

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
MONTANA STATE AUDITOR

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through XXXVII pertaining to	)	PROPOSED ADOPTION AND
Credit for Reinsurance, and the	)	REPEAL
repeal of ARM 6.6.3801 through	)	
6.6.3809 pertaining to Credit for	)	
Reinsurance, and ARM 6.6.3901	)	
through 6.6.3907 pertaining to	)	
Letters of Credit Used in Reduction	)	
of Liability for Reinsurance Ceded	)	

TO: All Concerned Persons

1. On October 19, 2016, at 10:00 a.m., the Commissioner of Securities and Insurance, Montana State Auditor (CSI), will hold a public hearing in the 2nd floor conference room, at the Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m., October 12, 2016, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail dsautter@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I METHODS OF ALLOWING CREDIT FOR REINSURANCE

(1) These rules implement the statutory provisions allowing for credit for reinsurance. Credit for reinsurance is allowed only where a method set out in statute has been followed, including the following methods:

(a) assuming insurer is licensed in Montana, as provided in 33-2-1216(2), MCA;

(b) assuming insurer is accredited in Montana, as provided in 33-2-1216(3), MCA;

(c) assuming insurer is domiciled, and licensed in, or entered through another state with standards regarding credit for reinsurance substantially similar to those of this state, as provided in 33-2-1216(4), MCA;

(d) assuming insurer maintains a trust fund, as provided in 33-2-1216(5), MCA;

(e) assuming insurer is certified by the commissioner, as provided in 33-2-1216(5)(e), MCA; or

(f) assuming insurer does not meet the requirements of 33-2-1216, MCA, but the commissioner approves reduction from liability in the amount of funds held by, or on behalf of, the ceding insurer pursuant to 33-2-1217, MCA.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1201, 33-2-1202, 33-2-1203, 33-2-1204, 33-2-1205, 33-2-1206, 33-2-1207, 33-2-1208, 33-2-1209, 33-2-1210, 33-2-1211, 33-2-1212, 33-2-1213, 33-2-1214, 33-2-1215, 33-2-1216, 33-2-1217, 33-2-1218, MCA

NEW RULE II DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Beneficiary" includes any successor by operation of law of the named beneficiary, including without limitation any liquidator, rehabilitator, receiver, or conservator.

(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.

(3) "Reinsurance agreement" or "reinsurance contract" means an agreement or contract between the assuming insurer and any other party for purposes of Title 33, chapter 2, part 12, MCA, and these rules. The original insured (ceding insurer) has no interest in a contract of reinsurance.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, 33-2-1217, MCA

NEW RULE III REINSURANCE TRANSACTIONS AFFECTED (1) All new and renewal reinsurance transactions entered into after October 1, 1993, shall conform to the requirements of 33-2-1201, 33-2-1202, 33-2-1203, 33-2-1204, 33-2-1205, 33-2-1206, 33-2-1207, 33-2-1208, 33-2-1209, 33-2-1210, 33-2-1211, 33-2-1212, 33-2-1213, 33-2-1214, 33-2-1215, 33-2-1216, 33-2-1217, 33-2-1218, and these rules if credit is to be given to the ceding insurer for such reinsurance.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1218, MCA

NEW RULE IV REQUIREMENTS FOR REINSURANCE CONTRACTS OR AGREEMENTS (1) Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance pursuant to 33-2-1216, or 33-2-1217, MCA, and these rules unless the reinsurance contract or agreement:

(a) includes a clause which requires that the reinsurance is payable directly to the liquidator or successor by the assuming insurer without consideration of the insolvency of the ceding insurer; and

(b) includes a provision whereby the assuming insurer has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, and has agreed to comply with all requirements necessary to give such 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 such court or panel.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, MCA

NEW RULE V FORMS (1) The following forms (and related instructions) are found on the web site of the Commissioner of Securities and Insurance, Office of the State Auditor:

- (a) Form AR-1;
- (b) Form CR-1;
- (c) Form CR-F; and
- (d) Form CR-S.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, MCA

NEW RULE VI ASSUMING INSURER THAT MAINTAINS A TRUST FUND - PERIOD FOR PAYMENT OF TRUST FUNDS SUBJECT TO CLAIMS

(1) Contested claims under 33-2-1216(5)(c), MCA, shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, MCA

NEW RULE VII ASSUMING INSURER THAT MAINTAINS A TRUST FUND - DEFINITION OF LIABILITIES (1) For the purposes of 33-2-1216(5)(b), MCA, the

term "liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers, excluding liabilities that are otherwise secured by acceptable means.

