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STATE OF CALIFORNIA

DEPARTMENT OF INSURANCE

45 Fremont Street, 24th Floor
San Francisco, California 94105
September 18, 2006 Regulation File: RH 01015731

FINAL STATEMENT OF REASONS

Reinsurance Oversight Regulations

Introduction

The Insurance Commissioner has proposed the adoption of regulations Title 10, Chapter 5, Subchapter 3, Article 3, §§2303 through 2303.25, titled "Reinsurance Accounting, Agreements and Oversight" regarding accounting for reinsurance on financial statements, general requirements for reinsurance agreements and oversight of those matters by the Commissioner. The Commissioner initially notified the public of his intention to propose regulations on these matters in an Invitation to Pre-Notice Public Discussions, dated September 7, 2004. The Invitation included proposed regulation text and advised that a "workshop" on the draft regulations would be held on September 27, 2004, and that comments on the draft regulations were to be submitted by September 30, 2004. Representatives of all major trade associations and insurers attended the workshop. In response to requests for additional time to provide written comments, the comment period was extended to November 5, 2004 and extensive written comments were received. A series of additional informal workshops were held in 2005 with persons who had provided written comments, where further revisions to the draft regulations were made. On November 21, 2005, the Commissioner issued a Notice of Proposed Action and proposed regulations that differed substantially from the draft that had been distributed with the workshop invitation in September 2004. The Notice of Proposed Action was published in the California Regulatory Notice Register on December 2, 2005 and pursuant to the Notice, a public hearing on the proposed text was noticed for January 24, 2006, with the 45-day comment period ending that date. Twelve persons testified at the public hearing and twenty-one written comments were received. In consideration of those comments the Commissioner proposed changes to the regulations in a Notice of Availability of Revised Text dated June 14, 2006. The period for providing written comments on the revised text closed on June 30, 2006. Six comments were received to the revised text; including four from major trade associations that had strenuously objected to key sections of the originally noticed text. All the comments received were statements of non-opposition to the revised text. The Commissioner issued a Notice of Addition to Rulemaking File on July 3, 2006 and the period for comment thereon expired on July 19, 2006. No comments were received. The Commissioner issued a Notice of Availability of Revised Text dated August 24, 2006, primarily to change the effective date. The period for providing written comments ended September 8, 2006. No comments were received.

UPDATE OF INITIAL STATEMENT OF REASONS

On June 14, 2006, the Commissioner made available for public comment certain changes to the regulation text as initially proposed. On August 24, 2006, the Commissioner made available for public

comment further changes to the regulation text as initially proposed. The changes were sufficiently related to the rulemaking as originally noticed such that a reasonable member of the directly affected public could have determined from the original notice that these changes could have resulted. Each substantive change is listed below. The organization of this Update of Initial Statement of Reasons follows the organization of the regulation text as originally noticed to the public on December 2, 2006 ("the initial text").

§2303.2 Definitions

§2303.2(c)

In the text distributed June 14, 2006, the definition of "Approved U.S. Trust" in subdivision (c) was revised to add the word "affiliated" in defining a group establishing a multiple beneficiary trust. That change was an error, in that underwriters at Lloyd's, which are a "group" but are technically not affiliated, also maintain a multiple beneficiary trust. Therefore, in the Notice of Availability of Revised Text mailed August 24, 2006, the added word "affiliated" was deleted, leaving the definition the same as the initial text, which used the language of the statute.

§2303.2(o)

The definition of "liabilities" has been deleted from this section. The definition pertained to the treatment of assumed and ceded modified coinsurance reserves. Calculations relating to such reserves are specified in §2303.15(h) and for purposes of clarity and context, the definition was moved to that section.

§2303.2(q)

The definition of "material reinsurance agreement" has been deleted. The initial text limited the application of parts of §2303.13 (Contract Requirements for Statement Credit), §2303.14 (Form of Agreements) and §2303.15 (Oversight of Reinsurance Transactions) to domestic insurers and "volume insurers" (foreign insurers with a certain volume of California business), and further limited application of the requirements to "material reinsurance agreements" which the Commissioner had determined were of a size that could impact the ceding insurer's operations. The purpose of the limitations was to reduce the burden on ceding insurers by not requiring compliance with the specified regulations for transactions that were not likely to impact its financial condition, and to reduce the enforcement burden on the Department.

Numerous comments objected to the definition of "material reinsurance agreement," including objections that insurers would incur costs in determining and monitoring whether the threshold for a material agreement had been reached. Upon review of the comments, the Commissioner revised the manner in which the regulations limit the compliance burden on insurers and enforcement burden on the Department by changing the definition of "volume insurer" (*see infra*, discussion of §2303.2(z)) and by deleting the definition of material reinsurance agreement.

§2303.2(r)

The definition of "materially deficient" has been deleted. As a condition to obtaining and maintaining a certificate of authority in California, California Insurance Code ("CIC") §§700(c) and 717(d) require that the Commissioner must evaluate the reinsurance arrangements of an applicant or licensee and determine that the arrangements are not "materially deficient." The term "materially deficient" is not

defined in the Insurance Code. The initial text included a definition for the term in order to provide a general standard for compliance and enforcement. However, the comments complained that the definition provided was vague and ambiguous. The definition could not be made more precise without limiting the scope of the statute. The definition necessarily needed to be broad because the Commissioner cannot anticipate all of the circumstances that could arise under particular agreements, for particular ceding insurers, or under particular markets or other conditions. The comments suggested no alternatives for the definition; therefore the definition was deleted.

§2303.2(z)

The definition of "volume insurer" has been relabeled as "w". The initial text included a definition for "volume insurer" as a foreign insurer whose California direct written premium or direct unpaid losses and loss adjustment expenses constituted at least 20% of its total direct written premium or losses and expenses, or whose California direct written premium exceeded \$20 million, or which assumed more than 50% of its total premium. As stated in the Initial Statement of Reasons ("ISR"), the purpose of the definition was to limit the application of certain regulations, specifically §§2303.13, 2303.14, and 2303.15, to only those foreign insurers whose failure might have an adverse impact upon a significant number of California policyholders. The definition was intended to limit the compliance burden on those foreign insurers with a lesser volume of California business and limit the enforcement burden on the Department.

Numerous comments objected to the definition by asserting that the Commissioner does not have the authority to create a subset of foreign insurers that are subject to regulation. Those arguments are without merit. A "foreign insurer" is defined in §2303.2 as a licensed insurer that is domiciled in a state other than California. A "licensed insurer" is defined in §2303.2 as one that has been issued a certificate of authority by the Commissioner. Foreign insurers, because they are California licensed insurers, are required to comply with the requirements of the Insurance Code and all regulations implementing the Insurance Code. (*See* CIC §§700(a) and (c).) The Commissioner could, therefore, apply the requirements of §§2303.13 through 2303.15 to all foreign insurers. Nothing in the Insurance Code prohibits the Commissioner from allocating Department resources in an efficient manner by limiting Department review of the reinsurance arrangements of foreign ceding insurers to those insurers with a significant volume of business in California. (*See, e.g., Painting & Drywall Work Preservation Fund, Inc. v. Aubry* (1988) 206 Cal.App.3d 682, 253 Cal.Rptr. 776 ("mandamus cannot be applied to control discretion as to a matter lawfully entrusted to a governmental agency" at p. 687).) Deficient reinsurance arrangements of "volume" foreign insurers and the potential for financial stress related thereto are likely to create problems for more California insureds than would deficient arrangements of foreign insurers that conduct less business in California. However, nothing in the regulations prevents the Commissioner from examining the reinsurance arrangements of non-volume foreign reinsurers as necessary pursuant to the examination authority of CIC §730.

A number of comments suggested using the same threshold as used for the "subset" already applicable to foreign insurers under the Holding Company Act ("HCA") in CIC §1215.13. That section defines a "commercially domiciled insurer" as a foreign insurer whose California gross written premiums constitute at least 33% of its total gross written premium. In response to the comments, the definition of "volume insurer" has been changed to correspond to the definition of "commercially domiciled insurer." (The term "commercially domiciled insurer" is not used in the regulations because it applies only to those insurers that are subject to the HCA.) The suggestion was reasonable and the definition was thus changed. A "volume insurer" is now defined as one whose average California gross direct premiums in the prior three years exceeds its average gross direct premiums in its state of domicile and equals or exceeds 33% of its total U.S. gross direct premiums. The revised definition will reduce the

burden on foreign insurers complying with the regulations because the calculation is already familiar to the industry. Moreover, the revised definition further reduces the number of insurers that will be subject to certain regulations, simplifying compliance and enforcement.

§2303.3 Credit for Reinsurance Ceded to Admitted Insurer

The second sentence of this section requiring a licensed reinsurer to notify the Commissioner when it becomes subject to a regulatory order or regulatory oversight based on a hazardous financial condition has been moved to §2303.18 for purposes of organization.

§2303.4 Credit for Reinsurance Ceded to Accredited Reinsurer

§2303.4(a)

The second sentence of this subdivision requiring an accredited reinsurer to notify the Commissioner when it becomes subject to a regulatory order or regulatory oversight based on a hazardous financial condition has been moved without substantive change to §2303.18 for purposes of organization.

§2303.4(b)(4)

The paragraph was revised to delete the language, "whether formal, informal or voluntary" regarding the requirement to report regulatory orders or proceedings against controlling persons, in response to objections that the reporting of voluntary or informal proceedings was beyond the scope of the reporting required by the statute and discouraged cooperation with regulators.

