

69O-144.007 Ratings Based Collateral Requirements 11-21-07

(1) Purpose. Paragraph (3)(e) of section 624.610 gives the Commissioner the option to allow credit for reinsurance without full collateral for transactions involving assuming insurers not meeting the requirements of Section 624.610(3)(a)-(c), Florida Statutes. These rules implement that paragraph. This rule is not an attempt to assert extraterritorial jurisdiction. Insurers that write in states other than Florida will need to comply with the laws of those states.

(2) Definitions. As used in this rule the following terms have the following meanings:

- (a) “Unaccredited reinsurer” means a reinsurer which has not meet the requirements under Rule Chapter 69O-144 as an accredited reinsurer.
- (b) “Eligible reinsurer” means an unaccredited reinsurer which has been determined by the commissioner by order to have met the requirements set forth in subsection (6) of this rule.
- (c) “Eligible jurisdiction” means a jurisdiction which has met the requirements set forth in subsection (7) of this rule.

(3) With respect to reinsurance contracts entered into or renewed on or after January 1, 2008, a ceding insurer may elect to take credit, as an asset or deduction from reserves, for reinsurance ceded to an eligible reinsurer, provided that the assuming insurer holds surplus in excess of \$100 million and maintains, on a stand-alone basis separate from its parent or any affiliated entities, a secure financial strength rating from at least two of the rating agencies indicated in paragraphs (a) through (e) of this subsection. The credit is subject to the limitations set forth in this rule. The rating agencies are:

- (a) Standard & Poor’s;
- (b) Moody’s Investors Service;
- (c) Fitch Ratings;
- (d) A.M. Best Company; or
- (e) any other rating agency recognized by the Office of Insurance Regulation.

(4) The amount of the credit allowed shall be no greater than the percentage specified for the lowest rating as indicated below:

| <u>Credit Allowed</u> | Best | S&P | Moody’s | Fitch |
|-----------------------|--------------------------------|---|---------------------------------------|--|
| 100% | A++ | AAA | Aaa | AAA |
| 90% | A+ | AA+, AA, AA- | Aa1, Aa2, Aa3 | AA+, AA, AA- |
| 80% | A, A- | A+, A, A- | A1, A2, A3 | A+, A, A- |
| 50% | B++, B+ | BBB+, BBB, BBB- | Baa1, Baa2, Baa3 | BBB+, BBB, BBB- |
| 0% | B, B-, C++, C+, C, C-, D, E, F | BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R, NR | Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C | BB+, BB, BB-, B+, B, B-, CCC+, CCC, CCC-, DD |

For reinsurance ceded by Florida domestic property insurers for short-tailed lines as defined below, any collateral required to be posted may be subject to a one-year deferral from the date of the first instance of a liability reserve entry as a result of a catastrophic

loss from a named Hurricane. For these purposes, a short-tailed line of business is defined as any one of the following lines of business as reported on the NAIC annual financial statement:

- Line 1 Fire
- Line 2 Allied Lines
- Line 3 Farmowners multiple peril
- Line 4 Homeowners multiple peril
- Line 5 Commercial multiple peril
- Line 9 Inland marine
- Line 12 Earthquake
- Line 21 Auto physical damage

A 5% reduction in the minimum collateral is available for those eligible reinsurers who maintain their required collateral obligations in a Florida domiciled depository financial institution.

(5) An insurer may not take credit pursuant to this rule unless:

