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SALUS POPULI SUPREMA LEX ESTO

*"The welfare of the people shall be the supreme law."*



JASON KANDER  
SECRETARY OF STATE

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at <http://www.sos.mo.gov/adrules/pubsched.asp>

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## HOW TO CITE RULES AND RSMo

**RULES**—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

**RSMo**—The most recent version of the statute containing the section number and the date.

**R**ules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety, or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons, and findings which support its conclusion that there is an immediate danger to the public health, safety, or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

**R**ules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

**A**ll emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

## Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

### Division 200—Insurance Solvency and Company Regulation

#### Chapter 2—Reinsurance and Assumptions

#### EMERGENCY AMENDMENT

**20 CSR 200-2.100 Credit for Reinsurance.** The department is amending this rule so that the regulation is consistent with the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Act and Regulation and section 375.246, RSMo, which was amended by HB 133 (2013). The department is deleting the current exhibits and replacing them with new exhibits. The department is also adding new exhibits 6, 7, and 8.

*PURPOSE:* This amendment is intended to make this regulation consistent with the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Act and Regulation and section 375.246, RSMo, which grants the director with the authority to determine minimum capital and surplus and financial strength ratings requirements for an assuming insurer to maintain in order to be certified by the director as being allowed to post reduced collateral with an emergency rulemaking. The department is deleting the current exhibits and replacing them with new exhibits. The department is also adding new exhibits 6, 7, and 8.

**EMERGENCY STATEMENT:** An emergency amendment to 20 CSR 200-2.100 is required to implement statutory amendments enacted in HB 133 (2013) to section 375.246, RSMo Supp. 2012, allowing ceding insurers a credit for reinsurance contracts entered into on or after January 1, 2014, the same date the amended statute becomes law. The legislature expressed a specific intent in section 375.246(5)(e) and (f) for the director, by rule, to assign a rating to each certified reinsurer, with a reinsurer's obligations to be consistent with the rating. By establishing a January 1, 2014 effective date for its statutory amendment, the General Assembly expressed its intent for these rules to be effective at the earliest reinsurance contracting period. Without a rule in effect on January 1, 2014, reinsurers cannot take advantage of the credits allowed by the amended statute and may not fully understand their obligations under the amended statute. Missouri domestic insurers currently have over six (6) billion dollars in collateralized reinsurance recoverables. The emergency rule amendment implementing the amendments to section 375.246 will enable reinsurers to increase their capacity to write additional reinsurance in Missouri for the risks they cover, including, but not limited to, catastrophic risks and commercial liability, which are important components of sound business operations. A failure to enact an emergency amendment to this rule would delay the possibility for certification of reinsurers that qualify for reduced collateral until 2015 because reinsurance contracts are generally written or renewed on a calendar year basis in January of each year. This delay would have immediate negative financial ramifications for Missouri companies, in that reinsurers will be required to fully collateralize their estimated claims liability for contracts initiating on January 1, 2014, tying up expensive capital that could be redeployed to increase underwriting capacity. Therefore, an emergency amendment will encourage reinsurers to write additional reinsurance in Missouri effective January 1, 2014. If no amendment is promulgated effective January 1, 2014, companies wanting to do business in Missouri will be at a competitive disadvantage. As of July 2013, the NAIC Credit for Reinsurance Model Regulation, with which this regulation is consistent, has been adopted by nine (9) states and is being considered in additional states. Three (3) states have already approved reinsurers for collateral reduction in accordance with the model regulation. As a result, the Department of Insurance, Financial Institutions and Professional Registration finds a compelling governmental interest exists that requires this emergency action. A proposed amendment that covers the same material, is published in this issue of the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating this emergency and complies with the protections extended in the *Missouri* and *United States Constitutions*. The department believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed September 23, 2013, becomes effective January 1, 2014, and expires June 29, 2014.

(1) If any provision[s] of this rule, or the [ir] application of the provision to any person or circumstance, [are] is held invalid, [that determination shall not affect other provisions or applications of this rule which can be given effect without the invalid provision or application and to that end the provisions of this rule are separable] the remainder of this rule, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

(2) **Credit for Reinsurance—Reinsurer Licensed in this State.** Pursuant to section 375.246.1(1), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer[s which were] that was licensed in this state as of [the] any date [of the ceding insurer's statutory financial statement] on which statutory financial statement credit for reinsurance is claimed. For purposes of this rule, an insurer whose certificate of authority has been suspended or revoked for one (1) or more of the

grounds set forth in section 375.881.1(1), (2), or (3), RSMo, shall be deemed not licensed in this state.

(3) Credit for Reinsurance—Accredited Reinsurers.

(A) Pursuant to section 375.246.1(2), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer *[which]* that is accredited as a reinsurer in this state as of the date *[of the ceding insurer's statutory financial statement]* on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer *[is one which]* must—

1. File/s with the director the following:

A. A properly executed *[application for approval as an authorized reinsurer]* **Reinsurer Application**, the form of which is set forth as Exhibit 1 of this rule, included herein **revised September 23, 2013, or any form which substantially comports with the specified form;**

B. A certified copy of *[a letter or]* a certificate of authority or *[of compliance as]* other acceptable evidence that *[the company]* it is licensed to transact insurance or reinsurance in at least one (1) state or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) state;

C. A properly executed appointment of the director to acknowledge or receive service of process, the form of which is set forth as Exhibit 2 of this rule included herein, **revised September 23, 2013, or any form which substantially comports with the specified form;**

D. A properly executed **Certificate of Assuming Insurer** (Form AR-1), which is set forth as Exhibit 3 of this rule included herein, **revised September 23, 2013, or any form which substantially comports with the specified form**, as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;

E. A copy of its articles of incorporation or association, as amended, duly certified by the proper officer of the state under whose laws it is organized or incorporated;

F. A copy of its bylaws, certified by its secretary;

G. *[A biographical sketch of its directors and officers as listed in its annual statement, accompanied by the original signatures of those directors and officers, the form of which is set forth as Exhibit 4 of this rule, included here]* **The National Association of Insurance Commissioner (NAIC) Uniform Certificate of Authority Application (UCAA) Form 11 Biographical Affidavit, the form of which is included herein as Exhibit 4 of this rule, revised September 23, 2013, or any form which substantially comports with the specified form; and**

H. A copy of the registration statement of any holding company system if it is a member of such a system; *and*,

*II. Its most currently dated audited financial report;*

2. File/s with the director in addition to its initial application, and annually after that, prior to March 1 of each year, *a [certified] annually with the director a copy of [the] its annual statement [it has] filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, [including an actuarial certification and management discussion and analysis] and a copy of its most recent audited financial statement.*

3. Include/s, with the documents required to be filed under the preceding provisions of *[this]* section (3) of this rule, the appropriate filing fees as set forth in section 374.230, RSMo; and

4. Maintain/s a surplus as regards policyholders in an amount not less than twenty (20) million dollars, *[and whose accreditation has not been denied by the director within ninety (90) days of its submission or, in the case of companies with a surplus as regards policyholders of less than twenty (20) million dollars, whose accreditation has been approved by the director]* or obtain the affirmative approval of the director upon a finding

that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

(B) If the director determines that the assuming insurer has failed to meet or maintain any of these qualifications, *[s/he]* the director may, upon written notice and opportunity for a hearing, *[may]* suspend or revoke the accreditation. *[No c]* Credit shall not be allowed a domestic ceding insurer under section (3) of this rule, if the assuming insurer's accreditation has been revoked by the director, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the director *[with respect to reinsurance ceded on or after December 31, 1991, if the assuming insurer's accreditation has been denied or revoked by the director after notice and hearing].*

(4) Credit for Reinsurance—*[Qualified]* Reinsurer Domiciled *[and Licensed]* in Another State.

