

69O-144.005 Credit for Reinsurance.

(1) Credit for reinsurance by a domestic insurer shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact that line of insurance or reinsurance both in this state and its state, place, or country of domicile as of the ceding insurer's statutory financial statement.

(2) Credit for reinsurance by a domestic insurer shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state pursuant to Section 624.610(3)(b), ~~F.S., Florida Statutes~~ and Rule 69O-144.002, F.A.C., as of any date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer pursuant to Section 624.610(3)(b), ~~F.S., Florida Statutes~~:

(a)1. Files with the Office a properly executed Form OIR-C1-1464, which is hereby adopted and incorporated by reference, as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records.

2. Form OIR-C1-1464 is available from, and shall be submitted to the following: for life and health insurers, Life and Health Financial Oversight, 200 East Gaines Street, Tallahassee, Florida 32399-0327; for property and casualty insurers, Property and Casualty Financial Oversight, 200 East Gaines Street, Tallahassee, Florida 32399-0329;

(b) Is licensed to transact insurance or reinsurance in at least one state, or in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state; and

(c) Files annually and quarterly with the Office a copy of its annual and quarterly statements filed on the National Association of Insurance Commissioners convention blanks, which are hereby adopted and incorporated by reference, with the insurance department of its state of domicile or, in

the case of a U.S. branch of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement and maintains a surplus as regards policyholders in accordance with Section 624.610(3)(b)1.d., F.S., and whose approval has been granted by the Office. If quarterly statements are not required by the state of domicile, quarterly statements shall only be required upon written request of the Office. The following National Association of Insurance Commissioners blanks are hereby adopted and incorporated by reference:

1. NAIC Annual Statement Blank Life/Accident/Health 2012; ~~2005~~,
2. NAIC Quarterly Statement Blank Life/Accident/Health 2012; ~~2005~~,
3. NAIC Annual Statement Blank Health 2012; ~~2005~~,
4. NAIC Quarterly Statement Blank Health 2012; ~~2005~~,
5. NAIC Annual Statement Blank Property and Casualty 2012; ~~2005~~, and
6. NAIC Quarterly Statement Blank Property and Casualty 2012; ~~2005~~.

(3)(a) No credit for reinsurance shall be allowed a domestic ceding insurer:

1. If the assuming insurer's approval has been revoked by the Office; or
2. In the case of an assuming insurer that is not a licensed or accredited reinsurer, unless the assuming insurer agrees in the reinsurance agreements:

a. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

b. To designate the Director or a person resident in the United States as its true and lawful

attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company.

(b) This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(4) Credit for Reinsurance – Reinsurers Maintaining Trust Funds.

(a)1. Pursuant to Section 624.610(3)(c)1., ~~F.S. Florida Statutes~~, the Office shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified financial institution as defined in Section 624.610(5)(b), ~~F.S. Florida Statutes~~, for the payment of the valid claims of its U.S. domiciled ceding insurers, their assigns and successors in interest.

2. The assuming insurer shall report quarterly to the Office substantially the same information as that required to be reported on the National Association of Insurance Commissioners (NAIC) annual and quarterly statement form by licensed insurers, to enable the Office to determine the sufficiency of the trust fund.

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

1.a. 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 reinsurance ceded by U.S. domiciled insurers; and

b. The assuming insurer shall maintain a trusteed surplus of not less than \$20,000,000.

2.a. The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:

(I) For reinsurance ceded under reinsurance agreements with an inception, amendment, or

renewal date on or after August 1, 1995, funds in trust in an amount not less than the group's several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any member of the group;

(II) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, 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 group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(III) In addition to these trusts, the group shall maintain a trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all the years of account.

b.(I) 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.

(II) 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 Office:

(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.

(c)1.a. 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 commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust.

b. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.

c. The trust instrument shall provide that:

(I) 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;

(II) Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's U.S. ceding insurers, their assigns and successors in interest;

(III) The trust shall be subject to examination as determined by the Office;

(IV) 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

(V) No later than February 28 of each year the trustee of the trust shall report to the Office in writing setting forth the balance 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 following December 31.

(VI) Any amendment to the trust shall be filed with the Office no later than thirty (30) days after approval of the amendment by the commissioner who has the regulatory oversight of the trust.

