international agreement with the United States that entitles certain assuming insurers regulated in that jurisdiction to assume~~regarding credit for~~ reinsurance from United States ceding insurers without providing security, ~~all of the terms of which are relevant to credit for reinsurance are in effect,~~ including an agreement entered into pursuant to [Dodd–Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. § 314], or in the case of a treaty or international agreement between the United States and the European Union, is a member state of the European Union, and which the commissioner has recognized as a Reciprocal Jurisdiction in accordance with the terms and conditions of such treaty or agreement, ~~any contemporaneous statement or statements by the duly authorized department of the United States,~~ and pursuant to Subsection D of this regulation section upon a determination that the jurisdiction is in substantial compliance with all material terms of the agreement, including those requiring reciprocal treatment of United States insurers and reinsurers; and/or
- (2) Any other qualified jurisdiction, as determined by the commissioner pursuant to [cite state law equivalent of Section 2E(3) of the Credit for Reinsurance Model Law and Section 8C of the Credit for Reinsurance Model Regulation], ~~which is not also a party to a treaty or international agreement referred to in subsection (1) above (or in the case that the European Union is a party to such treaty or international agreement, is a member state thereof)~~ and which the commissioner determines meets all of the following additional requirements:
 - (a) Provides that an insurer with its head office or domicile in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;
 - (b) Does not require a U.S.-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-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;
 - (c) Provides through statute, regulation or the equivalent in such qualified jurisdiction, that insurers and insurance groups that are

domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reported, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction;

- (d) Provides through statute, regulation or the equivalent in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such qualified jurisdiction; and
- (e) Such additional factors as may be considered in the discretion of the commissioner.

C. Credit shall be allowed when the reinsurance is ceded to an assuming insurer meeting in compliance with each of the conditions set forth below.

- (1) The assuming insurer must have its domicile or head office ~~or is domiciled~~ in, ~~as applicable,~~ and be licensed in a jurisdiction that has been recognized as a Reciprocal Jurisdiction by the commissioner.
- (2) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on an annual basis and confirmed as set forth in Subsection C(7) according to the methodology of its domiciliary jurisdiction, in the following amounts:
 - (a) No less than \$250,000,000; or
 - (b) If the assuming reinsurer is an association, including incorporated and individual unincorporated underwriters:
 - (i) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least \$250,000,000; and
 - (ii) A central fund containing a balance of the equivalent of at least \$250,000,000.

~~(c) In determining whether the amount of capital and surplus is equivalent, the commissioner may rely upon foreign currency exchange rates compiled from key market data contributors and established as of the preceding December 31.~~

- (3) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:
- (a) A solvency ratio of one hundred percent (100%) of the solvency capital requirement (SCR) as calculated under the Solvency II Directive issued by the European Union, or any similar successor solvency ratio, as applicable in the territory in which the assuming insurer has its head office or is domiciled, as applicable;
 - (b) A risk-based capital (RBC) ratio of three hundred percent (300%) of the authorized control level, calculated in accordance with the formula developed by the NAIC, as applicable in the territory in which the assuming insurer has its head office or is domiciled, as applicable;
 - ~~(c) If the assuming reinsurer is an association including incorporated and individual unincorporated underwriters, a solvency ratio of one hundred percent (100%) SCR under Solvency II (or any similar successor solvency ratio) or an RBC of three hundred percent (300%) of the authorized control level, as applicable in the territory in which the assuming reinsurer has its head office or is domiciled, as applicable; or~~
 - ~~(d)~~ Such other solvency or capital ratio as the commissioner finds is appropriate, as applicable in the territory in which the assuming insurer has its head office or is domiciled, as applicable; provided that to the extent that information or agreement is not required by a treaty or international agreement referred to in [cite state law equivalent of Section 2F(1)(a)(i) of the Credit for Reinsurance Model Law], the failure to satisfy such other requirements will not alter the ability of the ceding insurer to take credit for such reinsurance. In making this determination, the commissioner may rely upon recommendations published through the NAIC Committee Process.
- (4) The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1 (attached as an exhibit to this regulation), of its agreement to the following:
- (a) The assuming insurer must agree to provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in Paragraphs (2) and (3) of this subsection, or if any regulatory action is taken against it for serious noncompliance with applicable law.
 - (b) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process.

Comment [RAW4]: Seems confusing to say "Single assuming insurers must comply with the requirements of either (a) or (b). Lloyd's, on the other hand, must comply with the requirements of either (a) or (b)."