- (a) The reinsurer has been determined, by order of the commissioner, to be an eligible reinsurer, pursuant to subsection 6 of this rule;
- (b) the ceding insurer maintains satisfactory evidence that the unaccredited assuming insurer meets the standards of solvency, including standards for capital adequacy, established by its domestic regulator;
- (c) all reinsurance contracts between the ceding insurer and the unaccredited assuming insurer:
 - 1. require the unaccredited assuming insurer to notify the ceding insurer and the Office in writing, within 30 days, of any change in domiciliary license status;
 - 2. require the unaccredited assuming insurer to notify the ceding insurer and the Office in writing, within 30 days, of any change in its rating status;
 - 3. provide that the reinsurance shall be payable by the assuming reinsurer on the basis of the liability of the ceding reinsurer under the contract reinsured without diminution because of the insolvency of the ceding insurer;
 - 4. require any unaccredited assuming insurer to designate a person in Florida as its true and lawful agent upon whom may be served any lawful process in a dispute, action, suit, or proceeding instituted by, or on behalf of, the ceding insurer; and
 - 5. include the following provisions:
 - a. any dispute, suit, action or proceeding under the contract, or any dispute, suit, action or proceeding arising out of, directly, indirectly, or incidentally, or related to the contract or of the transactions and actions arising from performance of the contract are to be subject to the jurisdiction, and resolved in the courts, of the United States or any state thereof, and that the assuming insurer submits to the personal jurisdiction of such court; and
 - b. Any dispute, suit, action or proceeding under the contract, or any dispute, suit, action or proceeding arising out of, directly, indirectly, or incidentally, or related to the contract or of the transactions and actions arising from performance of the contract are to be governed by and construed in accordance with the laws of the State of Florida.

(6) Status as eligible reinsurer

(a) Application for a determination as an eligible reinsurer under this rule shall be made by cover letter from the insurer requesting a finding of eligibility as a reinsurer pursuant to this rule. The cover letter shall be accompanied with the following:

1. Audited financial statements from inception or for the last 3 years, whichever is less, filed with its domiciliary regulator by the reinsurer or, in the case of a rated group, by the group, pursuant to or including a reconciliation to U.S. GAAP or U.S. Statutory Accounting Principles;
2. Documentation that the applicant submits to the jurisdiction of the United States courts, appoints an agent for service of process in Florida, and agrees to post 100% collateral for its Florida liabilities if it resists enforcement of a valid and final judgment from a court in the United States, or if otherwise required by the Office pursuant to this rule;
3. A report in the form of the NAIC Property and Casualty Annual Filing Blank Schedule F;
4. A list of all disputed or overdue recoverables, whether or not the claims are in litigation or arbitration;
5. A certification from the domiciliary regulator of the insurer that the company is in good standing and that the regulator will provide financial and operational information to the Office.

(b) The determination of eligibility will be made by order executed by the Commissioner.

(c) To become an eligible reinsurer, the reinsurer, at a minimum:

1. shall hold surplus in excess of \$100 million;
2. shall be authorized in its domiciliary jurisdiction to assume the kind or kinds of reinsurance ceded by the ceding insurer; and,
3. if not a Florida domestic insurer, its domicile shall be an eligible jurisdiction as defined in subsection (7).

(d) If the Commissioner determines, based upon the material submitted, and any other relevant information, that it is in the best interests of market stability and the solvency of ceding insurers, the Commissioner will find, by order, that the insurer is an eligible reinsurer and will set a collateral credit level for the reinsurer if lower than the amount set forth in subsection (4).

(e) Every eligible reinsurer shall file the following information annually with the Office, on the anniversary of the order granting it eligibility:

1. A statement certifying that there has been no change in the provisions of its domiciliary license or any of its financial strength ratings, or a statement describing such changes and the reasons therefore;
2. A copy of all financial statements filed with their domiciliary regulator;
3. An updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers; and
4. Any other information that the Office may require to assure market stability and the solvency of ceding insurers.

(f) An eligible reinsurer must immediately advise the Office of any changes in its ratings assigned by rating agencies, domiciliary license status or directors and officers.

(g) At any time, if the Commissioner determines that it is in the best interests of market stability and the solvency of ceding insurers, the Commissioner will withdraw, by order, any determination of an insurer as an eligible reinsurer or require the reinsurer to post additional collateral.