(A) Pursuant to section 375.246.1(3), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer *[which is qualified as a reinsurer as of the date of the ceding insurer's statutory financial statement. A qualified reinsurer is one which]* that as of any date on which statutory financial statement credit for reinsurance is claimed—

1. Files *[the following]* with the director:—

A. A properly executed *[application for approval as an authorized reinsurer]* **Reinsurer Application**, the form of which is set forth as Exhibit 1 of this rule, included herein, **revised September 23, 2013, or any form which substantially comports with the specified form;**

*[B. Certified copy of a letter or a certificate of authority or of compliance as evidence that the company is licensed to transact insurance or reinsurance in at least one (1) state or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) state; and]*

*[C.]B.* A properly executed appointment of the director to acknowledge or receive service of process, the form of which is set forth as Exhibit 2 of this rule, included herein, **revised September 23, 2013, or any form which substantially comports with the specified form; and**

C. A properly executed Form AR-2, the form of which is included herein as Exhibit 5 of this rule, revised September 23, 2013, or any form which substantially comports with the specified form, as evidence of its submission to this state's authority to examine its books and records.

2. Files with the director in addition to its initial *[application]* filing, and annually after that, prior to March 1 of each year, a certified copy of the annual statement it has filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, including an actuarial certification and management discussion and analysis required as part of the *[National Association of Insurance Commissioner (NAIC)]* annual statement requirements;

*[3. Files with the director a properly executed Form AR-2, the form of which is set forth as Exhibit 5 of this rule, included herein, as evidence of its submission to this state's authority to examine its books and records;]*

*[4.]B.* Is domiciled *[and licensed]* in (or, in the case of a United States branch of an alien assuming insurer, is entered through *[and licensed in]*) a state *[which]* that employs standards regarding credit for reinsurance substantially similar to those applicable under *[the Law on Credit Reinsurance,]* section 375.246, RSMo (the Act) and this rule;

*[5.]4.* Includes with the documents required to be filed under preceding provisions of *[this]* section (4) of this rule, the appropriate filing fees as set forth in section 374.230, RSMo; and

*[6.]5.* Maintains a surplus as regards policyholders in an amount

not less than twenty (20) million dollars.

(B) The provisions of *[this]* section (4) of this rule relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, “substantially similar” standards means credit for reinsurance standards *[which]* that the director determines equal or exceed the standards of Reinsurance Model Act (the Act) and this rule.

(5) Credit for Reinsurance—Reinsurers Maintaining Trust Funds.

(A) Pursuant to section 375.246.1(4), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of *[the]* any date *[of the ceding insurer’s statutory financial statement]* on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed and therefore for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed in this rule in a qualified United States financial institution as defined in section 375.246.3(2), RSMo, for the payment of the valid claims of its United States *[policyholders and]* domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the director substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the director to determine the sufficiency of the trust fund.

(B) The following requirements apply to the following categories of assuming insurer:

1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer’s liabilities attributable to *[business written in the]* reinsurance ceded by United States domiciled insurers, and in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty (20) million dollars, except as provided in paragraph (5)(B)2. of this rule;

2. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three (3) full years, the director with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer’s liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer’s liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

*[2.]3.* The trust fund for a group *[of]* including incorporated and individual unincorporated underwriters shall consist of *[funds in trust in an amount not less than the group’s aggregate liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which one hundred (100) million dollars shall be held jointly for the benefit of the United States ceding insurers of any member of the group. The group shall make available to the director annual certifications by the group’s domiciliary regulator and its independent public accountants of the solvency of each underwriter member of the group; and]*:

A. For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters’ several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

B. For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the respective underwriters’ several insurance and reinsurance liabilities attributable to business written in the United States; and

C. In addition to these trusts, the group shall maintain a trustee surplus of which one-hundred (100) million dollars shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of the account.

4. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group’s domiciliary regulator as are the unincorporated members. The group shall, within ninety (90) days after its financial statements are due to be filed with the group’s domiciliary regulator, provide to the director—

A. An annual certification by the group’s domiciliary regulator of the solvency of each underwriter member of the group; or

B. If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

*[3.]5.* The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders’ surplus of ten (10) billion dollars (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and *Accounting Practices and Procedures Manual* of the NAIC) and which has continuously *[has]* transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall—

A. *[c]*Consist of funds in trust in an amount not less than the assuming insurer’s several liabilities attributable to business ceded by United States domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of *[that]* such group *[and, in addition, the group shall]*;

B. *[m]*Maintain a joint trustee surplus of which one hundred (100) million dollars shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group. *[The group shall file a]; and*

C. File with the director the following forms:

(I) A Reinsurer Application, the form of which is included herein as Exhibit 1 of this rule, revised September 23, 2013, or any form which substantially comports with the specified form;

(II) A properly executed Form AR-1 the form of which is included herein as Exhibit 3 of this rule, revised September 23, 2013, or any form which substantially comports with the specified form, as evidence of the submission to this state’s authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any examination. *[.]*; and

(III) *[The group shall make available to the director annual certifications by the member’s domiciliary regulators and their independent public accountants of the solvency of each member of the group.]* Includes with the documents required to be filed under preceding provisions of section (5) of this rule the appropriate filing fees as set forth in section 374.230, RSMo.

D. Within ninety (90) days after the statements are due to be filed with the group’s domiciliary regulator, the group shall file with the director an annual certification of each underwriter member’s solvency by the member’s domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

(C) Trust Instrument.

1. *[That trust shall be established in a form]* Credit for reinsurance shall not be granted unless the form of the trust and any

amendments to the trust have been approved by either the director [and complying with section 375.246.1., RSMo and this section.] or commissioner of the state where the trust is domiciled or the director or commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the director or commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that—

[1.A. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States;

[2.B. Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States [policyholders and] ceding insurers, their assigns and successors in interest;

[3.C. The trust shall be subject to examination as determined by the director;

[4.D. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and

[5.E. No later than February 28 of each year, the trustees of the trust shall report to the director in writing setting forth the balance [of] in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the [next] following December 31; and]

[6. No amendment to the trust shall be effective unless reviewed and approved in advance by the director].