2.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 this subsection, 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 or with an order of a court of competent

jurisdiction directing the trustee to transfer to the commissioner 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 commissioner 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 commissioner 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 U.S. beneficiaries of the trust, the commissioner 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 U.S. law that is inconsistent with this provision.

(d) For purposes of this rule, the term “liabilities” shall mean the assuming insurer’s gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers that are not 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 the trust and the trusteed surplus of a single assuming insurer shall consist of assets of a quality and limitation substantially similar to that required in Part II of Chapter 625, ~~F.S. Florida Statutes~~, and shall be valued according to their fair market value.

(f) Assets deposited in the trust and the trusteed surplus of a group including incorporated and individual unincorporated underwriters established to meet the requirements of Section 624.610(3)(c)3.b., ~~F.S. Florida Statutes~~, shall be of the type and subject to limitations of the following:

1. Assets deposited in the trusts established pursuant to Section 624.610(3)(c)3.b., ~~F.S. Florida Statutes~~, and this section shall be valued according to their fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution as defined in Section 624.610(5)(a), ~~F.S. Florida Statutes~~, clean irrevocable, unconditional and “evergreen” letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in Section 624.610(5)(a), ~~F.S. Florida Statutes~~, and investments of the type specified in this subsection.

2. 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.

3. 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 U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency.

4. No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under paragraphs a.(V), c., f.(II) or g. of this subsection.

5. The assets of a trust established to satisfy the requirements of subsection (4) shall be invested only as follows:

a. 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:

(I) The United States or by any agency or instrumentality of the United States;

(II) A state of the United States;

(III) A territory, possession or other governmental unit of the United States;

(IV) An agency or instrumentality of a governmental unit referred to in subparagraphs (I) and (II) of this paragraph 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 this paragraph if payable solely out of special assessments on properties benefited by local improvements; or

(V) 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;

b. Obligations that are issued in the United States, or that are dollar denominated and issued in a non-U.S. market, by a solvent U.S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) and that are

not in default as to principal or interest if the obligations:

(I) Are 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;

(II) Are 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

(III) Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

c. Obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. 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;

d. An investment made pursuant to the provisions of paragraph a., b. or c. of this subsection shall be subject to the following additional limitations:

(I) 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;

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

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

(IV) Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under paragraphs b.(I) and b.(II) of this subsection, but shall not exceed two percent (2%) of the assets of the trust.

e. As used in this regulation:

(I) "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; or

(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 Items (A)(i) and (A)(ii) of this subsection;

(II) "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.

f. Equity interests:

(I) Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:

(A) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(B) 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. §§ 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 National Association of Securities Dealers, Inc. A trust shall not invest in equity interests under this paragraph 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;

(II) 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:

(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;

(III) An investment in 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 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 (10%) of the assets in the trust;

g. 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.

h. Letters of Credit.

(I) In order for a letter of credit to qualify in funding 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 Office) 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.

(II) 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 willful misconduct.

(5) Trust agreements qualified under Section 624.610(4), ~~F.S. Florida Statutes.~~

(a) As used in this subsection (5):

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.

3. "Obligations," as used in sub-subparagraphs (b)11.b. and (b)11.c. of this subsection 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 ~~U.S. United States~~ financial institution as defined in Section 624.610(5)(b), ~~F.S. Florida Statutes~~.

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.

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 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 in subparagraph 11. below.

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 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;

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. 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

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, withdraw the asset upon condition that the proceeds are paid into the trust account.

7. The trust agreement shall provide that at least thirty (30) days prior to termination of the trust account written notification of termination shall be delivered by the trustee to the beneficiary and to

the Office.

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

9. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

10. 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 willful misconduct.

11. Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of Section 624.610(4), F.S. Florida Statutes, 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, 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 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 percent 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 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 ~~U.S. United States~~ financial institution apart from its general assets, in trust for such uses and purposes specified in a. and b. above as may remain executory after the withdrawal and for any period after the termination date.

12. Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of Section 624.610(4), ~~F.S. Florida Statutes~~, 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 U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in a. and b. above as may remain executory after withdrawal and for any period after the termination date.

13. The reinsurance agreement may, but need not, contain the provisions required in paragraph (d) of this subsection (5), so long as these required conditions are included in the trust agreement.