(7) Status as an eligible jurisdiction

(a) The determination of a jurisdiction as an eligible jurisdiction is to be made by the Commissioner. No jurisdiction shall be determined to be an eligible jurisdiction unless:

1. The insurance regulatory body of the jurisdiction has provided the Office with an affidavit that the jurisdiction agrees that it will provide information requested by the Office regarding its domestic reinsurers;
2. the Office has determined that the jurisdiction has a satisfactory structure and authority with regard to solvency regulation, acceptable financial and operating standards for reinsurers in the domiciliary jurisdiction, acceptable transparent financial reports filed in accordance with generally accepted accounting principles, and verifiable evidence of adequate and prompt enforcement of valid U.S. judgments or arbitration awards;
3. the Office has determined that the history of performance by reinsurers in the jurisdiction is such that the insuring public will be served by a finding of eligibility;
4. For non-US jurisdictions, the jurisdiction allows U.S. reinsurers access to the market of the domiciliary jurisdiction on terms and conditions that are at least as favorable as those provided in Florida law and regulations for unaccredited non-U.S. assuming insurers; and
5. There is no other documented information that it would not serve the best interests of the insuring public and the solvency of ceding insurers to make a finding of eligibility.

(b) If the NAIC issues findings that certain jurisdictions should be considered eligible jurisdictions, the Commissioner shall, if it would serve the best interests of the insuring public and the solvency of ceding insurers, make a determination that jurisdictions on the NAIC list are eligible jurisdictions.

(c) If the Commissioner determines that it is in the best interests of market stability and the solvency of ceding insurers, the Commissioner shall withdraw, by order, the determination of a jurisdiction as an eligible jurisdiction.

(8)(a) If the rating of an eligible reinsurer is or falls below that required in subsection (4) for the respective amount of credit, the existing credit to the ceding insurer shall be adjusted accordingly. Notwithstanding the change or withdrawal of an unaccredited assuming insurer's rating, the Commissioner, upon a determination that the interest of ensuring market stability and the solvency of the ceding insurer requires it, shall, upon request by the ceding insurer, authorize the ceding insurer to continue to take credit for the reinsurance recoverable, or part thereof, relating to the rating change or withdrawal for some specified period of time following such change or withdrawal, unless the reinsurance recoverable is deemed uncollectible.

(b) If the ceding insurer's experience in collecting recoverables from any assuming insurer indicates that the credit to the ceding insurer should be lower, the ceding insurer shall adjust the credit accordingly.

(9) The ceding insurer shall give immediate notice to the Office and provide for the necessary increased reserves with respect to any reinsurance recoverables applicable, in the event:

- (a) that obligations of an eligible reinsurer for which credit for reinsurance was taken under this rule are more than 90 days past due and not in dispute; or
- (b) that there is any indication or evidence that any eligible reinsurer, with whom the ceding insurer has a contract, fails to substantially comply with the solvency requirements under the laws of Florida or its domiciliary jurisdiction.
- (10) The Commissioner shall disallow all or a portion of the credit based on a review of the ceding insurer's reinsurance program, the financial condition of the eligible reinsurer, the eligible reinsurer's claim payment history, or any other relevant information when such action is in the best interests of market stability and the solvency of the ceding insurer. At any time, the Commissioner may request additional information from the eligible reinsurer. The failure of an eligible reinsurer to cooperate with the Office is grounds for the Commissioner to withdraw the status of the insurer as an eligible reinsurer or for the disallowance or reduction of the credit granted under this rule.
- (11)(a) Upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer, pursuant to chapter 631 or the equivalent law of another jurisdiction, an eligible reinsurer, within 30 days of the order, shall fund the entire amount that the ceding insurer has taken, as an asset or deduction from reserves, for reinsurance recoverable from the eligible reinsurer; provided, however, the commissioner may waive part or all of the foregoing requirement upon a showing of good cause.
- (b) If an eligible reinsurer fails to comply on a timely basis with paragraph (a) of this subsection, the Commissioner shall withdraw the reinsurer's eligibility under this rule, or take such other steps as necessary in the best interests of market stability and the solvency of the ceding insurers.
- (12) The Commissioner may, by order, determine that credit shall not be allowed to any insurer for reinsured risk pursuant to this rule if it appears to the Commissioner that granting of the credit to the insurer would not be in the public interest or serve the best interests of the insurer's solvency.