## 2. Trust Assets.

A. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subparagraph (5)(C)2.A. of this rule, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the director with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the director with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

B. The assets shall be distributed by and claims shall be filed with and valued by the director with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

C. If the director with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States beneficiaries of the trust, the director with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

D. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

(D) For purposes of this subsection, the term "liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include:

1. For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance—

A. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

B. Reserves for losses reported and outstanding;

C. Reserves for losses incurred but not reported;

D. Reserves for allocated loss expenses; and

E. Unearned premiums.

2. For business ceded by domestic insurers authorized to write life, health, and annuity insurance—

A. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

B. Aggregate reserves for accident and health policies;

C. Deposit funds and other liabilities without life or disability contingencies; and

D. Liabilities for policy and contract claims.

(E) Assets deposited in trusts established pursuant to section 375.246.1, RSMo, of this rule shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States financial institution as defined in section 375.246.3(1), RSMo, clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution, as defined in section 375.246.3(1), RSMo, and investments of the type specified in subsection (5)(E) of this rule, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent (5%) of total investments. No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under paragraphs (5)(E)1., (5)(E)3., subparagraph (5)(E)6.B., or paragraph (5)(E)7. of this rule, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of section 375.246.1(4), RSMo, shall be invested only as follows:

1. Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed, or guaranteed by—

A. The United States or by any agency or instrumentality of the United States;

B. A state of the United States;

C. A territory, possession, or other governmental unit of the United States;

D. An agency or instrumentality of a governmental unit referred to in subparagraphs (5)(E)1.B. and C. of this rule if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under subparagraph (5)(E)1.D. of this rule, if payable solely out of special assessments on properties benefited by local improvements; or

E. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

2. Obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution (other than an insurance company) or that are assumed or guaranteed by a solvent United States institution (other than an insurance company) and that are not in default as to principal or interest if the obligations—

A. Are rated A or higher (or the equivalent) by the securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;



B. Are insured by at least one (1) authorized insurer (other than the investing insurer or a parent, subsidiary, or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

C. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

3. Obligations issued, assumed, or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

4. An investment made pursuant to the provisions of paragraphs (5)(E)1., 2., or 3. of this rule shall be subject to the following additional limitations:

A. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent (5%) of the assets of the trust;

B. An investment in any one mortgage-related security shall not exceed five percent (5%) of the assets of the trust;

C. The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent (25%) of the assets of the trust; and

D. Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under subparagraphs (5)(E)2.A. and (5)(E)2.C. of this rule, but shall not exceed two percent (2%) of the assets of the trust.

5. As used in this rule—

A. "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either—

(I) Represents ownership of one (1) or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that—

(a) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(b) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Section 1703; or

(II) Is secured by one (1) or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of items (5)(E)5.A.(I)(a) and (5)(E)5.A.(I)(b) of this rule;

B. "Promissory note," when used in connection with a

manufactured home, shall also include a loan, advance, or credit sale as evidenced by a retail installment sales contract or other instrument.

6. Equity Interests.

A. Investments in common shares or partnership interests of a solvent United States institution are permissible if—

(I) Its obligations and preferred shares, if any, are eligible as investments under paragraph (5)(E)6. of this rule; and

(II) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. sections 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interest under part (5)(E)6.A.(II) of this rule an amount exceeding one percent (1%) of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

B. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if—

(I) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(II) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

C. An investment or loan upon any one institution's outstanding equity interests shall not exceed one percent (1%) of the assets of the trust. The cost of an investment in equity interests made pursuant to subparagraph (5)(E)6.C. of this rule, when added to the aggregate cost of other investments in equity interests then held pursuant to subparagraph (5)(E)6.A. of this rule, shall not exceed ten percent (10%) of the assets in the trust;

7. Obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

8. Investment companies.

A. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. section 80a, are permissible investments if the investment company—

(I) Invests at least ninety percent (90%) of its assets in the types of securities that qualify as an investment under paragraphs (5)(E)1., (5)(E)2., or (5)(E)3. of this rule or invests in securities that are determined by the director to be substantively similar to the types of securities set forth in paragraphs (5)(E)1., (5)(E)2., or (5)(E)3. of this rule; or

(II) Invests at least ninety percent (90%) of its assets in the types of equity interests that qualify as an investment under subparagraph (5)(E)6.A. of this rule;

B. Investments made by a trust in investment companies under subparagraph (5)(E)8.B. of this rule shall not exceed the following limitations:

(I) An investment in an investment company qualifying under part (5)(E)8.A.(I) of this rule shall not exceed ten percent (10%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent (25%) of the assets in the trust; and

(II) Investments in an investment company qualifying under part (5)(E)8.A.(II) of this rule shall not exceed five percent (5%) of the assets in the trust, and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to subparagraph (5)(E)6.A. of this rule.

### 9. Letters of Credit.

A. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the director), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

B. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

(F) A specific security provided to a ceding insurer by an assuming insurer pursuant to section (7) of this rule shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to section (5) of this rule.

### (6) Credit for Reinsurance—Certified Reinsurers.

(A) Pursuant to section 375.246.1(5), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under section (6) of this rule. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the director. The security shall be in a form consistent with the provisions of sections 375.246.1(5) and 375.246.2, RSMo, and sections (9), (10), or (11) of this rule. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

1. Ratings	Security Required
Secure – 1	0%
Secure – 2	10%
Secure – 3	20%
Secure – 4	50%
Secure – 5	75%
Vulnerable – 6	100%

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

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

4. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one (1) year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the director. The one (1) year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

- A. Line 1: Fire;
- B. Line 2: Allied Lines;
- C. Line 3: Farmowners multiple peril;
- D. Line 4: Homeowners multiple peril;
- E. Line 5: Commercial multiple peril;
- F. Line 9: Inland Marine;
- G. Line 12: Earthquake; and
- H. Line 21: Auto physical damage.

5. Credit for reinsurance under section (6) of this rule shall

apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to section (6) of this rule with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

6. Nothing in section (6) of this rule 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 section (6) of this rule.

### (B) Certification Procedure.

1. The director shall post notice on the department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The director may not take final action on the application until at least thirty (30) days after posting the notice required by paragraph (6)(B)1. of this rule.

2. The director shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with subsection (6)(A) of this rule. The director shall publish a list of all certified reinsurers and their ratings.

3. In order to be eligible for certification, the assuming insurer shall meet the following requirements:

A. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the director pursuant to subsection (6)(C) of this rule.

B. The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred-fifty (250) million dollars calculated in accordance with subparagraph (6)(B)4.H. of this rule. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least two hundred-fifty (250) million dollars and a central fund containing a balance of at least two hundred-fifty (250) million dollars.