(2) For business ceded by domestic insurers authorized to write accident and health or disability, and property and casualty insurance, the term "liabilities" shall include:

- (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.

(3) For business ceded by domestic insurers authorized to write life, health or disability, and annuity insurance, the term "liabilities" shall include:

- (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 or disability policies;
- (c) deposit funds and other liabilities without life or disability contingencies;

and

(d) liabilities for policy and contract claims.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, MCA

NEW RULE VIII ASSUMING INSURER THAT MAINTAINS A TRUST FUND - INSUFFICIENT TRUST FUNDS OR TRUST FUND GRANTOR DECLARED INSOLVENT OR PLACED INTO RECEIVERSHIP, REHABILITATION, LIQUIDATION, OR SIMILAR PROCEEDINGS

(1) If the trust fund is inadequate because it contains an amount less than required by 33-2-1216, MCA, or by [New Rules I through XXXVII], 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 commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled or other designated receiver all of the assets of the trust fund.

(2) Once so transferred, the trust fund assets shall be distributed by the commissioner described above pursuant to claims filed and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled. Assets of the trust fund unclaimed or disallowed by the commissioner shall be distributed in accordance with the trust agreement.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, MCA

NEW RULE IX ASSUMING INSURER THAT MAINTAINS A TRUST FUND - VALUATION OF TRUST ASSETS

(1) Assets deposited in trusts established pursuant to 33-2-1216(5), MCA, shall be valued according to their current fair market value and shall consist only of:

- (a) cash in U.S. dollars;
- (b) certificates of deposit issued by a U.S. financial institution; and
- (c) investments of the type specified in [New Rules XI through XVII].

(2) No more than 20% of the total of the investments in the trust may be foreign investments, and no more than 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 U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, MCA

NEW RULE X ASSUMING INSURER THAT MAINTAINS A TRUST FUND - RESTRICTION ON PERCENTAGE OF TRUST INVESTMENT SHARED BY

GRANTOR OR BENEFICIARY (1) For purposes of 33-2-1216(5), MCA, there can be no more than five percent of the total investments of the trust that involve investments in, or issued by, an entity controlling, controlled by, or under common control of either the grantor or beneficiary of the trust.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, MCA

NEW RULE XI ASSUMING INSURER THAT MAINTAINS A TRUST FUND - ALLOWABLE GOVERNMENT OBLIGATIONS (1) For purposes of 33-2-1216(5), MCA, government obligations are allowable if they are not in default as to principal or interest, are valid and legally authorized, and 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 allowed in this rule, if the obligations shall be payable, as to both principal and interest, from taxes or adequate specifically ordered revenues provided for making these payments; 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.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, MCA

NEW RULE XII ASSUMING INSURER THAT MAINTAINS A TRUST FUND - ALLOWABLE NONGOVERNMENT OBLIGATIONS (1) For purposes of 33-2-1216(5), MCA, nongovernment obligations are allowable if they are:

- (a) issued in the United States;
  - (b) dollar-denominated and issued in a non-United States market by a solvent United State institution (other than an insurance company); or
  - (c) assumed or guaranteed by a solvent United States institution (other than an insurance company).
- (2) The obligations shall not be in default as to principal or interest.
- (3) The obligations shall be:
- (a) rated A or higher (or the equivalent) by a 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) insured by at least one 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) designated as class one or class two by the Securities Valuation Office of the NAIC.

(4) 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 (3)(a) and (c), but shall not exceed two percent of the assets of the trust.

(5) 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 issued in a non-United States currency shall be rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, MCA

NEW RULE XIII ASSUMING INSURER THAT MAINTAINS A TRUST FUND - ADDITIONAL RESTRICTIONS ON GOVERNMENT OBLIGATIONS AND NONGOVERNMENT OBLIGATIONS (1) The following apply to allowable government and nongovernment obligations used to fulfill the requirements of 33-2-1216, MCA, trust fund investments:

(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 of the assets of the trust;

(b) An investment in any one mortgage-related security shall not exceed five percent of the assets of the trust; and

(c) The aggregate total investment in mortgage-related securities shall not exceed 25% of the assets of the trust.

(2) As used in this rule, "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:

(a) represents ownership of one 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:

(i) 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

(ii) 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.