§2303.7 Credit for Reinsurance Secured by a Single Beneficiary Trust

§2303.7(e)(5)

The requirement that the unauthorized reinsurer of a domestic ceding insurer must appoint an agent for service of process and submit to California jurisdiction has been deleted.

Some comments objected that a domestic ceding insurer may want to resolve disputes arising from a reinsurance agreement in a state other than California where it may be handled or resolved more efficiently or favorably, or may be resolved in a manner more beneficial than it if were handled in California. The regulation required California jurisdiction, in part, because California will be the most convenient forum for resolution of disputes involving a domestic ceding insurer that becomes insolvent and is conserved or liquidated by the Commissioner. The Commissioner was also concerned that in contract negotiations with a reinsurer that has greater bargaining power than the ceding insurer, the reinsurer could require jurisdiction in a forum favorable to its interest. Unequal bargaining power in contract negotiations exists in many circumstances, including when the ceding insurer is a relatively small company compared to the reinsurer, when the reinsurance market is tight and reinsurance is not readily available, and when the ceding insurer is financially distressed. Although the bargaining power issue remains a concern, the California jurisdiction requirement would encompass numerous agreements where either bargaining power is not an issue or where the parties prefer a jurisdiction other than California. Further, most reinsurance agreements that will be subject to this regulation section will involve solvent ceding insurers and reinsurers. In consideration of the comments, the requirements for California jurisdiction and appointment of an agent for service of process were deleted.

§2303.7(i)

This subdivision concerned statement credit taken by a foreign insurer for reinsurance secured by a single beneficiary trust. The initial text provided that, if the Department should evaluate the claim for statement credit, the transaction must meet, in substance, the requirements of this section. The comments evidenced a misunderstanding of the reference to foreign insurers in a section establishing collateral requirements applicable to domestic insurers. Therefore, the subdivision was deleted and all collateral requirements applicable to foreign insurers are now addressed in §2303.10.

§2303.8 Credit for Reinsurance Secured by Letter of Credit

§2303.8(c)(7)

The requirement that a letter of credit issued to a domestic insurer must be governed by California law has been deleted. Comments suggested that requiring California jurisdiction could make it more difficult for domestic insurers to obtain letters of credit. Upon further consideration, the Commissioner has determined that the California jurisdiction requirement would be a benefit primarily in a liquidation proceeding where it would reduce costs to the liquidation estate in the enforcement of collections on a letter of credit. However, since the benefit is remote (primarily in liquidation proceedings and even there, the need for an enforcement action would be rare), the Commissioner has determined that the benefit is outweighed by the possible adverse consequences of reducing the availability of letters of credit to domestic insurers.

§2303.8(d)

This subdivision gave the Commissioner the discretion to allow a letter of credit issued to domestic insurer to be governed by the law of another state if he determines that state's law on letters of credit is substantially similar to California law. The subdivision has been deleted as unnecessary since deletion of the requirement in subdivision (c) that California law must govern letters of credit securing reinsurance of domestic insurers.

§2303.8(f)

The requirement that an unauthorized reinsurer must appoint an agent for service of process and submit to California jurisdiction has been deleted for the same reasons the requirement was deleted in §2303.7 (e)(5) with respect to reinsurance agreements secured by a single beneficiary trust.

§2303.8(h)

This subdivision concerned statement credit taken by a foreign insurer for reinsurance secured by a letter of credit. The initial text provided that, if the Department should evaluate the claim for statement credit, the transaction must meet, in substance, the requirements of this section. The comments evidenced a misunderstanding of the reference to foreign insurers in a section establishing collateral requirements applicable to domestic insurers. Therefore, the subdivision was deleted and all collateral requirements applicable to foreign insurers are now addressed in §2303.10.

§2303.9 Credit for Reinsurance Secured by Funds Withheld

§2303.9(b)

In response to comments, subdivision (b) has been revised to allow funds withheld for the purpose of claiming statement credit to be deposited in an escrow or trust account if either (1) the ceding insurer has the sole right to withdraw the funds or (2) the funds are held to secure a cession to an affiliate. The subdivision provides that the form of the trust or escrow agreement shall be satisfactory to the Commissioner.

Subdivision (b) of the initial text provided that funds held in an escrow or trust account were not under the "exclusive control" of the ceding insurer and did not meet the requirements of CIC §922.5(a)(1) for statement credit. Comments were received stating that industry practice conforms to the requirements of other states, where escrowed or trustee funds are considered to be under the ceding insurer's "exclusive

control." Upon considering the comments, the Commissioner agrees that escrowed or trustee funds may be considered to be within the exclusive control of the ceding insurer under either of two circumstances. First, where only the ceding insurer has the right to withdraw assets from the escrow or trust and the exercise of that right does not require prior notice to the reinsurer. Second, where the cession is made to a reinsurer that is an affiliate. Affiliated insurers have common ownership and management and funds held in an escrow or trust account would be under the exclusive control of the beneficial owner of the ceding insurer. Therefore, subdivision (b) was revised to state that funds deposited in a trust or in escrow under the foregoing circumstances are considered held within the "exclusive control" of the ceding insurer.

§2303.9(c)

This subdivision concerned statement credit taken by a foreign insurer for reinsurance secured by funds withheld. The initial text provided that, if the Department should evaluate the claim for statement credit, the transaction must meet, in substance, the requirements of this section. The comments evidenced a misunderstanding of the reference to foreign insurers in a section establishing collateral requirements applicable to domestic insurers. Therefore, the subdivision was deleted and all collateral requirements applicable to foreign insurers are now addressed in §2303.10.

§2303.10 Credit for Reinsurance of Foreign Insurers

§2303.10(a)

As set forth in the ISR, §2303.10 implements CIC §922.6 which pertains to the Commissioner's authority to allow financial statement credit for insurance ceded by foreign insurers. Subdivision (a) of the initial text required foreign ceding insurers to comply with " ... all reinsurance accounting requirements for the preparation of financial statements for filing in California ...", excluding requirements that apply only to domestic ceding insurers. The initial text apparently lacked clarity, in that some comments questioned whether subdivision (a) would require foreign insurers to maintain separate sets of financial records for their domiciliary regulator and for California, which was not the intent.

Therefore, subdivision (a) has been revised for clarity to specify that credit for reinsurance will not be allowed to be claimed by a foreign insurer unless the reinsurance agreement meets the applicable requirements of §§2303.11 (Transfer of Risk -- Life & Disability), 2303.12 (Transfer of Risk -- Property & Casualty), 2303.13 (Contract Requirements for Statement Credit), and CIC §923 (compliance with the National Association of Insurance Commissioners ("NAIC") accounting practices). The revision is reasonably necessary to implement CIC §§922.3, 922.6 and 923 and is authorized by CIC §922.8.

§2303.10(b)

Subdivision (b) paraphrased CIC §922.6(b) and provided that statement credit "may be denied" to a foreign ceding insurer "upon a finding" that the "condition of the reinsurer, or the collateral or other security provided by the reinsurer, does not satisfy the credit for reinsurance requirements applicable to ... " domestic insurers. Comments objected that the Commissioner proposed to review every claim for statement credit made by a foreign insurer, which was not the intent. The subdivision has been revised to clarify that statement credit shall be allowed for reinsurance meeting the requirements of subdivision (a) *unless* the Commissioner has reason to question a claim for statement credit and elects to review the claim pursuant to the provisions of CIC §922.6(b), and determines that credit for the reinsurance would not be allowed if claimed by a domestic insurer. The revision is reasonably necessary to implement CIC §922.6 and is authorized by CIC §922.8.

§2303.10(c)

Former subdivision (c) has been relabeled as (d) and revised to clarify that the unauthorized reinsurer evaluated in the review of a claim for statement credit pursuant to CIC §922.6(b) need only meet the

financial standards for licensing or accreditation in California.

Insurance Code §922.6(b) requires that to allow statement credit for a claim under review where collateral is not provided, "the condition" of the unauthorized reinsurer must meet the same requirements applicable to reinsurers of domestic ceding insurers. As respects domestic insurers, where collateral is not provided, the reinsurer must either be accredited or licensed. The "condition" of the unauthorized reinsurer, as used in CIC §922.6(b), would generally be understood to mean its "financial condition," and therefore the unauthorized reinsurer assuming business from a foreign insurer must meet the same *financial* requirements as a licensed or accredited reinsurer.

In the initial text, this subdivision provided that " ... the reinsurer must, in substance, meet either the licensing or accreditation standards of California." However, some comments objected that the term "in substance" was ambiguous and the subdivision appeared to require that an unauthorized reinsurer must meet all standards for licensing or accreditation in California. The comments indicated that the proposed text lacked clarity, and therefore the subdivision was revised to read, "... the reinsurer must meet the financial standards for either licensing or accreditation in California." The revised text is necessary to clarify that the term "condition of the reinsurer" used in the statute intended application of *financial* standards, and not *all* the requirements for licensing or accreditation (which would include in the case of licensing an evaluation of e.g., ownership, management, and plan of business). The revision is reasonably necessary to implement CIC §922.6 and is authorized by CIC §922.8.

The Commissioner and major trade associations agreed to support legislation, AB 2400, to, *inter alia*, amend CIC §922.6(b) to provide that an unauthorized reinsurer need only meet the "financial" condition of a licensed or accredited reinsurer, and to provide that security provided a foreign insurer by an unauthorized reinsurer to guarantee reinsurance obligations need only meet the California standards for like security "in substance." AB 2400 passed the California Legislature unanimously on August 28, 2006, and is awaiting the signature of the Governor. There is no known opposition to the bill. The Commissioner expects that on or before September 30, 2006 the Governor will sign the bill.