C. The assuming insurer must maintain financial strength ratings from two (2) or more rating agencies deemed acceptable by the director. 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 (1) factor used by the director in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following: Standard & Poor's, Moody's Investors Service, Fitch Ratings, A.M. Best Company, or any other nationally recognized statistical rating organization.

D. The certified reinsurer must comply with any other requirements reasonably imposed by the director.

4. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

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 below. The director shall

use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two (2) financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification—

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

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

D. For certified reinsurers not domiciled in the United States, a review annually of the NAIC Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers).

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 ninety (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 insurance enterprise, on the basis described in subparagraph (6)(B)4.H. of this rule;

H. For certified reinsurers not domiciled in the United States, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-United States jurisdiction supervisor). Upon the initial application for certification, the director will consider audited financial statements for the last three (3) years filed with its non-United States jurisdiction supervisor;

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, which involves United States ceding insurers. The director shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

K. Any other information deemed relevant by the director.

5. Based on the analysis conducted under subparagraph (6)(B)4.E. of this rule of a certified reinsurer's reputation for prompt payment of claims, the director may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the director shall, at a minimum, increase the security the certified reinsurer is required to post by one (1) rating level under subparagraph (6)(B)4.A. of this rule if the director finds that—

A. More than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed one hundred thousand dollars (\$100,000) for each cedent; or

B. The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds fifty (50) million dollars.

6. The assuming insurer must submit a properly executed Form CR-1, the form of which is included herein as Exhibit 6 of this rule, revised September 23, 2013, or any form which substantially comports with the specified form, as evidence of its submission to the jurisdiction of this state, appointment of the director as an agent for service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The director shall not certify any assuming insurer that is domiciled in a jurisdiction that the director has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

7. The certified reinsurer must agree to meet applicable information filing requirements as determined by the director, both with respect to an initial application for certification and on an ongoing basis. The applicable information filing requirements are as follows:

A. Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

B. Annually, the NAIC Form CR-F or CR-S, the forms of which are included herein as Exhibits 7 and 8, respectively, of this rule, revised September 23, 2013, or any form which substantially

comports with the specified form as applicable;

C. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subparagraph (6)(B)7.D. of this rule;

D. Annually, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three (3) years filed with the certified reinsurer's supervisor;

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

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

G. Includes with the documents required to be filed under preceding provisions of section (6) of this rule the appropriate filing fees as set forth in section 374.230, RSMo; and

H. Any other information that the director may reasonably require.

8. The information required to be filed pursuant to paragraph (6)(B)7. of this rule shall be deemed records which are open to the inspection of the public in accordance with sections 374.070 and 610.011, RSMo. Any insurance company claiming that such filings are trade secrets or proprietary information shall comply with the procedures as set forth in 20 CSR 10-2.400(8).

#### 9. Change in Rating or Revocation of Certification.

A. In the case of a downgrade by a rating agency or other disqualifying circumstance, the director shall, upon written notice, assign a new rating to the certified reinsurer in accordance with the requirements of subparagraph (6)(B)4.A. of this rule.

B. The director shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time, if the certified reinsurer fails to meet or maintain its obligations or security requirements under section (6) of this rule, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the director to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

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

D. Upon revocation of the certification of a certified reinsurer by the director, the assuming insurer shall be required to post security in accordance with section (8) of this rule in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with section (5) of this rule, the director may allow additional credit equal to the ceding insurer's *pro rata* share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certi-

fication, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the director to be at high risk of uncollectibility.

#### (C) Qualified Jurisdictions.

1. If, upon conducting an evaluation under section (6) of this rule with respect to the reinsurance supervisory system of any non-United States assuming insurer, the director determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the director shall publish notice and evidence of such recognition in an appropriate manner. The director may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

2. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the director shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The director shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the director as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the director 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 director, include but are not limited to 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 United States regulators in general and the director 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 United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the director has determined that it does not adequately and promptly enforce final United States 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 director.

3. A list of qualified jurisdictions shall be published through the NAIC Committee Process. The director may consider this list in determining qualified jurisdictions. If the director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the director shall provide thoroughly documented justification with respect to the criteria provided under subsection (8)(C) of this rule.

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

#### (D) Recognition of Certification Issued by an NAIC Accredited

**Jurisdiction.**

1. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the director has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1, the form of which is included herein as Exhibit 6 of this rule, revised September 23, 2013, or any form which substantially comports with the specified form, and such additional information as the director requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

2. 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 director of any change in its status or rating within ten (10) days after receiving notice of the change.

3. The director may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subparagraph (6)(B)7.A. of this rule.

4. The director may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the director suspends or revokes the certified reinsurer's certification in accordance with subparagraph (6)(B)7.B. of this rule, the certified reinsurer's certification shall remain in good standing in this state for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(E) **Mandatory Funding Clause.** In addition to the clauses required under section (12) of this rule, reinsurance contracts entered into or renewed under section (6) of this rule shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under section (6) of this rule for reinsurance ceded to the certified reinsurer.

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

*[(6)](7)* Credit for Reinsurance Required by Law. Pursuant to section 375.246.1*[(5)](6)*, RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 375.246.1(1), (2), (3), *[or]* (4), or (5), RSMo, but only *[with respect]* as to the insurance of risks located in jurisdictions where *[that]* the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means *[any]* state, district, or territory of the United States and any lawful national government.

*[(7)](8)* Asset or Reduction From Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer **not Meeting the Requirements of Sections (2) Through (7) of this Rule.**

(A) Pursuant to section 375.246.2., RSMo, the director shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 375.246.1., RSMo, in an amount not exceeding the liabilities carried by the ceding insurer. *[That]* The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with *[the]* such assuming insurer as security for the payment of obligations under *[it]* the reinsurance contract. *[That]* The security *[must]* shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in section 375.246.3(2), RSMo. This security may be in the form of any of the following:

*[(A)]1.* Cash;

*[(B)]2.* Securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purpose and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

*[(C)]3.* Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in section 375.246.3(1), RSMo, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding *[company]* insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation), shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, *[shall]* continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; *[and]* or

*[(D)]4.* Any other form of security acceptable to the director *[and approved by the attorney general]*.

(B) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to *[subsections (7)(A)–(C)]* section (8) of this rule shall be allowed only when the requirements of section *[(8), (9) or (10)]* (12) and the applicable portions of sections (9), (10), or (11) of this rule *[are met]* have been satisfied.

*[(8)](9)* Trust Agreements Qualified Under Section *[(7)]* (8).

(A) As used in *[this]* section (9) of this rule—

1. "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes, and is limited to, the court-appointed domiciliary receiver (including conservator, rehabilitator, or liquidator);

2. "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer; and

3. "Obligations," as used in paragraph *[(8)](9)(B)11.* of this rule, means—

A. Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

B. Reserves for reinsured losses reported and outstanding;

C. Reserves for reinsured losses incurred but not reported; and

D. Reserves for allocated reinsured loss expenses and unearned premiums.

(B) Required Conditions.