- (i) ~~The commissioner may also require that~~ Such consent shall also be provided and included in each reinsurance agreement under the commissioner's jurisdiction.
- (ii) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms.
- (c) The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.
- (d) Each reinsurance agreement must include a provision requiring the assuming reinsurer to provide security in an amount equal to one hundred percent (100%) of the assuming reinsurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming reinsurer resists enforcement of a final judgment that is enforceable under the law of the territory in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its resolution estate, if applicable.
- (e) Each reinsurance agreement must include a representation by the assuming insurer 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 commissioner and to provide security in an amount equal to one hundred percent (100%) of liabilities attributable to the ceding insurer consistent with the terms of the scheme should the assuming reinsurer enter into such an arrangement.
- (f) The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in Paragraph (5) of this subsection.
- (5) The assuming insurer, or its legal ~~predecessor or~~ successor, where applicable, must provide the following documentation to the commissioner:
 - (a) For the two years preceding ~~entry into the reinsurance agreement~~ the assuming insurer's request to be listed by the commissioner as eligible for credit by reciprocity, and on an annual basis thereafter, the assuming reinsurer's or its legal predecessor's annual audited financial statements, in accordance with the applicable law of the territory of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

- (b) For the two years preceding the assuming insurer's request to be listed by the commissioner as eligible for credit by reciprocity~~entry into the reinsurance agreement~~, the solvency and financial condition report or actuarial opinion, if filed with the assuming reinsurer's supervisor;
 - (c) Prior to entry the assuming insurer's request to be listed by the commissioner as eligible for credit by reciprocity~~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 from this state; and
 - (d) Prior to the assuming insurer's request to be listed by the commissioner as eligible for credit by reciprocity~~entry into the reinsurance agreement~~ and not more than semi-annually thereafter, information regarding the assuming reinsurer's assumed reinsurance by ceding company, ceded reinsurance by the assuming reinsurer, and reinsurance recoverable on paid and unpaid losses by the assuming reinsurer to allow for the evaluation of the criteria set forth in Paragraph (6) of this subsection.
- (6) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:
- (a) More than fifteen percent (15%) of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the commissioner or other supervisor of the assuming insurer;
 - (b) More than fifteen percent (15%) of the assuming reinsurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer \$100,000, or its equivalent calculated by reference to foreign currency exchange rates compiled from key data contributors and established as of the preceding December 31; 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 its equivalent calculated by reference to foreign currency exchange rates compiled from key data contributors and established as of the preceding December 31.
- (7) The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis that the assuming reinsurer complies with the requirements set forth in Paragraphs (2) and (3) of this subsection.

(8) If applicable provisions of a treaty or international agreement establishes figures denominated in a Reciprocal Jurisdiction's currency that supersede some or all of the U.S. dollar figures specified in this subsection, those provisions shall control. Otherwise, unless the commissioner agrees to use some different procedure at the request of a particular Reciprocal Jurisdiction, the commissioner shall calculate the dollar equivalent of foreign currency annually by reference to foreign currency exchange rates compiled from key data contributors and established as of the preceding December 31.

(89) The assuming insurer must satisfy any other requirements for recognition deemed relevant by the commissioner. Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis. To the extent that information or agreement is not required by a treaty or international agreement referred to in [cite state law equivalent of Section 2F(1)(a)(i) of the Credit for Reinsurance Model Law], the failure to satisfy such other requirements will not alter the ability of the ceding insurer to take credit for such reinsurance.

D. The commissioner shall create and publish a list of Reciprocal Jurisdictions.

(1) A list of recommended Reciprocal Jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining Reciprocal Jurisdictions, and the commissioner has the discretion to defer to this list. The commissioner may approve a jurisdiction that does not appear on the list of Reciprocal Jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC Committee Process.

(2) The commissioner may remove a jurisdiction from the list of Reciprocal Jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a Reciprocal Jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the NAIC Committee Process. Upon removal of a Reciprocal Jurisdiction from this list credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to [cite to state law equivalent of Credit for Reinsurance Model Law].

Drafting Note: It is anticipated that the NAIC will develop criteria and a process with respect to Reciprocal Jurisdictions that is similar to the NAIC *Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions*. The NAIC and the states intend to communicate and coordinate with the U.S. Department of Treasury and United States Trade Representative and other relevant federal authorities with respect to the evaluation of Reciprocal Jurisdictions, as appropriate.

E. The commissioner shall create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with this section.

- (1) If an NAIC accredited jurisdiction has determined that the conditions set forth in Subsection C have been met, the commissioner has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The commissioner may accept financial documentation filed with the other accredited jurisdiction or with the NAIC in satisfaction of the filing requirements of Subparagraphs (a) and (b) of Subsection C(5).
- (2) When requesting that the commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the commissioner may require. A state that has received such a request will notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

F. If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this section, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this section. If an assuming reinsurer no longer satisfies one of the requirements under this section, the commissioner may require the assuming reinsurer to post security in accordance with Section 7, 8 or 11, as applicable, or adopt any similar requirement that will have substantially the same regulatory impact as security, in order for the commissioner to allow credit for reinsurance ceded by a domestic insurer to an assuming reinsurer. Before denying statement credit or imposing a requirement to post security or adopting any similar requirement that will have substantially the same regulatory impact as security, the commissioner shall:

- (1) Communicate with the ceding insurer, the assuming reinsurer, and the assuming reinsurer's supervisory authority that the assuming reinsurer no longer satisfies one of the conditions listed in Subsection C of this section;
- (2) Provide the assuming reinsurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;
- (3) After the expiration of 90 days or less, as set out in (2), if the commissioner determines that no or insufficient action was taken by the assuming reinsurer, the commissioner may impose any of the requirements as set out in this Ssubsection; and
- (4) Provide a written explanation to the assuming reinsurer of any of the requirements set out in this Ssubsection.