

## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Section 314 and 2741 (18 **Del.C.** §§314 and 2741)  
18 **DE Admin. Code** 1003

### FINAL

### ORDER

Proposed changes to Regulation 1003 relating to Credit for Reinsurance were published in the Delaware *Register of Regulations* on February 1, 2008. The comment period remained open until March 3, 2008. There was no public hearing on the proposed changes to Regulation 1003. Public notice of the proposed changes to Regulation 1003 in the *Register of Regulations* was in conformity with Delaware law.

#### Summary of the Evidence and Information Submitted

No public comment was received as a result of the publication of the proposed changes for comment. Regulation 1003 prior to the proposed amendment required the use of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 500. Publication 500 has been updated since the enactment of Regulation 1003 and is likely to be updated in the future. The purpose of Regulation 1003 is best served by the utilization of the most current update of Publication 500.

#### Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. 18 **Del.C.** §910 et. seq. of the Insurance Code requires a regulation to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of the Code.
2. The use of the most current version of Publication 500 of the Uniform Customs and Practices for Documentary Credits of the International Chamber of Commerce best serves the purpose of those rules and requirements.

#### Decision and Effective Date

Based on the provisions of 18 **Del.C.** §§311(a) and 1718 and 29 **Del.C.** §§10113-10118 and the record in this docket, I hereby adopt Regulation 1003 as amended and as may more fully and at large appear in the version attached hereto to be effective on April 11, 2008.

#### Text and Citation

The text of the proposed amendments to Regulation 1003 last appeared in the *Register of Regulations* Vol. 11, Issue 8, pages 990-998.

**IT IS SO ORDERED** this \_\_\_<sup>th</sup> day of March 2008.

Matthew Denn  
Insurance Commissioner

#### 1003 Credit for Reinsurance [Formerly Regulation 79]

##### 1.0 Authority

1.1 This regulation is promulgated pursuant to the authority granted by 18 **Del.C.** §§314 and 910 et seq. of the Insurance Code, and in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101. All references to section numbers shall refer to Title 18 (the Insurance Code) unless otherwise noted.

## **2.0 Purpose**

The purpose of this regulation is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of 18 Del.C. §910 et seq. of the Insurance Code. The actions and information required by this regulation are hereby declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state.

## **3.0 Severability**

3.1 If any provisions of this regulation, or their application to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application, and to that end the provisions of this regulation are separable.

## **4.0 Credit for Reinsurance — Reinsurer Licensed in this State**

4.1 Pursuant to 18 Del.C. §911(a) of the Act, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers which were licensed in this state as of the date of the ceding insurer's financial statement.

## **5.0 Credit for Reinsurance — Accredited Reinsurers**

5.1 Pursuant to 18 Del.C. §911(b) of the Act, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which is accredited as a reinsurer in this state as of the date of the ceding insurer's statutory financial statement. An accredited reinsurer is one which:

5.1.1 Files a properly executed Form AR-1 (attached as an exhibit to this regulation) as evidence of its submission to this jurisdiction and to this state's authority to examine its book and records; and

5.1.2 Files with the commissioner a certified copy of a letter or a certificate of authority or of compliance as evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact in insurance or reinsurance in at least one state; and

5.1.3 Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

5.1.4 Maintains a surplus as regards policyholders in an amount not less than \$20,000,000 and whose accreditation has not been denied by the commissioner within ninety (90) days of its submission or, in the case of companies with a surplus as regards policyholders of less than \$20,000,000, whose accreditation has been approved by the commissioner.

5.2 If the commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, he may upon written notice and hearing revoke the accreditation. No credit shall be allowed a domestic ceding insurer with respect to reinsurance ceded after January 1, 1995 if the assuming insurer's accreditation has been denied or revoked by the commissioner after notice and hearing.

## **6.0 Credit for Reinsurance — Reinsurer Domiciled and Licensed in Another State**

6.1 Pursuant to 18 Del.C. §911(c) of the Act the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which as of the date of the ceding insurer's statutory financial statement:

6.1.1 Is domiciled and licensed in (or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed in) a state which employs standards regarding credit for reinsurance substantially similar to those applicable under the Act and this regulation;

6.1.2 Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

6.1.3 Files a properly executed Form AR-1 with the commissioner as evidence of its submission to this state's authority to examine its books and records.

6.2 The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards which the commissioner determines equal or exceed the standards of the Act and this regulation.