1. The trust agreement shall be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified United States financial institution as defined in section 375.246.3(2), RSMo.

2. The trust agreement shall create a trust account into which assets shall be deposited.

3. All assets in the trust account shall be held by the trustee at the trustee's office in the United States, *except that a bank may apply for the director's permission to use a foreign branch office of that bank as trustee for trust agreements established pursuant to this section. If the director approves the use of that foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in subparagraph (8)(B)4.A. of this rule also must be presentable, as a matter of legal right, at the trustee's principal office in the United States]*.

4. The trust agreement shall provide that—

A. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

B. No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be

required to acknowledge receipt of withdrawn assets;

C. It is not subject to any conditions or qualifications outside of the trust agreement; and

D. It shall not contain references to any other agreements or documents except as provided for *[under]* in paragraphs *[(8)/(9)(B)11. and (9)(B)12.]* of this rule.

5. The trust agreement shall be established for the sole benefit of the beneficiary.

6. The trust agreement shall require the trustee to—

A. Receive assets and hold all assets in a safe place;

B. Determine that all assets are in the form that the beneficiary, or the trustee upon direction by the beneficiary, **may** whenever necessary, *[, may]* negotiate any **such** assets, without consent or signature from the grantor or any other person or entity;

C. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

D. Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account;

E. *[Take immediately, upon]* **Upon** written demand of the beneficiary, **immediately take** any **and all** steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of these assets to the beneficiary; and

F. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee **may**, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset *[may]* withdraw *[the]* **such** asset upon condition that the proceeds are paid into the trust account.

7. The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

8. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is *[established/]* **domiciled**.

9. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying *[compensation]* **commission** to, or reimbursing the expenses of, the trustee. **In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the director), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.**

10. The trust agreement shall provide that the trustee shall be liable for its *[own]* negligence, willful misconduct, or lack of good faith. **The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.**

11. Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, *[this] the trust agreement[, notwithstanding any other conditions in this rule,]* may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, **only** for the following purposes:

A. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

B. To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred-two percent (102%)

of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

C. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to that termination date, to withdraw amounts equal to those obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in section 375.246.3(2), RSMo, apart from its general assets, in trust for those uses and purposes specified in subparagraphs *[(8)/(9)(B)11.A. and B.]* of this rule as may remain executory after **such** withdrawal and for any period after the termination date.

12. *[The reinsurance agreement entered into in conjunction with a trust agreement may contain, but need not contain, the provisions required by subparagraph (8)(D)1.B. of this rule, so long as the required conditions are included in the trust agreement.]* Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of section (8) of this rule in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

A. To pay or reimburse the ceding insurer for—

(I) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(II) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

B. To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

C. Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in subparagraphs *(9)(B)12.A. and (9)(B)12.B.* of this rule as may remain executory after withdrawal and for any period after the termination date.

13. Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities, or accident and health risks, then the provisions required by paragraph *(9)(B)13.* of this

**rule must be included in the reinsurance agreement.**

(C) Permitted Conditions.

1. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not *[fewer]* less than ninety (90) days after *[receipt by]* the beneficiary and grantor *[off receive]* the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not *[fewer]* less than ninety (90) days after *[receipt by]* the trustee and the beneficiary *[off receive]* the notice, provided that *[this]* **no such** resignation or removal shall *[not]* be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor*[,]* and all assets in the trust have been duly transferred to the new trustee.

2. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and *[from time-to-time]* to receive **from time-to-time** payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends either shall be forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

3. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest those funds and to accept substitutions *[which]* **that** the trustee determines are at least equal in **current fair** market value to the assets withdrawn and that are consistent with the restrictions in subparagraph *[(8)(9)(D)]*1.B. of this rule.

4. The trust agreement may provide that the beneficiary*[,] at any time[,]* may **at any time** designate a party to which all or part of the trust assets are to be transferred. *[That t]*Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

5. The trust agreement may provide that, upon termination of the trust account, all assets not **previously** withdrawn *[previously]* by the beneficiary **shall**, with written approval by the beneficiary, *[shall]* be delivered over to the grantor.

(D) Additional Conditions Applicable to Reinsurance Agreements.

1. A reinsurance agreement*[,] which is entered into in conjunction with a trust agreement and the establishment of a trust account[,]* may contain provisions that $[-]$ —

A. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what *[that]* the agreement is to cover;

*[B.]* *Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender) and investments of the types permitted by the Insurance Code or any combination of the previously mentioned; provided, that investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, then that trust agreement may contain the provisions required by paragraph (8)(D)1. in lieu of including those provisions in the reinsurance agreement;*

*[C.]***B.** Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments $[,]$  or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, *[whenever necessary,]* may **whenever necessary** negotiate *[any]* these assets without consent or signature from the assuming insurer or any other entity;

*[D.]***C.** Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

*[E.]***D.** Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including, without limitation, any liquidator, rehabilitator, receiver, or conservator of *[that]* **such** company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(I) To **pay or** reimburse the ceding insurer for the assuming insurer's share **under the specific reinsurance agreement** of premiums returned, **but not yet recovered from the assuming insurer**, to the owners of policies reinsured under the reinsurance agreement because of cancellation of *[those]* **such** policies;

(II) To **pay or** reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

(III) *[To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. That account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses and unearned premium reserves]* **To pay or reimburse the ceding insurer for any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;** and

(IV) To *[pay any other amounts the ceding insurer claims are due under the reinsurance agreement]* **make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.**

2. The reinsurance agreement also may contain provisions that—

A. Give the assuming insurer the right to seek approval from the ceding insurer, **which shall not be unreasonably or arbitrarily withheld**, to withdraw from the trust account **all or any** part of the trust assets and transfer those assets to the assuming insurer $[,]$ , provided—

(I) The assuming insurer **shall**, at the time of that withdrawal, *[shall]* replace the withdrawn assets with other qualified assets having a **current fair** market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(II) After *[that]* withdrawal and transfer, the **current fair** market value of the trust account is no less than one hundred-two percent (102%) of the required amount. *[The ceding insurer shall not unreasonably or arbitrarily withhold its approval;]*

B. Provide for—

*[(I)]* *The* return of any amount withdrawn in excess of the actual amounts $[-]$  required for part/s *[(8)(D)1.E.(I)-(III)]* or, in the case of part *[(8)(D)1.E.(IV)]*, any amounts that are subsequently determined not to be due; and *[(9)(D)1.D.(I)-(IV)]* of this rule, and for interest payments at a rate not in excess of the prime rate of interest on such amounts.

*[(III)]* Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to part *[(8)(D)1.E.(III)]*; and

C. Permit the award by any arbitration panel or court of competent jurisdiction of—

(I) Interest at a rate different from that provided in *[part (8)(D)1.B.(III)]* subparagraph *[(9)(D)2.B.]* of this rule;

(II) Court *[of]* or arbitration costs;

(III) Attorney's fees; and

(IV) Any other reasonable expenses.