(b) is secured by one 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 this part of this rule.

(3) As used in this rule, when used in connection with a manufactured home, "promissory note" shall also include a loan, advance, or credit sale as evidenced by a retail installment sales contract or other instrument.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, MCA

NEW RULE XIV ASSUMING INSURER THAT MAINTAINS A TRUST FUND - ALLOWABLE EQUITY INTERESTS

(1) Investments in common shares or partnership interests of a solvent U.S. institution are permissible for purposes of 33-2-1216(5), MCA, if 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 interests under this paragraph an amount exceeding one percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.

(2) 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 are permissible for purposes of 33-2-1216(5), MCA, if:

(a) 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

(b) 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.

(3) An investment in, or loan upon, any one institution's outstanding equity interests shall not exceed one percent of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests, then held pursuant to this paragraph, shall not exceed ten percent of the assets in the trust.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, MCA

NEW RULE XV ASSUMING INSURER THAT MAINTAINS A TRUST FUND - ALLOWABLE OBLIGATIONS ISSUED, ASSUMED, OR GUARANTEED BY MULTINATIONAL DEVELOPMENT BANK

(1) For purposes of 33-2-1216(5), MCA,

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 are allowable.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, MCA

NEW RULE XVI ASSUMING INSURER THAT MAINTAINS A TRUST FUND - ALLOWABLE INVESTMENT COMPANIES (1) For purposes of 33-2-1216(5), MCA, 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:

(a) invests at least 90% of its assets in the types of securities that qualify as an investment under [New Rules XI through XIII], or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set out in [New Rules XI through XIII]; or

(b) invests at least 90% of its assets in the types of equity interests that qualify as an investment under [New Rule XIV].

(2) Investments made by a trust in investment companies under this rule shall not exceed the following limitations:

(a) an investment shall not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed 25% of the assets in the trust; and

(b) investments shall not exceed five percent 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 this rule.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, MCA

NEW RULE XVII ASSUMING INSURER THAT MAINTAINS A TRUST FUND - LETTERS OF CREDIT (1) 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 commissioner), 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.

(2) The term of the letter of credit must be at least one year. The letter of credit must require notice of the expiration or nonrenewal date to the trustee no less than 30 days prior to the expiration or nonrenewal date.

(3) 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, for which the trustee is liable. Such liability must be stated in the trust agreement.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, MCA

NEW RULE XVIII CERTIFICATION OF ASSUMING INSURERS - ELIGIBILITY FOR CERTIFICATION (1) To be eligible for certification by the department, the assuming insurer shall be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to the following:

(a) United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions;

(b) A list of qualified jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria in this rule; and

(c) 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 commissioner 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 assuming insurers licensed and domiciled in the United States. The commissioner shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose assuming insurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all assuming insurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include but are not limited to the following:

(i) the framework under which the assuming insurer is regulated;

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

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

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

(v) the domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner in particular;

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

(vii) 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 commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards;

(viii) 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

(ix) any other matters deemed relevant by the commissioner.

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

(2) To be eligible for certification, the assuming insurer must maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with [New Rule XXVII]. 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 \$250,000,000, and a central fund containing a balance of at least \$250,000,000.

(3) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

- (a) Standard & Poor's;
  - (b) Moody's Investors Service;
  - (c) Fitch Ratings;
  - (d) A.M. Best Company; or
  - (e) any other nationally recognized statistical rating organization.
- (4) The assuming insurer must comply with any other requirements

reasonably imposed by the commissioner.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, MCA

NEW RULE XIX CERTIFICATION OF ASSUMING INSURERS - INITIAL CERTIFICATION PROCEDURE

(1) The assuming insurer must submit an Application for Credit for Reinsurance and a properly executed Form CR-1. The forms and directions are found on the web site maintained by the commissioner.

(2) The commissioner shall post notice on the department web site promptly upon receipt of any application for credit for reinsurance involving certification pursuant to 33-2-1216(5)(e), MCA. The web site must include instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least 30 days after posting the notice required by this paragraph.

(3) Upon the initial certification, the assuming insurer shall submit audited financial statements for the last three years filed with the assuming insurer's supervisor.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, MCA

NEW RULE XX CERTIFICATION OF ASSUMING INSURERS - FILING REQUIREMENTS

(1) The assuming insurer must fulfill filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis.