§2303.10(d)

Former subdivision (d) has been relabeled as subdivision (c). In the initial text, the subdivision stated that a foreign insurer must provide information as requested by the Commissioner to establish that the "credit for reinsurance standards applicable to domestic insurers" had been met. The subdivision implemented (along with other regulation sections) CIC §922.6(b). Some comments interpreted the subdivision as indicating that the Commissioner would require the submission of information on all cessions by foreign ceding insurers. That was not intended and for clarity, the subdivision has been revised to state, "If the Commissioner has reason to question a claim for statement credit and elects to review the claim ... " then the information would be requested. The revision is reasonably necessary to implement CIC §922.6 and is authorized by CIC §922.8.

§2303.11 Transfer of Risk - Life & Disability

§2303.11(c)(7)

Paragraph (c)(7) has been revised to conform to the revisions made to §2303.9(b) for the same reasons. The paragraph allows statement credit and recognizes risk transfer for funds withheld and deposited in an escrow or trust account if either (1) the reinsurer is an affiliate of the ceding insurer, or (2) the ceding insurer has the sole right to withdraw funds from the account. The paragraph provides that the form of the trust or escrow agreement shall be satisfactory to the Commissioner. The revision is reasonably necessary to implement CIC §§922.3 and 922.5 and is authorized by CIC §922.8.

§2303.11(i)

Former subdivision (i) has been relabeled as subdivision (k) and revised to clarify the scope of review by the Commissioner to determine risk transfer; the Commissioner may review all contracts between the ceding insurer, its affiliates and the reinsurer. In the initial text, the subdivision provided that the Commissioner would review all contracts between the ceding insurer, the reinsurer, and the affiliates of

each. As revised, the subdivision limits the review to all agreements between the ceding insurer and its affiliates and the reinsurer. The revision is reasonably necessary to implement CIC §922.3 and is authorized by CIC §922.8.

As indicated in the ISR, agreements with affiliates were required to be reviewed so that the Commissioner could determine whether there were side agreements that would nullify the agreement for which statement credit was sought. The ISR noted that such agreements had been a problem in recent years. Comments stated that problem of side agreements was primarily an issue in property & casualty reinsurance, where the agreements may be made with affiliates of the reinsurer. Because the problem of side agreements has not been prevalent in life and disability reinsurance, to which this regulation section pertains, the subdivision was revised to limit the review to agreements involving affiliates of the ceding insurer and reinsurer, to make certain that the reinsurer did not cede the same business back to an affiliate of the ceding insurer. The revision is reasonably necessary to implement CIC §922.3 and is authorized by CIC §922.8.

New subdivision (i) has been added to require that both parties must execute the agreement, amendment or letter of intent not later than the "as of date" of the first financial statement claiming credit for the reinsurance. The purpose of this subdivision is to provide certainty, timeliness and finality to financial statements. The requirement is a verbatim copy of text from the NAIC Life and Health Reinsurance Agreements Model Regulation. The requirement is reasonably necessary to implement CIC §922.3 and is authorized by CIC §922.8.

§2303.11(j)

New subdivision (j) has been added to require that a reinsurance agreement shall expressly state that it constitutes the entire agreement between the parties and that there are no understandings between the parties except as expressed in the agreement. The requirement is included in the NAIC Life and Health Reinsurance Agreements Model Regulation and was inadvertently overlooked when preparing the initial text. The requirement is necessary in the evaluation of risk transfer, to make certain that another agreement does not effectively negate risk transfer in the reinsurance agreement. The subdivision also allows the entire agreement clause to state that it shall not be construed to limit the admissibility of evidence concerning the formation, interpretation, purpose or intent of the agreement, so that the parties are not limited to the four corners of the contract in litigation or arbitration concerning their obligations thereunder. The requirement is reasonably necessary to implement CIC §922.3 and is authorized by CIC §922.8.

§2303.12 Transfer of Risk - Property & Casualty

§2303.12(a) and (b)

Subdivisions (a) and (b) have been combined to clarify that transfer of risk shall be determined by application of the requirements of the NAIC Accounting Guidance.

The initial text included two risk transfer principles based on the NAIC Accounting Guidance. Comments were received that the principles were ambiguous and not comprehensive and therefore did not sufficiently conform to the NAIC Accounting Guidance. The subdivision was revised as suggested by comments to state that risk transfer will be determined by application of the "... risk transfer requirements of" the NAIC Accounting Guidance. In former subdivision (b) (now incorporated into (a)), the words "determine" and "evaluate" were reversed for clarity, to state that the Commissioner will "determine" risk transfer (as opposed to "evaluate" risk transfer) and "evaluate contract features" (as opposed to "determining" the effect of contract features). The revision provides greater clarity of the actual review process. The revision is reasonably necessary to implement CIC §922.3 and is authorized by CIC §922.8.

§2303.12(c)

Former subdivision (c) has been re-designated as subdivision (b) and for purposes of clarity it now provides that denial of statement credit "for failure of risk transfer" (instead of "under this section") shall be made in the manner prescribed by §2303.19(c). The revision is reasonably necessary to implement CIC §922.3 and is authorized by CIC §922.8.

§2303.13 Contract Requirements for Statement Credit

Comments complained that the requirements of this section duplicated requirements from the NAIC Accounting Guidance, were inappropriate for life and disability business, and erroneously interpreted the California insolvency clause requirements. In response to the comments, this section was substantially revised and simplified.

§2303.13(a)

New subdivision (a) clarifies that credit for reinsurance may be claimed only for agreements that meet the requirements of this section. The subdivision is reasonably necessary for clarity and to implement CIC §§922.2, 922.3, 922.6, and 923 and is authorized by CIC §922.8.

§2303.13(a)(1)

Former paragraph (a)(1) required that a reinsurance agreement must include a list of all related separate agreements that would have any impact upon risk transfer. The comments objected that "separate agreement" information is required to be included in the attestation requirement recently adopted by the NAIC, and including a list of separate agreements within the reinsurance agreement itself was burdensome, duplicative and created potential compliance problems in the preparation of the NAIC attestation form. Since the initial and revised text require that a reinsurance agreement must include an "entire agreement" clause (which states that the agreement is the entire agreement, except for separate contracts expressly disclosed), the requirement in former paragraph (a)(1) to list separate agreements was duplicative and has been deleted.

§2303.13(a)(2)

This paragraph has been relabeled subdivision (b), revised for clarity and requires specified agreements to include an "entire agreement" clause. In response to comments from the life industry, the subdivision is limited to property and casualty business, since a similar requirement is already included in Section 2303.11 applicable to life and disability business. As suggested by comments, the subdivision now also allows the entire agreement clause to state that it shall not be construed to limit the admissibility of evidence concerning the formation, interpretation, purpose or intent of the agreement. As more fully explained in the ISR, an "entire agreement" provision is necessary to ensure risk transfer, so that parties cannot negate risk transfer in a reinsurance agreement by means of a separate and secret agreement. The subdivision is reasonably necessary to implement CIC §922.3 and is authorized by CIC §922.8.

§2303.13(a)(3) and (4)

These paragraphs were deleted because, with the exception of the 30 day payment requirement, they duplicated NAIC Accounting Guidance requirements. The 30 day payment requirement was deleted in response to comments that the requirement is inconsistent with industry practice where life and disability payment requirements are required within 90 days, and some property and casualty business requires payment "immediately" or within 10 days.

§2303.13(a)(5)

Former paragraph (a)(5) relating to the NAIC Accounting Guidance requirements for statement credit has been relabeled as subdivision (e). It has been revised to delete the text allowing the Commissioner to substitute a requirement from a later version of the NAIC Accounting Guidance for a corresponding requirement in the section since the related requirements in the section have been deleted.

§2303.13(b)

In the initial text, this subdivision specified contract provisions to meet the requirements of CIC §922.2 (a)(2), which relates to the insolvency clause required in the reinsurance contracts of domestic insurers. As explained more fully in the ISR, the California insolvency clause statute is unique in the nation. The Department's interpretation of the unique statutory language included a regulation that denied setoffs in liquidation proceedings, where reinsurers would be required to fully pay claims owed, and not be permitted to deduct any unpaid premiums due. The proposed insolvency clause regulations caused vociferous industry opposition. Comments claimed that actual harm to the California insurance market would result, by reinsurers refusing to participate in the California market and domestic insurers redomesticating to other states.

The comments evidenced a failure to realistically assess the degree of additional risk posed by the insolvency clause regulations. The set-off limitation was required to be in the contracts of only domestic

ceding insurers and would be applied only in the rare event of the ceding insurer's insolvency. And, even that remote risk could be further reduced by a reinsurer's selection of only financially strong ceding insurers and closely monitoring their financial condition. Notwithstanding those risk limitations, reinsurers threatened to withdraw entirely from the California market, causing great concern to all direct writers (i.e., insurers that may cede business to reinsurers), and in particular, to California domestic insurers.

As explained in the ISR, the Commissioner expected opposition to the insolvency clause regulations by the industry, but did not expect any actual disruption in the California market by reason of the regulations. However, in assessing the comments, it became apparent that denial of setoffs was an issue of such paramount importance to the industry that reinsurers might actually withdraw from the California market and create a reinsurance crisis for domestic insurers. Therefore, the Commissioner elected to withdraw all of the proposed regulations implementing CIC §922.2(a)(2), and offered to work with the industry to amend the statute. The Commissioner and the industry agreed to support AB 2400 which will delete the unique California insolvency clause language from CIC §922.2(a)(2) and conform the statute to the same insolvency clause requirement as that used in the other 49 states. AB 2400 passed the California Legislature unanimously on August 28, 2006, and is awaiting the signature of the Governor. There is no known opposition to the bill and the Commissioner expects that the Governor will sign the bill on or before September 30, 2006.

