

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

CREDIT FOR REINSURANCE

I, Benjamin M. Lawskey, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 307(a), 308, 1301(a)(9), 1301(c), and 1308 of the Insurance Law, do hereby promulgate the following Eleventh Amendment to 11 NYCRR 125 (Insurance Regulations 17, 20, and 20-A), to take effect upon publication in the State Register, to read as follows:

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

Subdivision (h) of section 125.4 is hereby repealed. A new subdivision (h) of section 125.4 is added to read as follows:

(h) *Alternative credit for cessions to certified assuming insurers* (1) With respect to reinsurance contracts entered into or renewed on or after January 1, 2011, an insurer may reduce the amount withheld as required under section 125.6(b) of this Part for full credit, as an asset or deduction from reserves, for reinsurance recoverable, including incurred-but-not-reported loss reserves and unearned premium, from any unauthorized assuming insurer or any alien group of insurers, provided that the insurer satisfies the requirements set forth in paragraph (7) of this subdivision and is certified by the superintendent. The reduced amount withheld will be determined in accordance with paragraphs (2) through (8) of this subdivision. Any reinsurer qualifying for reduced collateral under the provisions of this subdivision as in effect on July 1, 2012 will be deemed to continue to remain in full compliance with this subdivision, provided that it satisfies the certification procedures of paragraph (7) of this subdivision by July 1, 2013.

(2) If the superintendent assigns a rating to an assuming insurer, the minimum reduced amounts that may be withheld for full credit are as follows:

<u>Rating by Superintendent</u>	<u>Minimum Amount Withheld for Full Credit</u>
<u>Secure-1</u>	<u>0 percent</u>
<u>Secure-2</u>	<u>10 percent</u>
<u>Secure-3</u>	<u>20 percent</u>
<u>Secure-4</u>	<u>50 percent</u>
<u>Secure-5</u>	<u>75 percent</u>
<u>Vulnerable-6</u>	<u>100 percent</u>

(3) Affiliated reinsurance transactions shall be eligible for reduced security requirements in the same manner as non-affiliated reinsurance transactions.

(4) A certified reinsurer may defer posting security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a catastrophic occurrence as recognized by the superintendent, provided that the certified reinsurer continues to pay claims in

a timely manner. Deferral of reinsurance recoverables related specifically to a catastrophic occurrence are permitted only for the following lines of business, as reported on the NAIC annual financial statement:

- (i) Line 1: Fire
- (ii) Line 2: Allied Lines
- (iii) Line 3: Farmowners Multiple Peril
- (iv) Line 4: Homeowners Multiple Peril
- (v) Line 5: Commercial Multiple Peril
- (vi) Line 9: Inland Marine
- (vii) Line 12: Earthquake
- (viii) Line 21: Auto physical damage

(5) A ceding insurer may take credit for reinsurance under this subdivision only with respect to a reinsurance contract entered into or renewed on or after the effective date that the assuming insurer is certified pursuant to this subdivision. Any reinsurance contract entered into before the effective date of such certification that is subsequently amended after the effective date of the certification, or a new reinsurance contract, covering any risk for which collateral was provided previously, will only be subject to this subdivision with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

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

(7) Certification Procedure.

(i) Upon receipt of an application for certification, the superintendent will post notice on the Department of Financial Services website that will include instructions on how members of the public may respond to or comment upon the application. The notice will remain posted for at least 30 days before the superintendent will take action upon the application.

(ii) The superintendent will notify the assuming insurer whether the assuming insurer's application to be a certified reinsurer has been approved. If the superintendent certifies the assuming insurer, the superintendent will include in the notification the rating assigned to the certified reinsurer in accordance with paragraph (2) of this subdivision. The superintendent will publish and make available to the public a list of all certified reinsurers and their ratings.

(iii) To be eligible for certification, an assuming insurer must:

(a) be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the superintendent pursuant to paragraph (9) of this subdivision;

(b) maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with subparagraph (iv)(h) of this paragraph. In the case of an association including incorporated and individual unincorporated underwriters, the association shall have minimum capital and surplus equivalents (net of liabilities) of at least \$250,000,000 and a central fund containing a balance of at least \$250,000,000;

(c) maintain financial strength ratings from two or more acceptable rating agencies. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the superintendent in determining the rating assigned to the assuming insurer. An acceptable rating agency is:

- (1) Standard & Poor's;
- (2) Moody's Investors Service;
- (3) Fitch Ratings;
- (4) A.M. Best Company; or
- (5) any other nationally recognized statistical rating organization acceptable to the superintendent;

(d) An assuming insurer applying to be a certified reinsurer shall agree to post 100 percent security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer for the benefit of the ceding insurer or its estate; and

(e) comply with any other conditions that the superintendent requires to ensure creditworthiness of the reinsurer.