(2) All information submitted by assuming insurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under 33-2-406, MCA, and shall be withheld from public disclosure.

(3) The assuming insurer must provide to the commissioner the following:

(a) notification within 10 days of any regulatory actions taken against the assuming insurer, 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, Form CR-F or CR-S, as applicable. The forms are found on the web site maintained by the commissioner;

(c) annually, reports of an independent auditor on the financial statements of the assuming insurer, 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 opinions (as filed with the assuming insurer's supervisor);

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

(e) a certification from the assuming insurer's domestic regulator that the assuming insurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(f) any other information that the commissioner may require.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, MCA

NEW RULE XXI CERTIFICATION OF ASSUMING INSURERS - RECOGNITION OF CERTIFICATION ISSUED BY AN NAIC-ACCREDITED JURISDICTION

(1) An assuming insurer that has submitted a properly executed Form CR-1 and such additional information as the commissioner requires, may request that the commissioner consider the assuming insurer's certification in an NAIC-accredited jurisdiction.

(2) In the event that the commissioner certifies the assuming insurer based on the certification in an NAIC-accredited jurisdiction (hereinafter the other jurisdiction), the following apply:

(a) the certified reinsurer shall notify the commissioner of any change in its certification status or rating in the other jurisdiction within 10 days after receiving notice of the change;

(b) any change in the certified reinsurer's certification status in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction;

(c) the commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer; and

(d) unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with [New Rule XXIII(1) and (2)], the certified reinsurer's certification shall remain in good standing in this state for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, MCA

NEW RULE XXII CERTIFICATION OF ASSUMING INSURERS - NOTICE OF CERTIFICATION (1) The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. The written notice shall include the rating assigned the certified reinsurer pursuant to this rule. The commissioner shall publish a list of all certified reinsurers and their ratings.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, MCA

NEW RULE XXIII CERTIFIED ASSUMING INSURERS - CHANGE IN CERTIFICATION (1) The commissioner has the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements as stated in 33-2-1216, MCA, and these rules, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(2) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security to continue to take credit for reinsurance. The commissioner may allow additional credit equal to the ceding insurer's pro rata share of trust funds meeting the standards of 33-2-1216, 33-2-1217, MCA, and these rules, 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 certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

(3) When an assuming insured has been certified by the commissioner pursuant to 33-2-1216(5)(e), MCA, (based on certification in a qualified jurisdiction and NAIC certification) and the certification in the NAIC-accredited jurisdiction (hereinafter the other jurisdiction) changes, the provisions of [New Rule XXVII] apply.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, MCA

NEW RULE XXIV CERTIFICATION OF ASSUMING INSURERS - MANDATORY FUNDING CLAUSE IN REINSURANCE CONTRACTS OR AGREEMENTS

(1) Insurance contracts entered into or renewed under the commissioner's authority to certify an assuming reinsurer 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.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, MCA

NEW RULE XXV CERTIFIED REINSURERS - EFFECTIVE DATE OF CREDIT

(1) The credit allowed to a certified reinsurer pursuant to 33-2-1216, MCA, and 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. Reinsurance contracts entered into prior to the effective date of the certification of the assuming insurer can be applied prospectively to the effective date of the certification of the assuming insurer only with respect to losses incurred and reserves reported from and after the effective date of an amendment to the prior contract or the effective date of a new contract.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, MCA

NEW RULE XXVI CERTIFIED REINSURERS - SECURITY RATING FOR CREDIT

(1) The credit allowed to a certified assuming insurer pursuant to 33-2-1216, MCA, 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 commissioner. The security shall be in a form consistent with 33-2-1216, MCA, and this rule. The minimum amount of security required in order for full credit to be allowed shall correspond with the following requirements:

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

(b) the commissioner 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 commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level if the commissioner finds that:

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

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

(c) the commissioner has the authority to revise and change the security rating of a certified reinsurer at any time pursuant to this rule. If the rating is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner 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 commissioner, the commissioner 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) the certified reinsurer shall post 100% of the security for the benefit of the ceding insurer or its estate upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer; and

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

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

(2) In the event that the commissioner certifies the assuming insurer based on the certification in an NAIC-accredited jurisdiction (hereinafter the other jurisdiction), the following apply:

(a) the certified assuming insurer shall notify the commissioner of any change in its rating in the other jurisdiction within 10 days after receiving notice of the change; and

(b) the commissioner may withdraw recognition of, change, or revoke the rating of the certified assuming insurer at any time and assign a new rating pursuant to this rule.