The insolvency clause is a fundamental requirement of the NAIC Accounting Guidance for statement credit (see SSAP 62-8(a), Model Regulation Section 13(a)), as well as by statute in every state. Former subdivision (b) has been relabeled as subdivision (d) and revised to require insolvency clauses in the agreements of all licensed insurers. It states that the insolvency clause in the reinsurance contracts of domestic insurers shall comply with the requirements of CIC §922.2(a)(2), without prescribing the specific elements to meet the "in substance" requirement of the statute. It also states general requirements for the insolvency clause that is to be used by foreign insurers in their reinsurance agreements. CIC §922.6 conditions a claim for statement credit made by a foreign insurer upon meeting the requirements of CIC §923, which incorporates the requirements of the NAIC Accounting Guidance, and which in turn conditions statement credit upon an agreement containing an acceptable insolvency clause (see SSAP 62-8(a)). The subdivision is reasonably necessary to implement CIC §922.2(a)(2) as respects domestic insurers, and CIC §§922.6 and 923 as respects foreign insurers, and is authorized by CIC §922.8.

§2303.13(c)

For the reasons stated above, former subdivision (c) relating to the interpretation of the insolvency clause required by CIC §922.5(a)(2) has been deleted.

New subdivision (c) has been added to clarify that a volume insurer shall not be denied credit for reinsurance for failure to include an entire agreement clause in the agreement if either (1) it was not a volume insurer on the date of execution of the agreement, or (2) it was not a volume insurer in the year preceding execution of the agreement, and the agreement was executed within 120 days of the "as of" date of the insurer's most recent annual statement. This subdivision prevents retroactive application of the entire agreement requirement by exempting agreements executed when the insurer was not a volume insurer and by providing a short "grace" period that recognizes that an agreement may be entered into when an insurer is in fact a volume insurer, but that financial calculation might not yet have been made or known. This subdivision is reasonably necessary to implement CIC §§700(c) and 717(d) to provide clarity for the situation where a foreign insurer may meet the threshold for a volume insurer one year but not another year.

§2303.13(d)

Former subdivision (d) was deleted. It provided that statement credit would be permitted for foreign ceding insurers if credit was permitted by the ceding insurer's domicile, if the either the reinsurance agreement was not a "material reinsurance agreements" or if the ceding insurer was not a "volume" insurer. The concept of a "material reinsurance agreement" was deleted from the regulations. New subdivision (d) relates to insolvency clause requirements and is discussed above in §2303.13(b).

§2303.13(e)

Former subdivision (e) was deleted. It provided that statement credit could be taken even though an agreement did not comply with former subdivision (a) if either the Commissioner gave written consent or if the agreement involved multiple ceding insurers and it was not a "material reinsurance agreement" of the domestic ceding insurer seeking statement credit. As noted above, the concept of "material reinsurance agreement" was deleted from the regulations. The only remaining requirement of former subdivision (a) requires agreements to contain an "entire agreement" clause and the Commissioner has determined that an exception to that requirement is not desirable.

As noted above, new subdivision (e) relates to the NAIC Accounting Guidance requirements formerly referenced in §2303.13(a)(5).

§2303.13(f)

Former subdivision (f) has been relabeled as subdivision (g) and revised for clarity to provide that any denial of statement credit shall be made in the manner prescribed in §2303.19(c).

New subdivision (f) has been added to except facultative certificates from the "entire agreement" requirement of relabeled subdivision (b) of this section. Facultative certificates are generally one-page contracts on standard forms to cover a single risk, and the Commissioner has determined that an entire agreement clause is not necessary to establish risk transfer in such contracts. This subdivision is reasonably necessary to implement CIC §922.3 and is authorized by CIC §922.8.

§2303.14 Form of Agreements

As set forth in the ISR, §2303.14 pertains to contract provisions that make a reinsurance agreement deficient as to form, which can be a predicate to finding that an insurer's reinsurance *arrangements* are materially deficient for purposes of CIC §§700(c) and 717(d). In response to comments, this Section has been significantly revised.

§2303.14(a)

In the initial text, subdivision (a) applied to domestic insurers. Subdivision (a) has been revised to apply to all reinsurance agreements of both domestic and volume insurers for which statement credit is claimed.

Subdivision (a) restates language that was included in former subdivisions (a) and (b) regarding the purpose of the section and clarifies that the section does not pertain to statement credit, instead it specifies conditions that make a reinsurance contract deficient as to form, and provides that one or more deficient reinsurance contracts may result in a determination that the insurer's reinsurance *arrangements* are materially deficient for purposes of CIC §§700(c) and 717(d). The revisions are reasonably necessary to implement CIC §§700(c) and 700(d), and are authorized by CIC §720.

§2303.14(a)(1), (2) and (6)

These paragraphs related to the Department's interpretation of the insolvency clause requirements of CIC §922.2(a)(2) and have been deleted for the reasons explained above with regard to the deletion of all proposed regulations interpreting CIC §922.2(a)(2).

§2303.14(a)(3)

This paragraph required an agreement that included an "extra contractual obligation" provision to permit indemnity only where allowed "by applicable law." Comments suggested that the requirement was unnecessary. Upon further consideration the Commissioner agreed and deleted the paragraph.

§2303.14(a)(4) and (5)

These paragraphs required jurisdiction and choice of law provisions to specify California law and have been deleted for the reasons given for the deletion of similar requirements in §§2303.7 and 2303.8.

§2303.14(a)(7)

This paragraph incorporated requirements from subdivision (b) and was deleted in the reorganization of the section.

§2303.14(b)

Former subdivision (b) applied to the material reinsurance agreements of domestic and volume ceding insurers for which statement credit was claimed and included six paragraphs listing contract requirements. The defined term "material reinsurance agreement" has been deleted from the regulations and accordingly, that term is not used in the revised text. In the reorganization of this section, this subdivision now covers all agreements of domestic and volume ceding insurers and has been further revised to eliminate all but two contract requirements included in former subdivision (b). The revisions are reasonably necessary to implement CIC §§700(c) and 700(d), and are authorized by CIC §720.

§2303.14(b)(1) and (2)

These paragraphs incorporated requirements from §2303.13 and are no longer necessary after the revisions and reorganization of the §§2303.13 and 2303.14.

§2303.14(b)(3)

This paragraph related to a requirement for formal amendments to reinsurance agreements. Comments objected that the requirement was overbroad and may be construed to apply to special acceptances where industry practice does not require formal amendments, and further, that most reinsurance agreements already include the provision. After consideration of the comments, the requirement was deleted.

§2303.14(b)(4)

This paragraph relates to an "early termination" clause in a reinsurance agreement. It has been relabeled paragraph (b)(1) and revised for clarity and to specify additional requirements upon an early termination by the reinsurer. Subparagraph (b)(1)(D) states that an agreement may provide that after receipt of an early termination notice from the reinsurer that the ceding insurer can agree to a shorter termination period. This provision is reasonably necessary to allow a shorter period if, for example, the ceding insurer has located another reinsurer that wants an early inception date. In response to concerns from reinsurers, subparagraph (b)(1)(E) has been added to permit an agreement to state that the early termination provisions do not apply to a termination "for cause." The revisions are reasonably necessary to implement CIC §§700(c) and 700(d), and are authorized by CIC §720.

§2303.14(b)(5)

This paragraph has been relabeled paragraph (b)(2) and specifies requirements if the agreement provides for payments between the parties to be transmitted through an intermediary. A provision has been added to allow the parties to include in the reinsurance agreement a provision directing the reinsurer to make payment directly to the ceding insurer with notice to the intermediary. The additional provision is reasonably necessary to reduce the risk inherent in transferring sums through third parties (as discussed in the ISR) and to clarify that permitting direct payment in a transaction involving an intermediary does not make an agreement deficient. The revisions are reasonably necessary to implement CIC §§700(c) and 700(d), and are authorized by CIC §720.

§2303.14(b)(6)

This paragraph required the establishment of an escrow for the deposit of disputed payments under a reinsurance agreement during litigation or arbitration. The comments were strongly opposed to the requirement, and among other objections, the comments complained that the deposit requirement is unprecedented in the industry, was unfair to reinsurers who may have valid reasons for disputing a claim, and would create more problems than it could solve. After careful consideration of the comments, the Commissioner has withdrawn the proposed escrow requirement.

§2303.14(c)

Former subdivision (c) specifying text for an incorporation by reference paragraph concerning the

escrow account has been deleted since the escrow requirement has been deleted.

New subdivision (c) has been added to clarify that the reinsurance agreement of a volume insurer shall not be determined deficient as to form for failure to meet the requirements of this section if either (1) it was not a volume insurer on the date of execution of the agreement, or (2) it was not a volume insurer in the year preceding execution of the agreement, and the agreement was executed within 120 days of the "as of" date of the insurer's most recent annual statement. This subdivision prevents retroactive application of the entire agreement requirement by exempting agreements executed when the insurer was not a volume insurer and by providing a short "grace" period that recognizes that an agreement may be entered into when an insurer is in fact a volume insurer, but that financial calculation might not yet have been made or known. This subdivision is reasonably necessary to implement CIC §§700(c) and 717(d) and to provide clarity for the situation where a foreign insurer may meet the threshold for a volume insurer one year but not another year.

§2303.14(d)

Former subdivision (d) relating to the escrow account has been deleted since the escrow account requirement was deleted.