(iv) The superintendent will rate each certified reinsurer on a legal entity basis with due consideration for the group rating, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. In determining the rating, the superintendent will take into account relevant factors and review appropriate materials, including:

(a) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table in this clause. The lowest financial strength rating received from an approved rating agency will be used in establishing the maximum rating of a certified reinsurer. An insurer that has failed to obtain or maintain at least two financial strength ratings from acceptable rating agencies will lose its eligibility for certification;

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

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

(c) For a certified reinsurer domiciled in the United States, the most recent applicable NAIC Annual Statement Blank, either Schedule F (for a property/casualty reinsurer) or Schedule S (for a life or health reinsurer);

(d) For a certified reinsurer not domiciled in the United States, the most recent Form CR-F (for a property/casualty reinsurer) or Form CR-S (for a life or health reinsurer), as such forms shall be prescribed by the superintendent;

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

(f) Regulatory actions against the certified reinsurer;

(g) The report of the independent auditor on the financial statements of the certified reinsurer;

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

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

(j) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, that involves United States ceding insurers. A certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement shall provide the superintendent with prior notice of such scheme as early as practicable; and

(k) Any other information the superintendent deems relevant.

(v) Upon direction by the superintendent, a certified reinsurer shall adjust, as the superintendent deems appropriate, the security that it is required to post based on the superintendent's analysis, pursuant to subparagraph (iv)(e) of this paragraph, of the reinsurer's reputation for prompt payment of claims. Subject to such additional adjustments as the superintendent may deem necessary in accordance with this subparagraph, a certified reinsurer shall, at a minimum, increase the security that it is required to post by one rating level under subparagraph (iv)(a) of this subdivision if:

(a) more than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more that are not in dispute and exceed \$100,000 for each ceding; or

(b) the aggregate amount of reinsurance recoverables on paid losses, which are not in dispute and are overdue by 90 days or more, exceeds \$50,000,000.

(vi)(a) The assuming insurer shall submit to the superintendent:

(i) a properly executed Form CR-1 on a form prescribed by the superintendent as evidence of its submission to the jurisdiction of this State;

(ii) an appointment of the superintendent as an agent for service of process in this State in accordance with Insurance Law section 1213; and

(iii) an agreement to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final U.S. judgment.

(b) The superintendent will not certify any assuming insurer that is domiciled in a jurisdiction that the superintendent has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(vii) The certified reinsurer shall agree to meet applicable information filing requirements both with respect to an initial application for certification and on an ongoing basis, and indicate in writing those portions of its filings that it believes are exempt from disclosure pursuant to Public Officers Law section 87(2)(d). The certified reinsurer shall agree to:

(a) Notify the superintendent within ten days of any regulatory actions taken against it, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing the changes and the reasons therefore;

(b) Submit annually on July 1, Form CR-F or CR-S, as applicable;

(c) Submit annually on July 1, the report of the independent auditor on the financial statements of the certified reinsurer, on the basis described in clause (d) of this subparagraph;

(d) Submit annually on July 1, audited financial statements (i.e., audited United States GAAP basis statements if available and audited International Financial Reporting Standards basis statements, including an audited footnote reconciling equity and net income to a United States GAAP basis, except that the superintendent may in his or her discretion accept audited International Financial Reporting Standards statements with reconciliation to United States GAAP certified by an officer of the insurer, provided that the capital and surplus of the insurer exceeds \$275,000,000); regulatory financial statement filings; an actuarial opinion as filed with the certified reinsurer's domestic regulator; and, upon the initial certification, audited financial statements for the prior three years filed with the certified reinsurer's domestic regulator;

(e) Submit at least annually by July 1, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

(f) Submit a certification from its domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(g) Submit such other information that the superintendent may reasonably require.

(viii) Change in Rating or Revocation of Certification.

(a) In the case of a downgrade by a rating agency or other disqualifying circumstance, the superintendent will upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of subparagraph (iv)(a) of this paragraph.

(b) If the superintendent upgrades the rating of a certified reinsurer, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, provided that the certified reinsurer posts security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the superintendent downgrades the rating of a certified reinsurer, the certified reinsurer shall be subject to the security requirements applicable to its new rating for all business that it has assumed as a certified reinsurer.