14.a. Notwithstanding any other provisions in the trust instrument, 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 or court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund.

b. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation.

c. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy claims of the U.S. beneficiaries of the trust, the assets or any part of them shall be returned to the trustee for distribution in accordance with the trust agreement.

(c) Permitted conditions:

1.a. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after the beneficiary and grantor 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 less than ninety (90) days after the trustee and the beneficiary receive the notice.

b. The 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.a. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account.

b. Any interest or dividends shall be either 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 funds and to accept substitutions that the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in sub-subparagraph (d)1.b. of this subsection (5).

4.a. 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.

b. 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 by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

(d) A reinsurance agreement may contain provisions that 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. United States~~ dollars, certificates of deposit issued by a ~~U.S. United States~~ bank and payable in ~~U.S. United States~~ dollars, and investments permitted by Part II of Chapter 625 of the Florida 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 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 the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement.

(6) Letters of credit qualified under Section 624.610(4)(c), ~~F.S. Florida Statutes~~.

(a)1. The letter of credit shall be clean, irrevocable, unconditional, and issued or confirmed by a qualified ~~U.S. United States~~ financial institution.

2. As used in this subsection (6), a qualified ~~U.S. United States~~ financial institution is one which meets the definition set forth in Section 626.7492(2)(j), ~~F.S. Florida Statutes~~.

3. The letter of credit shall contain an issue date and 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.

4. The letter of credit also shall indicate that it is not subject to any condition or qualifications

outside of the letter of credit.

5. The letter of credit shall not contain reference to any other agreements, documents, or entities, except as provided in subparagraph (g)1. of this subsection (6).

6.a. As used in this subsection (6), “beneficiary” means the domestic insurer for whose benefit the letter of credit has been established and any successor by operation of law of the named beneficiary, including without limitation any liquidator, rehabilitator, receiver or conservator.

b. 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)1. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit.

2. The boxed section shall be clearly marked to indicate that 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 U.S.~~United States~~ financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(d)1. The term of the letter of credit shall be for at least one year and shall contain an “evergreen clause” that prevents the expiration of the letter of credit without due notice from the issuer.

2. The “evergreen clause” shall provide for a period of no less than sixty (60) days notice prior to expiration date or nonrenewal.

(e)1. The letter of credit shall be subject to and governed by the laws of the state of Florida;

2. All drafts drawn on the letter of credit shall be presentable at an office in the United States of a qualified U.S.~~United States~~ financial institution.

(f) The letter of credit shall be issued or confirmed by a qualified ~~U.S. United States~~ financial institution authorized to issue letters of credit, pursuant to Section 624.610(5)(a), ~~F.S. Florida Statutes~~.

(g) Reinsurance agreement provisions.

1. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions 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 the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(I) To pay or reimburse the ceding insurer for:

(A) The assuming insurer's share 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 such policies; and

(B) 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 insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

(C) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(II) 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 specific

reinsurance 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 U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in sub-sub-subparagraph (g)1.b.(l) of this subsection (6) as may remain after withdrawal and for any period after the termination date.

c. All of the provisions of this subparagraph (g)1. shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

2. Nothing contained in this subparagraph (g)1. 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 sub-subparagraph 1.b. above; or

b. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

(7) Credit shall be allowed foreign and alien insurers when the reinsurance is ceded to an assuming insurer which is domiciled or licensed in, or, in the case of a U.S. branch of an alien assuming insurer is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under these rules, and the assuming insurer and the reinsurance agreement meets the requirements established by this rule and Section 624.610, F.S. Florida Statutes.

(8) A domestic ceding insurer shall notify the Office within thirty (30) days after reinsurance recoverables from any single assuming insurer, or group of assuming insurers, exceeds fifty percent

(50%) of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(9) A domestic ceding insurer shall notify the Office within thirty (30) days after ceding to any single assuming insurer, or group of assuming insurers, more than twenty percent (20%) of the domestic ceding insurer's gross written premium in the prior calendar year, or after it is determined that the reinsurance ceded to any single assuming insurer, or group of assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

Specific Authority 624.308 FS. Law Implemented 624.307(1), 624.610 FS. History—New 1-30-91, Formerly 4-108.005, Amended 12-25-97, 10-13-02, Formerly 4-144-005, Amended 9-14-06, _____.