New subdivision (d) has been added to provide that the reinsurance arrangements of a domestic or volume ceding insurer may be materially deficient for purposes of CIC §§700(c) and 717(d) if (1) the arrangements include one or more deficient reinsurance agreements and (2) the aggregate amount of business ceded under the deficient contracts is an amount that equals or exceeds 25% of the insurer's business.

Comments complained that the initial text did not provide sufficient guidance on when "deficiencies" may constitute "material deficiencies." Comments suggested that there could be circumstances in which a number of reinsurance agreements may be deficient, but the deficiencies might be "technical" or financially *de minimis* and would not affect the financial condition of the ceding insurer. The Commissioner agreed that a financial threshold for materiality should be established. Subdivision (d) now provides that for the reinsurance arrangements of domestic or volume ceding insurers, deficiencies may be material if the aggregate amount of business ceded by the deficient agreements equals or exceeds 25% of the ceding insurer's total premium or total liabilities. This subdivision is reasonably necessary to provide guidance as to determining financial material deficiency under CIC §§700(c) and 717.

§2303.14(e)

Former subdivision (e) relating to agreements that are not subject to the requirements of former subdivisions (a) or (b) has been deleted as not necessary after the reorganization of the Section. New subdivision (e) has been added to except facultative certificates from the requirement to include the two contract terms remaining in this section. Facultative certificates are generally one page contracts on standard forms used to cover a single risk, and the Commissioner has determined that the concerns addressed by the two contract provisions (early termination and intermediary credit risk) are generally not present in facultative business. The subdivision is reasonably necessary to implement CIC §§700(c) and 700(d), and is authorized by CIC §720.

§2303.14(f)

Former subdivision (f) relating to additional provisions in reinsurance agreements has been deleted as not necessary after the reorganization of the section.

New subdivision (f) has been added to provide that this section shall not be construed as stating the only bases for a determination that a reinsurance agreement is deficient or that reinsurance arrangements are materially deficient. The purpose of this section is to specify that certain reinsurance agreements may be deficient. The Commissioner cannot anticipate all of the circumstances or conditions that may cause a reinsurance agreement or reinsurance arrangements to be deficient. This subdivision is reasonably necessary to implement CIC §§700(c) and 717(d) in order to provide notice that agreements and

arrangements may be found deficient for reasons not included in this section.

§2303.14(g)

Former subdivision (g) excepted certain agreements from the requirements of this section. However, after the reorganization of this section, only two essential contract requirements remain and the Commissioner has determined that permitting an exception is not desirable. Therefore, the subdivision has been deleted.

§2303.15 Oversight of Reinsurance Transactions

This Section has been significantly revised in response to comments.

§2303.15(a)

Subdivision (a) previously stated that the factors set forth in CIC §1215.5(f) (of the HCA) are the factors used to determine the reasonableness of an insurer's policyholder surplus. Comments suggested confusion over the reference to factors in the HCA. Therefore, subdivision (a) has been revised to expressly list the eleven factors set forth in CIC §1215.5(f). This change is reasonably necessary to make clear that these are the factors the Commissioner has determined are appropriate to use in evaluating the policyholder surplus of all licensees and not just those in holding company systems, and for ease of reference by licensees and Department financial examiners. This revision is reasonably necessary to implement CIC §§ 700(c) and 717 and is authorized by CIC §720.

§2303.15(b)

Former subdivision (b) has been relabeled subdivision (c). The definition for "one party" has been revised to make clear that the group of insurers referenced is a group of *affiliated* insurers. Definitions for "assumption" and "sale" or "purchase" that were formerly included in former subdivision (e) have been moved to this subdivision. The definitions of "total premium" and "total liabilities" have been moved to new subdivision (h). The revisions were made for purposes of clarity and organization. The revisions are reasonably necessary to implement CIC §§700(c), 717 and 1011, and are authorized by CIC §§720 and 1011.

§2303.15(c)

Former subdivision (c) has been relabeled as subdivision (d) and revised for clarity. The definitions for "assumption" and "sale" or "purchase" were deleted and were moved to the subdivision relabeled as (c). The revisions are reasonably necessary to implement CIC §§700(c), 717 and 1011, and are authorized by CIC §§720 and 1011.

§2303.15(d)

Former subdivision (d) has been relabeled as subdivision (e) and revised to apply to all licensees and to expressly state that a licensee that enters a transaction within the scope of relabeled subdivision (d) (involving the sale, cession, assumption or purchase of 75% or more of its business) without obtaining the Commissioner's prior consent is subject to the initiation of a receivership proceeding pursuant to CIC §1011. The comments objected that the initial text required prior consent to a transaction within the scope of CIC 1011(c), while the Code does not require prior consent, but instead subjects an insurer to the possibility of seizure or conservation if it fails to obtain the Commissioner's prior consent. The comments were correct and the subdivision has been revised accordingly.

The subdivision has been further revised to permit licensees that are exempt from registration under the HCA to make a limited "notice" filing of a transaction with an affiliate and provides that consent to the transaction shall be deemed if the Commissioner has not objected within 90 days of receipt of the notice filing. This minimal filing and deemer exception is appropriate in that the home state regulator will also review the transaction, and since the insurer is not required to register under the HCA in California, the volume of its California business would be less than one-third of its total business and of less concern to

the Department.

The subdivision also makes clear that an application for consent shall satisfy any filing required by CIC §1215.5(b)(3) (of the HCA). This provision is necessary to clarify that only one application needs to be filed when a transaction is subject to the requirements of both CIC §§1011(c) and 1215.5(b)(3).

The revisions to this subdivision were made in response to comments and are reasonably necessary to implement CIC §§1011(c) and 1011.5.

§2303.15(e)

Former subdivision (e) relating to licensees not included in former subdivision (d) has been deleted, since all licensees are now included in former subdivision (d).

§2303.15(f)

Former subdivision (f) has been relabeled as subdivision (b) and revised to require that except for cessions to affiliates, domestic insurers and volume insurers shall retain at least 10% of direct premium written per line of business unless the Commissioner has consented to a lesser percentage. This requirement ensures that a direct writer bears financial risk for the policies it issues. An insurer that does not retain financial risk may not be adequately underwriting or pricing its products and may thus be exposing itself (and its reinsurer) to financial hazard and risk of insolvency. Moreover, a retention of less than 10% of direct premium written may indicate that the ceding insurer is only "fronting" for the reinsurer and not performing the intended function of its license, which is to bear risk. The subdivision also provides instructions to apply for consent to a lesser-retained percentage. This exception to retain a lesser percentage permits flexibility where the cession is necessary for the ceding insurer's conduct of its business (for financial or other reasons) and where the transaction will not jeopardize its financial condition. Subdivision (b) is reasonably necessary to interpret and implement CIC §§700(c) and 717 and is authorized by CIC §720.

§2303.15(g)

Former subdivision (g) has been relabeled as subdivision (f) and revised to provide that with respect to a 100% cession to an inter-company pooling agreement, the calculation is based on direct written premium instead of total premium. "Total premium" would include premium received from assumed reinsurance business. In some instances, ceding insurers cede 100% of their direct business to an inter-company pool, but do not cede their assumed business, and therefore, the initial text would not have covered some cessions to inter-company pools. Since the intent of the subdivision is to establish requirements for inter-company pools, the text has been revised for clarity. The subdivision has also been revised to delete the reference to former subdivision (j), which previously included specific contract provisions that could be used to protect ceding insurers. The specific contract provisions in former subdivision (j) have been deleted, and therefore, this subdivision has been revised to state that the Commissioner may condition consent to a 100% cession to an inter-company pool on the reinsurance agreement including provisions that the Commissioner deems necessary to protect the ceding insurer. These revisions are reasonably necessary to implement CIC §§700(c), 717, 1011 and 1215.5(b)(3) and are authorized by CIC §§720 and 1011 and 1215.8.

§2303.15(h)

Former subdivision (h) has been relabeled as subdivision (g) and revised to apply to all licensees (instead of only to domestic and volume insurers), except for affiliate transactions if the licensee is exempt from registration under the HCA. The exception is appropriate in that an affiliate transaction of this magnitude (50% to 74% of a licensee's business) is required to be submitted to the home state regulator for review under its holding company system statutes, and since the excepted insurer is not required to register under the HCA in California, the volume of its California business would be less

than one-third of its total business and therefore is of less concern to the Department. The subdivision provides that the transaction shall be deemed not objectionable if the Commissioner has not objected within 90 days of its receipt. The deemer provision was added in response to comments, and is reasonable in that it provides sufficient time for the Department to make an assessment of whether objection to the transaction is appropriate while providing a relatively short period for the licensee to await the Department's determination. The affiliate exception and deemer are significant changes in the manner in which the Department has historically reviewed transactions of this magnitude. The revisions are reasonably necessary to implement CIC §§700(c), 717, 730 and 1011 and are authorized by CIC §§720, 730 and 1011.

New subdivision (h) has been added to define the terms "total premium" and "total liabilities" used in this section. The definition for "total liabilities" includes the same items listed in §2303.5(g) with respect to the liabilities of multiple beneficiary trusts. The definition for "liabilities" previously included in §2303.2 has been moved to this subdivision. The revision was necessary for purposes of organization and to clarify the manner in which §2303.15 applies to property/casualty insurance and life/health insurance. The definitions are reasonably necessary to implement CIC §§700(c), 717 and 1011 and are authorized by CIC §§720 and 1011.

§2303.15(i)

Former subdivision (i) relating to filing procedures has been deleted as unnecessary after the revision of this section.