## **7.0 Credit for Reinsurance — Reinsurers Maintaining Trust Funds**

7.1 Pursuant to 18 Del.C. §911(d) of the Act, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of the date of the ceding insurer's statutory financial statement maintains a trust fund in an amount prescribed below in a qualified United States financial institution as defined in 18 Del.C. §913 of the Act, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successor in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

7.2 The following requirements apply to the following categories of assuming insurer:

7.2.1 The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business written in the United States, and in addition, a trustee surplus of not less than \$20,000,000.

7.2.2 The trust fund for a group which includes incorporated and individual unincorporated underwriters shall consist of funds in trust in an amount not less than the group's aggregate liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of the United States ceding insurers of any member of the group. The incorporated members of such a group shall not engage in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the commissioner annual certifications by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter member of the group.

7.2.3 The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10,000,000,000 (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall consist of funds in trust in an amount not less than the assuming insurers' liabilities attributable to business ceded by United States ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group and, in addition, the group shall maintain a joint trustee surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall file a properly executed Form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination. The group shall make available to the commissioner annual certifications by the members' domiciliary regulators and their independent public accountants of the solvency of each member of the group.

7.3 The trust shall be established in a form approved by the commissioner. The trust instrument shall provide that:

7.3.1 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.

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

7.3.3 The trust shall be subject to examination as determined by the commissioner.

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

7.3.5 No later than February 28 of each year the trustees of the trust shall report to the commissioner 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 next following December 31.

7.3.6 No amendment to the trust shall be effective unless reviewed and approved in advance by the commissioner.

## **8.0 Credit for Reinsurance Required by Law**

8.1 Pursuant to 18 **Del.C.** §911(e), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of 18 **Del.C.** § 911(a), (b), (c) or (d), but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district or territory of the United States and any lawful national government.

## **9.0 Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer**

9.1 Pursuant to 18 **Del.C.** §912, the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of 18 **Del.C.** §911 in an amount not exceeding the liabilities carried by the ceding insurer. Such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder. Such security must be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in 18 **Del.C.** §913. This security may be in the form of any of the following:

9.1.1 Cash.

9.1.2 Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets.

9.1.3 Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in 18 **Del.C.** §912(c), effective no later than December 31 of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs.

9.1.4 Any other form of security acceptable to the Commissioner.

9.1.4.1 An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to sections 9.1.1, 9.1.2 and 9.1.3 shall be allowed only when the requirements of sections 10.0, 11.0 or 12.0 of this regulation are met.

## **10.0 Trust Agreements Qualified under Section 9.0**

10.1 As used in this section:

10.1.1 **"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).

10.1.2 **"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.

10.1.3 **"Obligations"**, as used in section 10.2.4.11 of this section, means:

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

10.1.3.2 Reserves for reinsured losses reported and outstanding;

10.1.3.3 Reserves for reinsured losses incurred but not reported; and

10.1.3.4 Reserves for allocated reinsured loss expenses and unearned premiums.

10.2 Required conditions.

10.2.1 The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution as defined in 18 **Del.C.** §913.

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

10.2.3 All assets in the trust account shall be held by the trustee at the trustee's office in the United States, except that a bank may apply for the Commissioner's permission to use a foreign branch office of such bank as trustee for the trust agreements established pursuant to this section. If the Commissioner approves the use of such foreign branch office as trustee, then its use must be approved by the beneficiary in

writing and the trust agreement must provide that the written notice described in section 10.2.4.1 of this section must also be presentable, as a matter of legal right, at the trustee's principal office in the United States.

10.2.4 The trust agreement shall provide that:

10.2.4.1 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;

10.2.4.2 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;

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

10.2.4.4 It shall not contain references to any other agreements or documents except as provided for under section 10.2.4.11 of this subsection.

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

10.2.4.6 The trust agreement shall require the trustee to:

10.2.4.6.1 Receive assets and hold all assets in a safe place;

10.2.4.6.2 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;

10.2.4.6.3 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;

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

10.2.4.6.5 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

10.2.4.6.6 All 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.

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

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

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

10.2.4.10 The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith.

10.2.4.11 Notwithstanding other provisions of this regulation, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, such a 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:

10.2.4.11.1 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;

10.2.4.11.2 To may 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

10.2.4.11.3 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 United States financial institution as defined in 18 Del.C. §913 apart from its general assets, in trust for such uses and purposes specified in sections 10.2.4.6.1 and 10.2.4.6.2 above as may remain executory after such withdrawal and for any period after the termination date.

10.2.4.12 The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by 10.4.1.2 of this section, so long as these required conditions are included in the trust agreement.