**[3.](E)** Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but *[that]* such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

**[4.](F)** Existing agreements. Notwithstanding the effective date of this rule, *[January 1, 1992,]* any trust agreement or underlying reinsurance agreement in existence prior to January 1, *[1991] 2013*, will continue to be acceptable until December 31, *[1991] 2013*, at which time the agreements will have to be in full compliance with this rule for the trust agreement to be acceptable.

**[5.](G)** The failure of any trust agreement to specifically identify the beneficiary as defined in subsection *[(8)](9)(A)* of this rule shall not be construed to affect any actions or rights which the director may take or possess pursuant to the provisions of the laws of this state.

**[(9)](10)** Letters of Credit Qualified Under Section *[(7)] (8)*.

(A) The letter of credit must be clean, irrevocable, *[and]* unconditional,*[/]* and issued or confirmed by a qualified United States financial institution as defined in section 375.246.3(1), RSMo. The letter of credit shall contain an issue date and *[date of]* expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in paragraph *[(9)](H)1.* **(10)(H)1.** of this rule. As used in *[this]* section **(10) of this rule**, “beneficiary” means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes, and is limited to, the court-appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).

(B) The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for *[that]* the letter of credit. The boxed section shall be clearly marked to indicate that *[the]* such information is for internal identification purposes only.

(C) The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect *[to the letter of credit] thereto*.

(D) The term of the letter of credit shall be for at least one (1) year and shall contain an “evergreen clause” *[which]* that prevents the expiration of the letter of credit without due notice from the issuer. The “evergreen clause” shall provide for a period of no less than thirty (30) days’ notice prior to *[expiry]* expiration date or nonrenewal.

(E) The letter of credit shall state whether it is subject to *[or]* and governed by the laws of this state or the *Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce* (Publication *[400] 600*) (UCP 600) or *International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98)*, or any successor publication, and all drafts drawn *thereunder* *[the letter of credit]* shall be presentable at an office in the United States of a qualified United States financial institution.

(F) If the letter of credit is made subject to the *Uniform Customs*

*and Practice for Documentary Credits of the International Chamber of Commerce* (Publication *[400] 500*), or any successor publication, then the letter of credit shall specifically *[shall]* address and *[make provision]* provide for an extension of time to draw against the letter of credit in the event that one (1) or more of the occurrences specified in Article *[19]17* of Publication *[400] 500* or any other successor publication, occur.

*[(G)]* The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to section 375.246.3(1), RSMo.]

*[(H)](G)* If the letter of credit is issued by a *[qualified United States]* financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection *[(9)](G)] (10)(A)* of this rule, then the following additional requirements shall be met:

1. The issuing *[qualified United States]* financial institution shall formally designate the *[conforming]* confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

2. The “evergreen clause” shall provide for thirty (30) days’ notice prior to *[expiry]* expiration date for nonrenewal.

*[(I)](H)* Reinsurance Agreement Provisions.

1. The reinsurance agreement,*[/]* in conjunction with which the letter of credit is obtained,*[/]* may contain provisions *[which]* that:*[-]*

A. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;

B. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer,*[/]* pursuant to the provisions of the reinsurance agreement,*[/]* may be drawn upon at any time, notwithstanding any other provisions in *[that]* the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one (1) or more of the following reasons:

(I) To pay or reimburse the ceding insurer for the assuming insurer’s share *[of premiums returned to the owners of policies reinsured]* under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of those policies;

(II) To pay or reimburse the ceding insurer for the assuming insurer’s share, *[of surrenders and benefits or losses paid by the ceding insurer]* under the *[terms and provisions of the policies reinsured under the]* specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement;

*[(III)]* To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer’s liabilities for policies ceded under the agreement (that amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and]

*[(IV)](III)* To pay or reimburse the ceding insurer for any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer *[claims are due under the reinsurance agreement]*; and

(V) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer’s entire obligations under the reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer’s share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in part **(10)(H)1.B.(I)** of this rule as may



remain after withdrawal and for any period after the termination date.

C. [Apply all of the previously mentioned provisions of paragraph (9)(I)1. of this rule] **All of the provisions of paragraph (10)(H)1. of this rule shall be applied** without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

2. Nothing contained in paragraph [(9)(I)1.] **(10)(H)1.** of this rule shall preclude the ceding insurer and assuming insurer from providing for—

A. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to part [(9)(I)]**(10)(H)1.B.(III)** of this rule; or

B. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the **above** [previously mentioned] or, in the case of part (9)(I)1.B.(IV) of this rule, any amounts that are subsequently determined not to be due.

[3. When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then that reinsurance agreement, in lieu of subparagraph (9)(I)1.B. of this rule, may require that the parties enter into a trust agreement which may be incorporated into the reinsurance agreement or be a separate document.]

[(J) A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.]

[(10)(11) **Other Security.** A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

[(11)(12) **Reinsurance Contract.** Credit will not be granted, **nor an asset or reduction from liability allowed**, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of sections (2), (3), (4), (5), **(6)**, or (7) of this rule or otherwise in compliance with section 375.246.1., RSMo after the adoption of this rule unless the reinsurance agreement includes:

(A) A proper insolvency clause which [shall be substantially similar to the following:] **stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company consistent with section 375.246.5(2), RSMo, or is substantially similar to the following:**

1. In the event of the insolvency of the company, this reinsurance shall be payable directly to the **ceding** company, or to its liquidator, receiver, conservator, or statutory successor on the basis of the liability of the company without diminution because of the insolvency of the **ceding** company, or because the liquidator, receiver, conservator, or statutory successor of the company has failed to pay all or a portion of any claim. [It is agreed, h]However, [that] the liquidator, receiver, conservator, or statutory successor of the company shall give written notice to the reinsurers of the pendency of a claim against the company indicating the policy or bond reinsurance which claim would involve a possible liability on the part of the reinsurers within a reasonable time after that claim is filed in the conservation or liquidation proceeding or in the receivership, and that during the pendency of that claim the reinsurers may investigate that claim and interpose, at their own expense, in the proceeding where that claim is to be adjudicated any defense(s) they may deem available to the company or its liquidator, receiver, conservator, or statu-

tory successor. This expense incurred by the reinsurers shall be chargeable, subject to the approval of the court, against the company as part of the expense of conservation or liquidation to the extent of a *pro rata* share of the benefit which may accrue to the company solely as a result of the defense undertaken by the reinsurers;

2. Where two (2) or more reinsurers are involved in the same claim and a majority in interest elect to interpose defense to that claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though that expense had been incurred by the company; and

3. This insolvency clause shall not preclude the reinsurer from asserting any excuse or defense to payment of this reinsurance other than the excuses or defenses of the insolvency of the company and the failure of the company's liquidator, receiver, conservator, or statutory successor to pay all or a portion of any claim; [and]

(B) A provision [in which] **pursuant to section 375.246.1(7), RSMo, whereby** the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give that court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of that court or panel.; **and**

(C) **A proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.**

[(12)(13) **Contracts Affected.** All new and renewal reinsurance transactions entered into after January 1, [1991] **2014** shall conform to the requirements of the Act and this rule if credit is to be given to the ceding insurer for [that] **such** reinsurance.