§2303.15(j)

Former subdivision (j) has been relabeled as subdivision (i). It provided that where the loss of statement credit would have a significant adverse impact on a ceding insurer where no security had been provided, the Commissioner could condition his consent to a reinsurance transaction on the reinsurance agreement providing for the posting of security by a licensed or accredited reinsurer under certain listed conditions. The comments complained that it was not clear when the Commissioner could invoke the regulation and that the list of conditions specified in the regulation would not be appropriate for all cases. Upon consideration of the comments, the subdivision has been revised for clarity and now provides that the Commissioner may condition consent to a cession by a domestic or volume insurer which involves 50% or more of its business by requiring the reinsurance agreement to include provisions the Commissioner deems necessary to protect the ceding insurer; the specific conditions listed for possible inclusion in the reinsurance agreement have been deleted. The revisions are reasonably necessary to implement CIC §§700(c), 717, and 1011(c) and are authorized by CIC §§720 and 1011..

§2303.15(k)

Former subdivision (k) has been relabeled as subdivision (j) and relates to requirements where a transaction provides for the transmission of payments through a reinsurance intermediary. Comments had complained that the initial text would require triennial examinations of all intermediaries, which are unnecessary in that there have been no problems caused by an intermediary default for many years, and the examination requirement may result in delay in the Department's approval of transactions. After considering the comments the subdivision was revised to apply only to transactions involving 50% or more of the business of a domestic or volume insurer, and to permit the submission of specified financial documents by the intermediary in lieu of an examination report. The subdivision now also provides that if the Commissioner conditions consent to transmission of payments through an intermediary upon the receipt of a satisfactory examination report of the intermediary, that the payment arrangements shall be deemed non-objectionable if the Commissioner has not objected on the grounds of an unsatisfactory examination report within 180 days after issuing the conditional consent. The deemer provision is appropriate in that it provides sufficient time for the examination and permits finality to the transaction. The revisions are reasonably necessary to implement CIC §§700(c), 717(d),

and 1011(c) and are authorized by CIC §§720 and 1011..

New subdivision (k) has been added to provide for the coordination of reviews of transactions with other interested state regulators. The purpose of this subdivision is to minimize delay and the burdens on regulators and ceding insurers. Coordination is required where the transaction involves 75% or more of the licensee's business and the licensee is exempt from registration under the HCA. Generally, coordination will permit an earlier determination than would separate reviews, and is especially appropriate for transactions involving insurers of lesser regulatory concern to the Department, such as those exempt from HCA registration. The subdivision is reasonably necessary to implement CIC §§700(c), 717(d), and 1011(c) and is authorized by CIC §§720 and 1011.

§2303.15(l)

Former subdivision (l) has been relabeled as subdivision (m) and revised for clarity. It now specifies that the proposed amendments to agreements that must be filed prior to execution include those agreements that have been reviewed and approved as well as those agreements approved by a deemer provision of these regulations. A copy of the prior consent, approval or non-objection letter must now be submitted with the proposed amendment. The terms "consent" and "non-objection" have been defined. The subdivision now includes a deemer provision that no new application or filing need be made concerning the amendment if the Commissioner has not responded within 30 days of its receipt, and in that event, the right of the Commissioner to object to the amendment upon a subsequent renewal or amendment of the agreement is preserved. The revisions are reasonably necessary to implement CIC §§700(c), 717, 1011 and 1215.5(b)(3) and are authorized by CIC §§720, 1011, and 1215.8. .

New subdivision (l) was added to specify procedures relating to denials of consent or objections to transactions. The Department is required to issue a finding explaining the reasons for the determination. The determination may be appealed to the Chief of the Financial Surveillance Branch in a manner consistent with making a request for a permitted accounting practice, which is a standard industry procedure. The subdivision is reasonably necessary to implement CIC §§700(c), 717, 1011 and 1215.5, and is authorized by CIC §§720, 1011, and 1215.8.

§2303.15(n)

Former subdivision (n) has been relabeled as subdivision (r) and revised without substantive change. In response to comments, the last sentence of the former subdivision ("The form of the commitment shall in any event be sufficient to legally bind the insurer.") was deleted as unnecessary.

New subdivision (n) has been added to clarify that an amendment that is subject to prior review under this section does not include a "special acceptance" which is defined as the extension of a reinsurance contract to embrace a specific risk which is not automatically included, but once accepted, all terms of the reinsurance agreement apply. This subdivision was added in response to comments. Special acceptances are used routinely in certain lines of business and types of contracts. Requiring a prior review of each special acceptance would significantly impact the operations of both licensees and the Department. Although special acceptances are technically amendments in that they enlarge the risks covered by the reinsurance agreement, the potential for special acceptances and increased risk would have been reasonably foreseeable during the prior review of the contract, and the remaining terms of the contract are not changed. Therefore, the Commissioner has determined that an exception to prior review of amendments is warranted for special acceptances. The subdivision is reasonably necessary to implement CIC §§700(c), 717, 1011, and 1215.5, and are authorized by CIC §§720, 1011, and 1215.8.

§2303.15(p)

Former subdivision (p) has been relabeled as subdivision (o) and clarified without substantive change. A new subdivision (p) was added which states that §2303.15 does not limit the type of reinsurance arrangements that may be found to be deficient pursuant to CIC §717(d). One of the purposes of §2303.15 is to specify certain reinsurance arrangements that may be deficient. The Commissioner cannot anticipate all of the circumstances or conditions that may cause reinsurance arrangements to be deficient. This subdivision provides notice that reinsurance arrangements may be found to be deficient for reasons not included in this article. The subdivision is reasonably necessary to implement CIC §§700(c) and 717 and is authorized by CIC §720.

Former §2303.16 Attestation Requirements

In response to comments that the attestation requirement was burdensome and a duplication of information newly required by the NAIC, former §2303.16 has been deleted in its entirety. Former §2303.16 required the submission of certain information with regard to "separate agreements" that affect or pertain to reinsurance agreements disclosed to the Commissioner. The information was required in addition to the information regarding separate contracts that is required to be disclosed by insurers in the NAIC "Reinsurance Attestation Supplement." As set forth in the ISR, the additional information was required, in part, to assist the Commissioner in identifying the reinsurance agreements relating to the separate agreements disclosed on the NAIC forms. However, because matching of the disclosed agreements may be apparent in many instances or determined to be unnecessary, the Commissioner has withdrawn the separate California attestation requirement. In those instances where reinsurance agreements cannot reasonably be matched with the separate agreements disclosed in the NAIC forms, the Commissioner will undertake further inquiry with the insurer.

New §2303.16 List of Volume Insurers**§2303.16(a)**

Subdivision (a) clarifies that the definition of "volume insurer" uses the same threshold test as that used for a "commercially domiciled" insurer under the HCA, but is not limited to members of holding company systems. The subdivision clarifies the relationship between "volume insurers," as defined in §2303.2(w), and "commercially domiciled insurers," as defined in CIC §1215.13(a) (of the HCA). The latter are always "volume insurers," but a volume insurer may not be "commercially domiciled" in California because it is not a member of an insurance holding company system. This subdivision is reasonably necessary to implement CIC §§700(c) and 717 and is authorized by CIC §720.

§2303.16(b)

Subdivision (b) provides that the Department shall publish on its public website by April 15 of each year a list that includes the name of each licensee that has attained the status of volume insurer or commercially domiciled insurer for the year. Determination of either status is a mathematical calculation. Publishing the list will provide notice of the Commissioner's determinations and will provide an opportunity for affected insurers to notify the Commissioner of any disagreement they may have regarding the determination. Publication of the list will provide notice to insurers and reinsurance intermediaries and will permit them to plan for the application of these regulations to reinsurance transactions. This subdivision is reasonably necessary to implement CIC §§700(c) and 717 and is authorized by CIC §720.

§2303.17 Examination of Reinsurance Intermediaries**§2303.17(a)**

Former subdivision (a) has been relabeled as subdivision (b). Paragraph (2) has been revised to delete the requirement to submit an intermediary's internal audit reports, in response to comments that internal audit reports are prepared for the purpose of self-policing, and a disclosure requirement might chill effective internal oversight. Paragraphs (5) and (6) have been combined for clarity without substantive change. The revisions are reasonably necessary to implement CIC §1781.1, *et seq.* and are authorized by CIC §1781.12.

§2303.17(b)

Former subdivision (b) has been relabeled as subdivision (c) and has been revised for clarity without substantive change.

§2303.17(c) and (h)

Former subdivisions (c) and (h) have been combined and relabeled as subdivision (a) and revised for clarity to provide that the Commissioner may examine an intermediary whenever he deems necessary or

upon application as provided in the section. Subdivision (a) contains the text of former subdivision (c) and revised to provide that the Commissioner's examination of an intermediary is discretionary, instead of mandatory. An examination may be made when the Commissioner deems it to be necessary (previously stated in former subdivision (h)), or "upon application as provided for in this article." This change permits the Commissioner to allocate his examination resources as needed and reduces the examination burden placed upon intermediaries. The revisions are reasonably necessary to implement CIC §1781.1, *et seq.* and are authorized by CIC §1781.12.

§2303.17(d)

The time for an intermediary to comment on an examination report was shortened from 30 days to 15 days, and the time thereafter for the Commissioner to adopt or reject an examination report was also reduced from 30 to 15 days. The reductions in time were necessary because of the 180 day deemer provision added in Section 2303.15(j)(3) limiting the Department's time to produce an examination report where consent to a reinsurance transaction is conditioned upon the issuance of a satisfactory final examination report. The revisions are reasonably necessary to implement CIC §1781.1, *et seq.* and are authorized by CIC §1781.12.