### 10.3 Permitted conditions.

10.3.1 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 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 ninety (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.

10.3.2 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. Any such 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.

10.3.3 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 which the trustee determine are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in 10.4.1.2 of this section.

10.3.4 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.

10.3.5 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.

### 10.4 Additional conditions applicable to reinsurance agreements.

10.4.1 A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that:

10.4.1.1 Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

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

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

10.4.1.4 Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

10.4.1.5 Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be

withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

10.4.1.5.1 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;

10.4.1.5.2 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;

10.4.1.5.3 To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses and unearned premium reserves; and

10.4.1.5.4 To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

10.4.2 The reinsurance agreement may also contain provisions that:

10.4.2.1 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:

10.4.2.1.1 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

10.4.2.1.2 After withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount.

10.4.2.1.3 The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

10.4.2.2 Provide for:

10.4.2.2.1 The return of any amount withdrawn in excess of the actual amounts required for sections 10.4.1.5, 10.4.1.5.1, 10.4.1.5.2 and 10.4.1.5.3, or in the case of sections 10.4.1.5, 10.4.1.5.4, any amounts that are subsequently determined not to be due; and

10.4.2.2.2 Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to section 10.4.1.5.3.

10.4.2.3 Permit the award any arbitration panel or court of competent jurisdiction of:

10.4.2.3.1 Interest at a rate different from that provided in Subparagraph (b)(ii)(10.4.2.2.2),

10.4.2.3.2 Court of arbitration costs,

10.4.2.3.3 Attorney's fees, and

10.4.2.4 Any other reasonable expenses.

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

10.4.4 Existing agreements. Notwithstanding the effective date of this regulation, any trust agreement or underlying reinsurance agreement in existence prior to January 1, 1995 will continue to be acceptable until January 1, 1996, at which time the agreements will have to be in full compliance with this regulation for the trust agreement to be acceptable.

10.4.5 The failure of any trust agreement to specifically identify the beneficiary as defined in section 10.1 shall not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

## **11.0 Letters of Credit Qualified under Section 9.0**

11.1 The letter of credit must be clean, irrevocable and unconditional and issued or confirmed by a qualified United States financial institution as defined in 18 **Del.C.** §913. The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents of entities, except as provided in section 11.2 below. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established 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).

11.2 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 shall be clearly marked to indicate that such information is for internal identification purposes only.

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

11.4 The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than thirty (30) days' notice prior to expiry date or nonrenewal.

11.5 The letter of credit shall 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 500 or subsequent updates), and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

11.6 If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500 or subsequent updates), then the letter of credit shall 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 force majeure events specified in Publication 500 (or subsequent updates) occur.

11.7 The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to 18 **Del.C.** §913.

11.8 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 11.7 of this section, then the following additional requirements shall be met:

11.8.1 The issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts, and

11.8.2 The "evergreen clause" shall provide for thirty (30) days' notice prior to expiry date for nonrenewal.

11.9 Reinsurance agreement provisions.

11.9.1 The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

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

11.9.1.2 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:

11.9.1.2.1 To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;



11.9.1.2.2 To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;

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

11.9.1.2.4 To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

11.9.1.3 All of the foregoing provisions of 11.1 of this subsection should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

11.9.2 Nothing contained in 11.1 of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

11.9.2.1 An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to 11.9.1.2.3 of this subsection; and/or

11.9.2.2 The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the case of 11.9.1.2.4 of this subsection, any amounts that are subsequently determined not to be due.

11.9.2.3 When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of 11.9.1.2 of this subsection, require that the parties enter into a "Trust Agreement" which may be incorporated into the reinsurance agreement or be a separate document.

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

## **12.0 Other Security**

12.1 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.

## **13.0 Reinsurance Contract**

13.1 Credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of sections 4.0, 5.0, 6.0, 7.0 or 9.0 of this regulation or otherwise in compliance with 18 **Del.C.** §910 of the Act after the adoption of this regulation unless the reinsurance agreement:

13.1.1 Includes a proper insolvency clause pursuant to 18 **Del.C.** §914 of the Insurance Code; and

13.1.2 Includes a provision pursuant to 18 **Del.C.** §911(f) whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court of 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 panel.

## **14.0 Contracts Affected**

All new and renewal reinsurance transactions shall conform to the requirements of the Act and this regulation of credit is to be given to the ceding insurer for such reinsurance.

## **15.0 Effective Date**

This regulation shall become effective 30 days after the Commissioner's signature.

**11 DE Reg. 1378 (04/01/08) (Final)**