AUTH: 33-1-313, 33-2-1517, MCA  
 IMP: 33-2-1216, MCA

NEW RULE XXVII CERTIFIED ASSUMING INSURERS - LEGAL ENTITY SECURITY RATING

(1) 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 commissioner 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 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 or disability reinsurers);

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

health or disability reinsurers). The forms are found on the web site maintained by the commissioner;

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

(f) regulatory actions against the certified reinsurer;

(g) reports of an independent auditor on the financial statements of the assuming insurer, audited financial statement, regulatory filings, and actuarial opinions (as filed with the assuming insurer's supervisor);

(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 commissioner will consider audited financial statements for the last three 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 commissioner 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 commissioner.

(2) The commissioner has the authority to revise and change the legal rating of a certified assuming insurer at any time pursuant to this rule.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, MCA

#### NEW RULE XXVIII ASSUMING INSURER - DEFINITION OF OBLIGATIONS

(1) "Obligations," as used in [New Rules XXIX through XXXVII], 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.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1217, MCA

#### NEW RULE XXIX ASSUMING INSURER - VALUATION OF ASSETS

(1) Either the reinsurance agreement or the trust agreement relevant to 33-2-1217, MCA, 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 Title 33, MCA, or any combination thereof, 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 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 or disability risks, then the provisions required by this paragraph must be included in the reinsurance agreement.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1217, MCA

NEW RULE XXX ASSUMING INSURER - FINANCIAL REPORTING (1) 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 the 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 must be equal to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1217, MCA

NEW RULE XXXI ASSUMING INSURER - TRUST AGREEMENT  
CONDITIONS - MANDATORY (1) The trust agreement required by 33-2-1217(2), MCA, shall be entered into between the beneficiary, the grantor, and a trustee which shall be a qualified United States financial institution as defined in 33-2-1217, MCA, and include all of the following conditions:

(a) the trust agreement shall create a trust account into which assets shall be deposited;

(b) all assets in the trust account shall be held by the trustee at the trustee's office in the United States;

(c) the trust agreement shall provide that:

(i) 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;

(ii) 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; and

(iii) it is not subject to any conditions or qualifications outside the trust agreement; and it shall not contain references to any other agreements to documents except as provided for under (j).

(d) the trust agreement shall be established for the sole benefit of the beneficiary;

(e) the trust agreement shall require the trustee to:

(i) receive assets and hold all assets in a safe place;

(ii) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(iii) 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;

(iv) notify the grantor and the beneficiary within 10 days of any deposits to or withdrawals from the trust account;

(v) 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 the assets to the beneficiary; and

(vi) 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, withdraw such asset upon condition that the proceeds are paid into the trust account.

(f) the trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination must be delivered by the trustee to the beneficiary;

(g) the trust agreement shall be made subject to and governed by the laws of the state in which the trust is established;

(h) the trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee;

(i) 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; and

(j) 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 U.S. dollars, certificates of deposit issued by a U.S. bank and payable in U.S. 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 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 or disability risks, then the provisions required by this paragraph must be included in the reinsurance agreement.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1217, MCA.

NEW RULE XXXII ASSUMING INSURER - RISKS OTHER THAN LIFE, ANNUITIES, ACCIDENT AND HEALTH OR DISABILITY - TRUST AGREEMENT PROVISIONS - PERMISSIVE

(1) When a trust agreement is established in conjunction with a reinsurance agreement pursuant to 33-2-1217, MCA, covering risks other than life, annuities, and accident and health or disability, the trust agreement may, notwithstanding any other conditions in this regulation, 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, 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 102% of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or
- (c) when the ceding insurer has received notification of termination of the trust account and when the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the 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 33-2-1217, MCA, apart from its general assets, in trust for such uses and purposes specified in (a) and (b) as may remain executory after such withdrawal and for any period after the termination date.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1217, MCA

NEW RULE XXXIII ASSUMING INSURER - RISKS ASSOCIATED WITH LIFE, ANNUITIES, ACCIDENT AND HEALTH OR DISABILITY - TRUST AGREEMENT PROVISIONS - PERMISSIVE