§2303.17(e)

Former subdivision (e) has been relabeled as subdivision (f) and revised to clarify that the examination expense shall be borne by the intermediary unless the examination has been requested by an insurer, and then shall be at the expense of the insurer. The revisions are reasonably necessary to implement CIC §1781.1, *et seq.* and are authorized by CIC §1781.12.

Former §2303.18 Commissioner's Discretion

The entire text of this section was moved to §2303.20.

New §2303.18 Reporting of Regulatory Action

The second sentence of §2303.3 and the second sentence of subdivision §2303.4(a) relating to reporting of regulatory actions were combined for purposes of organization and moved to this section. With respect to licensed insurers, the initial text required reporting only by assuming insurers; the reporting requirement has been revised to cover all licensed insurers in order to alert the Department when a licensee has been determined by another state regulator to be in a hazardous financial condition. The revision is reasonably necessary to implement CIC §§700(c) and 717, and is authorized by CIC §720.

§2303.19 Denial of Statement Credit and Non-Admission of Assets

§2303.19(c)

Subdivision (c) was revised so that the Department and not the Commissioner shall issue the finding upon a determination of a denial of credit for reinsurance. Department staff would make the determination and should be required to issue the finding, so that in the event of an appeal to the Chief of the Financial Surveillance Branch, it would not be necessary to overturn a decision of the Commissioner in order to find for the appellant. . The revision is reasonably necessary to implement CIC §§922.1, *et seq.* and 923 and is authorized by CIC §822.8..

§2303.19(e)

Subdivision (e) was added to require a foreign insurer to report any variance between the credit it claims for reinsurance in California and the credit it claims for reinsurance in its home state. The variance is to be reported on a form prescribed by the Department in the annual statement instructions. The subdivision provides that the Department may consider the variance in all financial strength evaluations

of the insurer, including, but not limited to, whether to restrict the insurer's writing of new business in California. The subdivision was added in response to comments that the initial text did not specify the manner of reporting variances or state the consequences of variances. The subdivision is reasonably necessary to implement CIC §§700(c), 717, 922.1, *et seq.* and 923.

Former §2303.20 Sanctions for Non-Payment of Reinsurance

This section interpreted CIC §§704 and 704.7 to establish possible consequences for failing to make timely payments under reinsurance contracts. Strong objections were made in the comments that the Commissioner would be intervening in private disputes between insurers and would cause parties to make payments ultimately determined not due in order to avoid possible regulatory sanctions. The entire text of this section was deleted in response to the comments.

Renumbered §2303.20 Commissioner's Discretion

The text of former §2303.18 was moved to this section. One of the conditions for granting a waiver to a requirement under this article was changed; the condition that the variance must not be material was changed to a condition that the variance must be reasonable and justifiable in relation to the insurer's overall financial condition. The initial text would have precluded the allowance of variances where the variance request was reasonable and justifiable under the circumstances. The revision is reasonably necessary to implement CIC §§700(c), 717, 922.1, *et seq.*, 923, 1011, and 1215.5(b)(3), and is authorized by CIC §§ 720, 922.8, 1011, and 1215.8.

§2303.21 Insurer Default for Failure to Comply

§2303.21(a)

Subdivision (a) was revised for clarity without substantive change.

§2303.21(b)

Subdivision (b) was deleted in its entirety as unnecessary since it paraphrased the subject statute (CIC §701).

§2303.22 Required Deposits, Fees and Filing Offices

The section was revised for clarity, organization and to further specify procedures to make the various applications or filings, without substantive change. The revisions are reasonably necessary to implement CIC §§700(c), 717, 922.1, *et seq.*, 923, 1011, 1215.5(b)(3), and 1781.10, and is authorized by CIC §§ 720, 922.8, 1011, 1215.8 and 1781.12.

§2303.24 Effective Date

§2303.24(a)

Subdivision (a) has been revised to change the Effective Date. In the Notice of Availability of Revised Text mailed June 14, 2006, subdivision (a) of this section had been revised to provide an Effective Date of October 1, 2006, except that compliance with §§2303.7, 2303.8, 2303.13 and 2303.14 was not required until January 1, 2007. In the Notice of Availability of Revised Text mailed August 24, 2006, the Effective Date for all sections has been changed to January 1, 2007, or the 30th day following filing with the Secretary of State, whichever is later.

§2303.24(b)

Subdivision (b) has been revised to provide that the regulations apply only to new or renewal agreements executed on or after the Effective Date. In response to comments that it would be difficult and burdensome to apply new statement credit requirements to agreements already negotiated, the application of the regulations to agreements *amended* on or after the Effective Date was deleted.

§2303.24(c)

Subdivision (c) has been revised to provide that all reinsurance agreements executed prior to the Effective Date shall continue to comply with Bulletin 97-5. Since the regulations will apply only to

agreements executed on or after the Effective Date, it is necessary to continue application of the Bulletin to all agreements executed prior to the Effective Date.

UPDATE OF MATERIAL RELIED UPON

The Notice of Proposed Action mailed December 3, 2005 advised that the Rulemaking File included information upon which the proposed action was based and was available for copying. On January 11, 2006, the Rulemaking File was copied by the Association of California Insurance Companies ("ACIC") and distributed by it to the Reinsurance Association of America and other interested persons. Following is a list of the documents included in the Rulemaking File and copied by ACIC:

1. National Association of Insurance Commissioners Model Regulation Service, Model Reinsurance Regulations: 786 - Credit for Reinsurance Model Regulation (2003).
2. National Association of Insurance Commissioners Model Regulation Service, Model Reinsurance Regulations: 785 - Credit for Reinsurance Model Regulation (2003).
3. National Association of Insurance Commissioners, Insurer Receivership Model Act, Adopted by the Financial Condition (E) Committee, Draft dated 11/09/05
4. Memorandum, Harry Levine to Arlene Joyce, State of California, Department of Insurance, dated 9/30/04, attaching Workshop Sign-In Sheet for RH 01015731, Workshop Concerning Reinsurance Accounting, Agreements and Oversight, September 27, 2004 and September 28, 2004, State of California, Department of Insurance.
5. National Association of Insurance Commissioners, SSAP No. 61, Life, Deposit-Type and Accident and Health Reinsurance, effective 1/1/01.
6. National Association of Insurance Commissioners, SSAP No. 62, Property and Casualty Reinsurance, effective 1/1/01.
7. National Association of Insurance Commissioners, SSAP No. 63, Underwriting Pools and Associations Including Intercompany Pools, effective 1/1/01.
8. State of California, Department of Insurance, Bulletin 97-5, Credit In Accounting And Financial Statements On Account Of Reinsurance Ceded, December 3, 1997.
9. *The People of the State of New York, by Eliot Spitzer, Attorney General of The State of New York, and Howard Mills, Superintendent of Insurance of the State of New York v. American International Group, Inc., Maurice R. Greenberg and Howard I. Smith*, Supreme Court of the State of New York, County of New York:

Summons, filed May 26, 2005.

Complaint, dated May 26, 2005,

Exhibits to Complaint
10. Morgan Stanley, *Finite Reinsurance: Potential Stock & Industry Implications*, Insurance-

Property & Casualty, November 19, 2004.

11. Jonathan Liang, *Letting the Air Out, How insurers are pumping up earnings - and why the practice may end*, Barrons, January 2005

12. Harold S. Horwich, Bingham McCutchen LLC Reporter, *Affiliate Transactions Within Insurance Company Groups: Proposed Improvements to Regulation of a Recurrent Problem, Current Developments Task Force*, INTERNATIONAL ASSOCIATION OF INSURANCE RECEIVERS

13. Jonathan Bank, Norris Clark, John Gurley, and William Kelty, Lord Bissel Brook, *Client Alert: Caveat Emptor-Caveat Seller*, November 19, 2004

14. Peter Eavis, *Buffett Insurance Deals Warrant Spitzer Scrutiny*, TheStreet.com, October 21, 2004, at <http://www.thestreet.com/comment/detox/10189308.html>

15. Gretchen Morgenson, *Next Up for Spitzer: Funny Numbers*, November 21, 2004

ACIC's written comment dated January 24, 2006, includes a list of materials copied from the Rulemaking File on pages 45-46 of its comment. The list erroneously omits items 6 and 7 above, as confirmed in an email from Barry Weissman on May 1, 2006, included in Volume Five of the Rulemaking File.