(c) Upon the superintendent's suspension, revocation or other termination of the certification of a certified reinsurer, unless the assuming insurer posts security in accordance with section 125.6(b) of this Part, the ceding insurer may not continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Part 126 of this Title (Insurance Regulation 114), the superintendent may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or suspension, revocation or other termination of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may take credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the superintendent finds the reinsurance to be at high risk of uncollectibility.

(8) Qualified Jurisdictions.

(i) If, upon conducting an evaluation under this paragraph with respect to the reinsurance supervisory system of any alien assuming insurer, the superintendent determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the superintendent will publish notice and evidence of such recognition in an appropriate manner. The superintendent may withdraw recognition of a jurisdiction that is no longer qualified and will provide notice by publication or otherwise.

(ii) In order to determine whether the domiciliary jurisdiction of an alien assuming insurer is eligible to be recognized as a qualified jurisdiction, the superintendent will evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The superintendent will create and publish a list of jurisdictions whose domiciliary reinsurers may be approved by the superintendent as eligible for certification. No jurisdiction will be deemed to be qualified unless it agrees to share information in accordance with Insurance Law § 110 and cooperate with the superintendent with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the superintendent, include the following:

(a) The framework under which the assuming insurer is regulated;

(b) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance;

(c) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction;

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

(e) The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the superintendent in particular;

(f) The history of performance by assuming insurers in the domiciliary jurisdiction;

(g) Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the superintendent has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards;

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

(i) Any other matters deemed relevant by the superintendent.

(iii) The superintendent will consider the list published through the relevant NAIC committee in determining qualified jurisdictions. However, the superintendent may approve a jurisdiction as qualified that does not appear on the list of qualified jurisdictions. In such a case, the superintendent will provide notice to the relevant NAIC committee.

(iv) A U.S. jurisdiction that is NAIC-accredited will be deemed a qualified jurisdiction.

(9) Recognition of Certification Issued by an NAIC-Accredited Jurisdiction.

(i) If an applicant for certification has been certified as a reinsurer in an NAIC-accredited jurisdiction, the superintendent may accept that jurisdiction's certification and rating, if the assuming insurer submits a properly executed Form CR-1 and any other additional information the superintendent requires. In such a case, the assuming insurer will be considered a certified reinsurer in this State.

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

(iii) The superintendent may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with paragraph (8)(vii)(a) of this subdivision.

(iv) The superintendent may withdraw recognition of the other jurisdiction's certification at any time upon written notice to the certified reinsurer. Unless the superintendent suspends, revokes or otherwise terminates the certified reinsurer's certification, the certified reinsurer's certification shall remain in good standing in this State for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this State.

(10) Reinsurance Contract Terms. A ceding reinsurer may not enter into a reinsurance contract with a certified assuming insurer unless the reinsurance contract shall include:

(i) an insolvency clause as provided in Insurance Law § 1308(a)(2)(A);

(ii) a funding clause requiring the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer;

(iii) a provision stating that any dispute, suit, action or proceeding under the contract, or any dispute, suit, action or proceeding related to or arising out of, directly, indirectly, or incidentally, the contract, or out of the transactions and actions arising from performance of the contract, will 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, will comply with the requirements necessary to give that court jurisdiction, will abide by the final decision of that court or of an appellate court in the event of an appeal, and will consent to any effort to enforce the final decision of the court in the home jurisdiction of the alien assuming insurer, including the granting of full faith and credit or comity in the home jurisdiction of the assuming insurer or any other jurisdiction where the assuming insurer is subject to jurisdiction. Such provision shall not override an agreement between the ceding insurer and the unauthorized alien assuming insurer to submit any and all disputes to arbitration, in accordance with the laws of the U.S. or any state thereof; and

(iv) a provision stating that any dispute, suit, action or proceeding under the contract, or any dispute, suit, action or proceeding related to or arising out of, directly, indirectly, or incidentally, the contract, or out of the transactions and actions arising from performance of the contract, will be governed by and construed in accordance with either the laws of the State of New York or the laws of the state in which the ceding insurer is domiciled or the laws of any state chosen by the ceding insurer. Such provision shall not override an agreement between the ceding insurer and the unauthorized alien assuming insurer to submit any and all disputes to arbitration, in accordance with the laws of the U.S. or any state thereof.

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

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

(i) the assuming insurer, if accredited in this State, or if [qualified] certified under the provisions of section 125.4(h) of this Part, as to the total net reserves held by it and by all retrocessionaires, or
Section 125.6(b) is amended as follows:

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

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

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

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

Section 125.7 is amended to read as follows:

Section 125.7 Certificate of recognition.

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

Section 125.8 is amended to read as follows:

Section 125.8 Annual filing and processing charge.

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