(1) When a trust agreement is established in conjunction with a reinsurance agreement pursuant to 33-2-1217, MCA, covering risks associated with life, annuities, and accident and health or disability, notwithstanding any other conditions in this regulation, 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 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 U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in (a) and (b) as may remain executory after withdrawal and for any period after the termination date.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1217, MCA

NEW RULE XXXIV ASSUMING INSURER - TRUST AGREEMENT

PROVISIONS - PERMISSIVE (1) The trust agreement pursuant to 33-2-1217, MCA, may include any or all of the following conditions:

(a) the trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after receipt by the beneficiary and grantor of 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 less than 90 days after receipt by the trustee and the beneficiary of the notice, provided that no such resignation or removal shall 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;

(b) the grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends must be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name;

(c) the trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution may 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 funds and to accept substitutions that the trustee determines are at least equal in current market value to the assets withdrawn and that are consistent with the restrictions of this rule;

(d) the trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such

transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets; and

(e) the trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary must, with written approval by the beneficiary, be delivered over to the grantor.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1217, MCA

NEW RULE XXXV REINSURANCE AGREEMENT PROVISIONS RELATING TO 1217 TRUST AGREEMENTS - PERMISSIVE (1) Reinsurance agreements

entered into in conjunction with trust agreements pursuant to 33-2-1217, MCA, may include the following:

(a) a requirement that the assuming insurer enter into a trust agreement and establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

(b) a requirement that the assuming insurer, prior to depositing assets with the trustee, 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, may, whenever necessary, negotiate these assets without consent or signature from the assuming insurer or any other entity;

(c) a requirement that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(d) a requirement 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 must 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 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 reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(ii) to 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 pay or reimburse the ceding insurer any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; and

(iv) to pay 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.

(2) The reinsurance agreement may provide for amounts due, reasonable interest, and awards by an arbitration panel or court of competent jurisdiction.

(3) The reinsurance agreement may also contain provisions that give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(a) the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a 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

(b) after withdrawal and transfer, the market value of the trust account is no less than 102 % of the required amount. The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1217, MCA

NEW RULE XXXVI TERMS AND CONDITIONS OF LETTERS OF CREDIT

(1) Applicable standards of acceptability for issuers of letters of credit under 33-2-1217, MCA, include the following:

(a) the letter of credit must contain an issue date and date of expiration and must 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;

(b) the letter of credit must indicate that it is not subject to any condition or qualifications outside of the letter of credit; and

(c) the letter of credit itself must not contain reference to any other agreements, documents, or entities.

(2) 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 the letter of credit. The boxed section must be clearly marked to indicate that such information is for internal identification purposes only.

(3) The letter of credit must 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 thereto.

(4) The term of the letter of credit must be at least one year. The letter of credit must require notice of the expiration or nonrenewal date to the trustee no less than 30 days prior to the expiration or nonrenewal date.

(5) The letter of credit must state whether it is subject to 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), and whether all drafts drawn thereunder must be presentable at an office in the United States of a qualified United States financial institution.

(6) 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), then the letter of credit must specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 19 of Publication 400 occur.

(7) The letter of credit must be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to 33-2-1217, MCA.

(8) 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 (7), then the following additional requirements must be met:

(a) the issuing qualified U.S. financial institution shall formally designate the confirming qualified U.S. financial institution as its agent for the receipt and payment of the drafts; and

(b) the letter of credit must require notice of the expiration or nonrenewal date to the trustee no less than 30 days prior to the expiration or nonrenewal date.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1217, MCA

NEW RULE XXXVII REINSURANCE AGREEMENT PROVISIONS RELATING TO 1217 LETTERS OF CREDIT (1) The reinsurance agreement entered into in conjunction with trust agreements pursuant to 33-2-1217, MCA, may include the following:

(a) a requirement that the assuming insurer provide letters of credit to the ceding insurer and specify what they are to cover; and

(b) a requirement that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer may be drawn upon at any time, notwithstanding any other provisions in the reinsurance agreement, and must 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 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 reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(ii) to reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers;

(iii) to pay or reimburse the ceding insurer any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; and

(iv) when 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 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 U.S. financial institution apart from its

general assets, in trust for such uses and purposes specified in this rule as may remain after withdrawal and for any period after the termination date.