On July 3, 2006, the Commissioner mailed a Notice of Addition to Rulemaking File, advising that the following documents and other information had been added to the Rulemaking File and were available for public inspection and comment:

1. Declaration of Robert Loo
2. Declaration of Arlene Joyce with Exhibits
 - A. Email from Arlene Joyce to Arlene Joyce dated February 11, 2002 concerning service of process on accredited reinsurer
 - B. Email from Arlene Joyce to James Holmes dated June 21, 1995 concerning a 1991 meeting with Citibank regarding letters of credit issued to Mission Insurance Company
 - C. Handwritten note of Arlene Joyce dated July 25, 1991 concerning meeting with Citibank regarding letters of credit issued to Mission Insurance Company
 - D. Email from Robert Hall to Arlene Joyce dated June 30, 2006 concerning condition of company records in some liquidation proceedings
 - E. Email to Kevin Kelly and Bruce Daley of the Pennsylvania Department of Insurance from Arlene Joyce dated May 1, 2002 regarding replacement of security for expiring letters of credit
 - F. Email to Arlene Joyce from Frederick Masters dated June 28, 2002, enclosing draft agreement for exchange of securities for expiring letters of credit
 - G. Draft agreement between the California Department of Insurance, the Pennsylvania liquidator of Legion Insurance Company and Villanova Insurance Company, and Comerica Bank to exchange securities for expiring letters of credit
 - H. Email from Mike Stone to David Fishman concerning discovery of side letters negating reinsurance risk transfer during an examination of a domestic insurer
 - I. Email from Bob Loo to Ramon Calderon and Arlene Joyce dated April 25, 2006, listing reinsurance contract terms and related issues considered by analysts in the Financial Analysis Division when reviewing reinsurance agreements

- J. Diagram of a reinsurance transaction submitted by a licensee to explain an affiliate reinsurance transaction
- K. List of licensees which have submitted an application pursuant to Insurance Code Section 1011.5 in the years 2001 through 2005 for review of a reinsurance transaction
- 3. 2005 Annual Statement Blanks and Instructions
- 4. National Association of Insurance Commissioners Model Regulation No. 791 and Appendix A-791, Life and Health Reinsurance Agreements
- 5. Exhibits, National Association of Commissioners Risk Assessment Training, May 2-3, 2005
- 6. Glossary of Reinsurance Terms
- 7. Letter dated December 11, 1988 to California Insurance Commissioner Roxani Gillespie from Congressman John Dingell, Chairman of the Subcommittee on Oversight and Investigations
- 8. *Failed Promises, Insurance Company Insolvencies*, A Report by the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, February 1990
- 9. *The Failure of HIH Insurance, Volume I, A corporate collapse and its lessons*, The HIH Royal Commission, April 2003
- 10. *Property/Casualty Insurance Criteria: Adjusting For Finite Reinsurance*, Standard & Poors, March 14, 2005
- 11. Robert Lenzner and Bernard Condon, *Passing The Trash*, Forbes, January 10, 2000

The comment period for the additions to the Rulemaking File expired on July 19, 2006. No comments were received.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Commissioner has made a determination that adoption of the regulations does not impose a mandate on local agencies or school districts. The regulations have no application to local agencies or school districts, and neither requires nor prohibits action on their part.

ALTERNATIVES

In response to comments, significant revisions have been made to the initial text, including revisions that limit the scope of the regulations and reduce the number of affected insurers. The only alternative suggested by the comments was the adoption of the NAIC Model Regulation on Credit for Reinsurance. However, this is not a true alternative in that the proposed regulations already incorporate virtually all provisions of that Model. The "alternative" implicit in the suggestion was a withdrawal of all regulations that covered topics not included in the Model Regulation, such as licensing standards, contract provisions and oversight of reinsurance transactions. The Commissioner declines the suggestion because the subject provisions are necessary to implement sections of the Insurance Code that are not covered by the Model Regulation.

The purpose of the regulations is to safeguard a licensed insurer's solvency by prescribing accounting rules, contract provisions, operational standards and examination procedures. The Commissioner has determined that no reasonable alternative exists that would be as effective in carrying out the purpose for which the regulations are proposed, or would be less burdensome to affected persons, than the proposed regulations. This determination is supported by the written comments received from the major trade associations stating their non-opposition to the revised text, and the absence of any comments objecting to the revised text.

UPDATE ON ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner initially determined there would be an adverse economic impact upon licensees caused by the proposed regulations, which was not significant and which was outweighed by the

expected benefits in safeguarding insurer solvency. However, all provisions which could conceivably cause an adverse economic impact upon licensees have been deleted from the regulations and therefore, there will be no adverse economic impact on businesses or impact on the ability of California businesses to compete with insurers domiciled in other states. This determination is supported by the written statements of non-opposition to the revised text received from the affected major trade associations (the statements are included in Volume Three of the Rulemaking File), and the absence of objections to the revisions to the regulations.

UPDATE ON IMPACT ON SMALL BUSINESS

The only small businesses that the proposed regulations will affect are licensed reinsurance intermediaries. The requirement for examination of licensed intermediaries every three years was deleted and replaced with a requirement that an intermediary shall submit financial information upon request and be examined when the Commissioner determines it necessary. The revision will significantly reduce any adverse economic impact of the regulations upon intermediaries by eliminating the triennial examination expense.

SUMMARY OF AND RESPONSE TO OBJECTIONS OR RECOMMENDATIONS

Twenty-one written comments were received to the initial text of the proposed regulations published December 2, 2005. Twelve persons testified at the public hearing held January 24, 2006. Comments were both general and specific, and many were repetitive. In response to the comments, significant revisions were made to the initial text. Revised text was distributed by proper notice on June 14, 2006. Six comments were received to the revised text, all of which were statements of non-opposition to the proposed regulations as revised. Four of the statements of non-opposition were from major industry trade associations that had strongly opposed the initial text. A Notice of Addition to Rulemaking File was mailed on July 3, 2006, and a Notice of Availability of Revised Text was mailed on August 24, 2006 (primarily to change the effective date of the regulations). No comments were received to either notice.

A summary of and response to each written comment received during the 45-day comment period is attached as Exhibit A and incorporated herein by reference as though set out in full. A summary of and response to oral testimony given at the January 24, 2006 public hearing is attached as Exhibit B and incorporated herein by reference as though set out in full.

Following is the verbatim text of each comment received during the 15-day comment period for the Notice of Availability of Revised Text mailed June 14, 2006. Since all of the comments are statements of non-opposition to the revised text, and none of the comments offer an objection or suggestion, no response is required and none is provided.

Verbatim Comment by: American Council of Life Insurers and

Association of California Life and Health Insurance Companies

Date: June 29, 2006

"Please be advised that the American Council of Life Insurers (ACLI) and the Association of California Life and Health Insurance Companies (ACLHIC) withdraw their January 24, 2006, comments on the portions of the above proposed rule that are unchanged and do not oppose proposed rule text that is new or revised since November 21, 2005."

Verbatim Comment by: American Re-Insurance Company

Date: June 28, 2006

"We have received the June 14, 2006 Notice of Availability of Revised Text and a copy of the proposed revisions to the original Reinsurance Oversight Regulations. In view of the substantial changes to the originally proposed regulations, we hereby withdraw our January 23, 2006 comments. We have no comment with respect to the revised regulations."

Verbatim Comment by: Association of California Insurance Companies

Date: June 30, 2006

"ACIC is not opposed to the adoption of the June 14, 2006, version of the regulations. ACIC is taking this position because this version of the proposed regulations on reinsurance accounting, agreements and oversight is significantly different than the original version of the regulations, which ACIC opposed.

"ACIC appreciates the Department of Insurance's willingness to study and acknowledge the validity of many of the issues put forward in ACIC's written comments on the original version of the regulations. Although we still have concerns about some of the provisions in the June 14 version of the proposed regulation, ACIC is prepared to examine how these provisions operate. We appreciate the department's willingness to consider future modifications to the adopted regulations if implementation problems are identified."

Verbatim Comment by: Fireman's Fund (Allianz group of companies)

Date: June 30, 2006

"We are pleased to submit the following comments regarding the proposal to adopt Sections 2303.3-2303.25 of Title 10, Chapter 5, Subchapter 3 of the California Code of Regulations as published on June 14, 2006. We acknowledge and appreciate the extensive revisions that the Department has made to previous proposed drafts in response to industry concerns. These revisions have rendered the objections to specific regulation sections in our letter of January 24, 2006 irrelevant, and no further response from the Department to our comment letter is necessary in our view."

Verbatim Comment by: Personal Insurance Federation of California

Date: June 30, 2006

"On behalf of the Personal Insurance Federation of California (PIFC), which represents insurers who write nearly 50% of the personal lines insurance soled in California, including State Farm, Farmers, Safeco, 21st Century Insurance Group, Progressive, and NAMIC, I am writing to inform you that PIFC is not opposed to the June 14, 2006 version of the reinsurance regulations. PIFC is taking this position because this version of the proposed regulations is significantly different from the original version of the regulations.

"PIFC thanks you and the Department for working diligently with PIFC and with other members of the insurance industry to address many of the industry concerns. In addition, PIFC appreciates the Department's willingness to consider future modifications to the adopted regulations if implementation problems are identified."

Verbatim Comment by: Reinsurance Association of America

Date: June 29, 2006

"Pursuant to Government Code section 11346.8, the Reinsurance Association of America (RAA) submits the following comments regarding the proposed adoption of Title 10, Chapter 4, Subchapter 3, Article 3 §§ 2303 through 2303.25 of the California Code of Regulations, entitled the Reinsurance Oversight Regulations.

"On November 21, 2005, the California Insurance Department (the Department) proposed the adoption of the Reinsurance Oversight Regulations and solicited comments from the industry. On January 24, 2006, the Reinsurance Association of America (RAA) submitted written comments and testified regarding its concerns about the proposed Regulations. On June 14, 2006, after several months of negotiations with the insurance and reinsurance industry, the Department published a set of revised Regulations.

"The revised Regulations are a notable improvement over the initial draft of the Regulations and address many of the RAA's concerns. The RAA appreciates the Department's efforts in this regard and will not object to the adoption of the revised Regulations. We reserve our right, however, to challenge the application of the Regulations, if warranted, at a later date. Finally, we would also note that despite the improvements in the draft Regulation, the RAA remains concerned about California's statutes, in particular Section 922.6, which allow extraterritorial regulation of non-domestic (re)insurers. As you know, one of the RAA's primary goals is to achieve uniformity of reinsurance laws and regulations and California law deviates from standard industry laws and practices that are employed throughout the rest of the United States."

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