[(13) **Authority.** This rule is promulgated pursuant to the authority granted by sections 374.045 and 375.246, RSMo.]

**EXHIBIT 1**  
**Reinsurer Application**

**Instructions**

This application is to be completed by all insurance companies/associations who wish to transact business in the State of Missouri as accredited reinsurer, a reinsurer domiciled in another state, or a reinsurer maintaining trust funds.

**PART 1—TYPE OF APPLICATION**

New       Amended     Renewal    For Year Ending 20\_\_\_\_\_

**PART 2—IDENTIFYING DATA**

Name \_\_\_\_\_  
(Full Name of Insurer)

Home Address      Street      City      State      Zip + 4

Mail Address      Street or P. O. Box      City      State      Zip . + 4

**PART 3—KIND OF REINSURER**

- Accredited Reinsurer (Chapter 375.246.1(2))
- Reinsurer Domiciled in Another State (Chapter 375.246.1(3))
- Reinsurer Maintaining Trust Fund (Chapter 375.246.1(4))

**PART 4—CURRENT BUSINESS**

Currently licensed to transact insurance or reinsurance business in the state of \_\_\_\_\_

Alien company which has United States branch licensed to transact insurance business in the state of \_\_\_\_\_

Alien company with no United States branch licensed to transact insurance business.

**PART 5—AUTHORIZED OFFICER SIGNATURE**

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

By: \_\_\_\_\_  
*(Name of Officer)*

\_\_\_\_\_  
*(Title of Officer)*

**EXHIBIT 2**  
**Appointment of Director to Acknowledge or**  
**Receive Service of Process**

\_\_\_\_\_ a corporation organized under the  
*(Name of Insurer)*  
laws of \_\_\_\_\_ and thereby authorized to transact the business  
of \_\_\_\_\_ insurance, desires to transact such business within the State of  
Missouri, pursuant to the laws thereof: and whereas, in and by Section 375.906, RSMo.

NOW, THEREFORE, in accordance with the terms and requirements of Section 375.906,  
RSMo, the said \_\_\_\_\_ does, by these presents, appoint and  
*(Name of Insurer)*  
authorize the Director of the Department of Insurance, Financial Institutions and Professional  
Registration of the state of Missouri, for the purpose mentioned in Section 375.906, RSMo, to do any  
and all the things in said Section specified in its behalf to be done, by said Director, the Deputy Director,  
or the Chief Clerk, of the Department of Insurance Financial Institutions and Professional Registration  
of the State of Missouri, including receipt of service of process which shall be valid and binding, and be  
deemed personal service upon the company, so long as it shall have any policies or liabilities  
outstanding in the State of Missouri.

IN WHITNESS WHEREOF, the said company (in accordance with a resolution of its Board of  
Directors duly adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, a certified  
copy of which appears on reverse side), hath caused these presents to be subscribed by its President and  
its corporate seal to be hereto affixed, attested by its Secretary, at the city of

\_\_\_\_\_, State of \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Attest:

\_\_\_\_\_  
PRESIDENT

\_\_\_\_\_  
SECRETARY

COPY OF RESOLUTION

I, \_\_\_\_\_, Secretary of \_\_\_\_\_  
*(Name of Insurer)*

a corporation existing under the laws of \_\_\_\_\_, do hereby certify that the following is true and correct copy, from corporate records of said corporation, of a resolution duly adopted by the Board of Directors thereof, at a \_\_\_\_\_ meeting of said Board, a quorum thereof present and acting, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

To wit:

**“RESOLVED, That the president and secretary of this company are hereby authorized to execute in behalf of said company, under the corporate seal thereof, a written instrument in accordance with the insurance laws of the State of Missouri appointing and authorizing the Director of the Department of Insurance, Financial Institutions and Professional Registration of the State of Missouri (by whomsoever such office of Director may be held and exercised under the laws of the State of Missouri), for the purpose mentioned in section 375.906 RSMo, to do any and all the things in behalf of this company specified in said section to be done by said Director, and further consenting that service of process as therein referred to shall be valid and binding, and be deemed personal service upon this company so long as it shall have any policies or liabilities outstanding in the State of Missouri.”**

And I do further certify that the said resolution has never been rescinded or reconsidered and still remains in force.

GIVEN AND CERTIFIED, at the principal office of said company in the city of \_\_\_\_\_ State of \_\_\_\_\_ with the common seal thereof hereto affixed by undersigned, having custody of the same as secretary of said company, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST: \_\_\_\_\_ Secretary.

**EXHIBIT 3**  
**FORM AR-1**  
**Certificate of Assuming Accredited Insurer**

I, \_\_\_\_\_ of  
*(Name of Officer)* *(Title of Officer)*

\_\_\_\_\_, the assuming insurer under  
*(Name of Assuming Insurer)*

a reinsurance agreement(s) with one (1) or more insurers domiciled in Missouri, hereby certify that

\_\_\_\_\_  
*(Name of Assuming Insurer):* (“Assuming Insurer”)

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

2. Designates the director of Missouri Department of Insurance, Financial Institutions and Professional Registration as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement(s) instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the director of Missouri Department of Insurance, Financial Institutions and Professional Registration to examine its books and records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in Missouri reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list of the insurance director at least once per calendar quarter.

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

By: \_\_\_\_\_  
*(Name of Officer)*

\_\_\_\_\_  
*(Name of Assuming Insurer)*

\_\_\_\_\_  
*(Title of Officer)*

Applicant Name (Company): \_\_\_\_\_

NAIC No. \_\_\_\_\_  
FEIN: \_\_\_\_\_

**EXHIBIT 4**

**BIOGRAPHICAL AFFIDAVIT**

To the extent permitted by law, this affidavit will be kept confidential by the state insurance regulatory authority.

(Print or Type)

Full name, address and telephone number of the present or proposed entity under which this biographical statement is being required (Do Not Use Group Names). \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In connection with the above-named entity, I herewith make representations and supply information about myself as hereinafter set forth. (Attach addendum or separate sheet if space hereon is insufficient to answer any question fully.) IF ANSWER IS "NO" OR "NONE," SO STATE.

1. Affiant's Full Name (Initials Not Acceptable): First: \_\_\_\_\_ Middle: \_\_\_\_\_ Last: \_\_\_\_\_

2. a. Are you a citizen of the United States?

Yes  No

b. Are you a citizen of any other country?

