

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the adoption of New)	NOTICE OF PROPOSED ADOPTION
Rules I and II and the amendment of)	AND AMENDMENT
ARM 6.6.3813 pertaining to Credit for)	
Reinsurance)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. The Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI), proposes to adopt and amend 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. on November 7, 2017, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon in any of the following ways: Mail: 840 Helena Avenue, Helena, Montana, 59601; Telephone: (406) 444-2726; TDD: (406) 444-3246; Fax (406) 444-3499; or Email: rbidon@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I CREDIT FOR UNENCUMBERED FUNDS (1) 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.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1217, MCA

NEW RULE II ASSUMING INSURER THAT MAINTAINS A TRUST FUND - APPLICATION OF SPECIFIC SECURITY (1) A specific security provided to a ceding insurer by an assuming insurer pursuant to 33-2-1216(6), MCA 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 33-2-1216(5), MCA and applicable rules.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1217, MCA

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

6.6.3813 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 includes:

(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; and

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

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

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

5. STATEMENT OF REASONABLE NECESSITY: The Commissioner of Securities and Insurance, Montana State Auditor, Matthew M. Rosendale, Sr., (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 sections 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 rules in ARM Title 6, chapter 6, subchapter 38 derive from the *NAIC Credit for Reinsurance Model Regulation #786*. Use in Montana of the model rules helps ensure uniformity with other states. The new rules and amendment of one existing rule are necessary to meet NAIC accreditation standards and requirements regarding credit for reinsurance.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Barbara C. Harris, Attorney, 840 Helena Ave., Helena, Montana, 59601 or Email: bharris@mt.gov, and must be received no later than 5:00 p.m., November 24, 2017.

7. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must

make written request for a hearing and submit this request along with any written comments to Michael A. Kakuk at the above address no later than 5:00 p.m., November 24, 2017.

8. The CSI will hold a hearing if any person or association directly affected by the proposed action requests it. If this occurs, the CSI will hold a hearing at a later date and will publish notice of the hearing in the Montana Administrative Register.

9. The CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may sign up by clicking on the blue button on the CSI's website at: <http://csimt.gov/laws-rules/> and may specify the subject matter they are interested in. Notices will be sent by e-mail unless a mailing preference is noted in the request. Requests may also be sent to the CSI in writing. Such written request may be mailed or delivered to the contact information in 2 above, or may be made by completing a request form at any rules hearing held by the CSI.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. The proposed adoption and amendment 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/ Kris Hansen
Kris Hansen
Chief Legal Counsel

Certified to the Secretary of State October 16, 2017.