(2) The reinsurance agreement may provide for amounts due, reasonable interest, and awards by an arbitration panel or court of competent jurisdiction.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1217, MCA

4. The commissioner proposes to repeal the following rules:

6.6.3801 DEFINITIONS on page 6-1001 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, 33-2-1517, MCA

6.6.3802 TRUST AGREEMENT CONDITIONS on page 6-1001 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, 33-2-1517, MCA

6.6.3803 CONDITIONS APPLICABLE TO REINSURANCE AGREEMENTS on page 6-1004 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, 33-2-1517, MCA

6.6.3804 RESTRICTIONS ON AMENDMENT OF TRUST AGREEMENTS on page 6-1006 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, 33-2-1517, MCA

6.6.3805 FINANCIAL REPORTING on page 6-1006 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, 33-2-1517, MCA

6.6.3806 EFFECT OF FAILURE TO IDENTIFY BENEFICIARY on page 6-1007 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, 33-2-1517, MCA

6.6.3807 EFFECT OF LOSS OF ACCREDITATION BY ASSUMING REINSURER on page 6-1007 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, 33-2-1517, MCA

6.6.3808 SURPLUS DETERMINATION OF A GROUP OF INCORPORATED INSURERS UNDER COMMON ADMINISTRATION on page 6-1007 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, 33-2-1517, MCA

6.6.3809 THE PERIOD OF PAYMENT OF TRUST FUNDS SUBJECT TO CLAIMS on page 6-1008 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, 33-2-1517, MCA

6.6.3901 DEFINITIONS on page 6-1021 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, 33-2-1517, MCA

6.6.3902 TERMS AND CONDITIONS OF LETTER OF CREDIT on page 6-1021 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1217, 33-2-1517, MCA

6.6.3903 LIMITS ON USE OF LETTER OF CREDIT TO REDUCE LIABILITY on page 6-1023 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1217, 33-2-1517, MCA

6.6.3904 OTHER SECURITY FOR PAYMENT OF OBLIGATIONS UNDER CONTRACT on page 6-1023 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA  
IMP: 33-2-1216, 33-2-1517, MCA

6.6.3905 REINSURANCE CONTRACTS AS SECURITY on page 6-1023 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, 33-2-1217, 33-2-1517, MCA

6.6.3906 CONTRACTS AFFECTED on page 6-1024 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, 33-2-1217, 33-2-1517, MCA

6.6.3907 FORM FOR SUBMITTING TO STATE AUTHORITY AND JURISDICTION on page 6-1024 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, 33-2-1517, MCA

5. STATEMENT OF REASONABLE NECESSITY: The Commissioner of Securities and Insurance, Montana State Auditor, Monica J. Lindeen, (commissioner) is the statewide elected official responsible for administering the Montana Insurance Code and regulating the business of insurance. Chapter 370, passed by the 64th Montana Legislature (effective April 30, 2015), amended 33-2-1216 and 33-2-1217, MCA, regarding credit for reinsurance, a practice regularly used in the insurance industry.

The National Association of Insurance Commissioners (NAIC) is an organization of insurance regulators from the 50 states, the District of Columbia, and the U.S. Territories. The NAIC provides a forum for the development of uniform policy and regulation when uniformity is appropriate. The statutory amendments passed in 2015 were based on the NAIC model law regarding credit for reinsurance. These rules are derived from the NAIC Credit for Reinsurance Model Regulation (#786). They ensure uniformity with other states and are necessary to meet the NAIC accreditation standards.

The new rules and restatement of previous rules regarding credit for reinsurance are necessary to implement the statutory changes in 2015 and conform with the NAIC model regulations. Those changes, in turn, required reorganization of the subchapter. The new rule at the beginning of the subchapter explains the statutory methods by which credit for reinsurance can be allowed. The rules thereafter are organized according to that list of methods.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Barb Harris, Attorney, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3499; or bharris@mt.gov, and must be received no later than 5:00 p.m., October 26, 2016.

7. Barb Harris, Attorney, has been designated to preside over and conduct this hearing.

8. The CSI maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Darla Sautter using the contact information in 2 above, or may be made by completing a request form at any rules hearing held by the CSI.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. Pursuant to 2-4-302, MCA, the bill sponsor notification does not apply.

11. The proposed adoption and repeal of the above-stated rules do not significantly and directly impact small businesses; therefore, the requirements of 2-4-111, MCA, do not apply.

/s/ Michael A. Kakuk

Michael A. Kakuk

Rule Reviewer

/s/ Jesse Laslovich

Jesse Laslovich

Chief Legal Counsel

Certified to the Secretary of State September 12, 2016.