Yes  No

If yes, what country? \_\_\_\_\_

3. Affiant's occupation or profession: \_\_\_\_\_

4. Affiant's business address: \_\_\_\_\_

Business telephone: \_\_\_\_\_ Business Email: \_\_\_\_\_

5. Education and training:

<u>College/University</u>	<u>City/State</u>	<u>Dates Attended (MM/YY)</u>	<u>Degree Obtained</u>

<u>Graduate Studies</u>	<u>College/University</u>	<u>City/State</u>	<u>Dates Attended (MM/YY)</u>	<u>Degree Obtained</u>

<u>Other Training: Name</u>	<u>City/State</u>	<u>Dates Attended (MM/YY)</u>	<u>Degree/Certification Obtained</u>

Note: If affiant attended a foreign school, please provide full address and telephone number of the college/university. If applicable, provide the foreign student Identification Number in the space provided in the Biographical Affidavit Supplemental Information.

Applicant Name (Company): \_\_\_\_\_ NAIC No. \_\_\_\_\_  
FEIN: \_\_\_\_\_

6. List of memberships in professional societies and associations:

<u>Name of Society/Association</u>	<u>Contact Name</u>	<u>Address of Society/Association</u>	<u>Telephone Number of Society/Association</u>
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7. Present or proposed position with the applicant entity: \_\_\_\_\_

\_\_\_\_\_

8. List complete employment record for the past twenty (20) years, whether compensated or otherwise (up to and including present jobs, positions, partnerships, owner of an entity, administrator, manager, operator, directorates or officerships). Please list the most recent first. Attach additional pages if the space provided is insufficient. It is only necessary to provide telephone numbers and supervisory information for the past ten (10) years.

Beginning/Ending Dates (MM/YY): \_\_\_\_\_ - \_\_\_\_\_ Employer's Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State/Province: \_\_\_\_\_

Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_ Phone: \_\_\_\_\_ Offices/Positions Held: \_\_\_\_\_

Type of Business: \_\_\_\_\_ Supervisor/Contact: \_\_\_\_\_

Beginning/Ending Dates (MM/YY): \_\_\_\_\_ - \_\_\_\_\_ Employer's Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State/Province: \_\_\_\_\_

Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_ Phone: \_\_\_\_\_ Offices/Positions Held: \_\_\_\_\_

Type of Business: \_\_\_\_\_ Supervisor/Contact: \_\_\_\_\_

Beginning/Ending Dates (MM/YY): \_\_\_\_\_ - \_\_\_\_\_ Employer's Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State/Province: \_\_\_\_\_

Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_ Phone: \_\_\_\_\_ Offices/Positions Held: \_\_\_\_\_

Type of Business: \_\_\_\_\_ Supervisor/Contact: \_\_\_\_\_

Beginning/Ending Dates (MM/YY): \_\_\_\_\_ - \_\_\_\_\_ Employer's Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State/Province: \_\_\_\_\_

Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_ Phone: \_\_\_\_\_ Offices/Positions Held: \_\_\_\_\_

Type of Business: \_\_\_\_\_ Supervisor/Contact: \_\_\_\_\_



Applicant Name (Company): \_\_\_\_\_

NAIC No. \_\_\_\_\_  
FEIN: \_\_\_\_\_

9. a. Have you ever been in a position which required a fidelity bond?

Yes  No

If any claims were made on the bond, give details: \_\_\_\_\_  
\_\_\_\_\_

b. Have you ever been denied an individual or position schedule fidelity bond, or had a bond canceled or revoked?

Yes  No

If yes, give details: \_\_\_\_\_  
\_\_\_\_\_

10. List any professional, occupational and vocational licenses (including licenses to sell securities) issued by any public or governmental licensing agency or regulatory authority or licensing authority that you presently hold or have held in the past. For any non-insurance regulatory issuer, identify and provide the name, address and telephone number of the licensing authority or regulatory body having jurisdiction over the license (s) issued. If your professional license number is your Social Security Number (SSN) or embeds your SSN or any sequence of more than five numbers that are reasonably identifiable as your SSN, then write SSN for that portion of the professional license number that is represented by your SSN. (For example, "SSN", "12-SSN-345" or "1234-SSN" (last 6 digits)). Attach additional pages if the space provided is insufficient.

Organization/Issuer of License: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State/Province: \_\_\_\_\_ Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_

License Type: \_\_\_\_\_ License #: \_\_\_\_\_ Date Issued (MM/YY): \_\_\_\_\_

Date Expired (MM/YY): \_\_\_\_\_ Reason for Termination: \_\_\_\_\_

Non-Insurance Regulatory Phone Number (if known): \_\_\_\_\_

Organization/Issuer of License: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State/Province: \_\_\_\_\_ Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_

License Type: \_\_\_\_\_ License #: \_\_\_\_\_ Date Issued (MM/YY): \_\_\_\_\_

Date Expired (MM/YY): \_\_\_\_\_ Reason for Termination: \_\_\_\_\_

Non-Insurance Regulatory Phone Number (if known): \_\_\_\_\_

11. In responding to the following, if the record has been sealed or expunged, and the affiant has personally verified that the record was sealed or expunged, an affiant may respond "no" to the question. Have you ever:

a. Been refused an occupational, professional, or vocational license or permit by any regulatory authority, or any public administrative, or governmental licensing agency?

Yes  No

b. Had any occupational, professional, or vocational license or permit you hold or have held, been subject to any judicial, administrative, regulatory, or disciplinary action?

Applicant Name (Company): \_\_\_\_\_

NAIC No. \_\_\_\_\_

FEIN: \_\_\_\_\_

Yes  No

c. Been placed on probation or had a fine levied against you or your occupational, professional, or vocational license or permit in any judicial, administrative, regulatory, or disciplinary action?

Yes  No

d. Been charged with, or indicted for, any criminal offense(s) other than civil traffic offenses?

Yes  No

e. Pled guilty, or nolo contendere, or been convicted of, any criminal offense(s) other than civil traffic offenses?

Yes  No

f. Had adjudication of guilt withheld, had a sentence imposed or suspended, had pronouncement of a sentence suspended, or been pardoned, fined, or placed on probation, for any criminal offense(s) other than civil traffic offenses?

Yes  No

g. Been subject to a cease and desist letter or order, or enjoined, either temporarily or permanently, in any judicial, administrative, regulatory, or disciplinary action, from violating any federal, state law or law of another country regulating the business of insurance, securities or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities or banking?

Yes  No

h. Been, within the last ten (10) years, a party to any civil action involving dishonesty, breach of trust, or a financial dispute?

Yes  No

i. Had a finding made by the Comptroller of any state or the Federal Government that you have violated any provisions of small loan laws, banking or trust company laws, or credit union laws, or that you have violated any rule or regulation lawfully made by the Comptroller of any state or the Federal Government?

Yes  No

j. Had a lien or foreclosure action filed against you or any entity while you were associated with that entity?

Yes  No

If the response to any question above is yes, please provide details including dates, locations, disposition, etc. Attach a copy of the complaint and filed adjudication or settlement as appropriate.

\_\_\_\_\_  
\_\_\_\_\_

12. List any entity subject to regulation by an insurance regulatory authority that you control directly or indirectly. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls,