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Credit for Reinsurance

Sec. 38a-88-1. Credit for reinsurance—reinsurer licensed in this state

(a) The Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was licensed in this state as of any date on which statutory financial statement credit for reinsurance is claimed.

(b) As used in sections 38a-88-1 to 38a-88-12, inclusive, of the Regulations of Connecticut State Agencies:

(1) ''Commissioner'' means the Insurance Commissioner of the State of Connecticut;

(2) ''Evergreen'' means that a letter of credit will be continuously renewed unless the financial institution which issued or confirmed the letter of credit gives advance notice that it will not be renewed when its term expires;

(3) ''Liabilities'' means 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: (A) For business ceded by domestic insurers authorized to write property and casualty insurance: (i) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer; (ii) Reserves for losses reported and outstanding; (iii) Reserves for losses incurred but not reported; (iv) Reserves for allocated loss expenses; and (v) Unearned premiums; (B) For business ceded by domestic insurers authorized to write life, health and annuity insurance: (i) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums; (ii) Aggregate reserves for accident and health policies; (iii) Deposit funds and other liabilities without life or disability contingencies; and (iv) Liabilities for policy and contract claims; and

(4) ''NAIC'' means the National Association of Insurance Commissioners.

(Effective November 26, 1991; amended July 7, 2004)

Sec. 38a-88-2. Credit for reinsurance—accredited reinsurers

(a) 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 any date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer is one which:

(1) Files a properly executed Form AR-1 (Appendix A of this regulation) as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;

(2) Files annually by March 1 with the Commissioner a certified copy of a certificate of authority or other acceptable 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 insurance or reinsurance in at least one state;

(3) Files annually by March 1 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

(A) 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 90 days of its submission; or (B) Maintains a surplus as regards policyholders of less than $20,000,000, and whose accreditation has been approved by the Commissioner.

(b) If the Commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, the Commissioner may upon written notice and hearing revoke the accreditation. Credit shall not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the Commissioner.

(Effective November 26, 1991; amended July 7, 2004)

Sec. 38a-88-3. Credit for reinsurance—Reinsurer domiciled in another state

(a) The Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial statement credit for reinsurance is claimed:

(1) Is domiciled in (or, in the case of a United States branch of an alien assuming insurer, is entered through) a state which employs standards regarding credit for reinsurance substantially similar to those applicable under Sections 38a-85 to 38a-89, inclusive, of the General Statutes and this regulation;

(2) Maintains a surplus as regards policyholders in an amount not less than $20,000,000; and

(3) Files a properly executed Form AR-1 (Appendix A of this regulation) with the Commissioner as evidence of its submission to this State's authority to examine its books and records.

(b) The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed 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 Sections 38a-85 to 38a-89, inclusive, of the General Statutes and this regulation.

(c) Notwithstanding subsection (a) of this section, the Commissioner shall allow credit for reinsurance ceded and assumed to a pooling arrangement that has the following characteristics:

(1) The majority of the pooling members are licensed to transact business in this state;

(2) The members of the pool are subject to several or joint and several liability;

(3) All members of the pool agree to file annually on or before March 1 with the Commissioner a copy of its annual statement filed with the insurance department of its state of domicile; and

(4) The manager of the pool files annually by December 1 with the Commissioner a request to be exempted from the provisions of subsection (a) of this section.

(Effective November 26, 1991; amended July 7, 2004)

Sec. 38a-88-4. Credit for reinsurance—Reinsurers maintaining trust funds

(a) The Commissioner 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 United States financial institution as defined in Section 38a-87(b) of the General Statutes, for the payment of the valid claims of its United States domiciled ceding insurers, their assigns and successors 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.

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

(1) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States domiciled insurers, and in addition, 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 United States 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 sections 38a-88-1 to 38a-88-12, inclusive, of the Regulations of Connecticut State Agencies, 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 United States domiciled ceding insurers of any member of the group for all the years of account.

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

(i) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(ii) If a certification is unavailable, a financial statement, audited by independent public accountants, of each underwriter member of the group.

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

(c) (1) 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. 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. The trust instrument shall provide that:

(A) Contested claims 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.

(B) Legal Title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest.

(C) The trust shall be subject to examination as determined by the Commissioner.

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

(E) No later than March 1 of each year the trustee of the trust shall report to the Commissioner in writing setting forth the balance in the trust and listing the trust's investment 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.

(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 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 United States 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 United States law that is inconsistent with the provisions of this subsection, including actions pursuant to Section 304 of the Federal Bankruptcy Act seeking repatriation of trust assets for distribution in a non-United States liquidation proceeding.

(d) Assets deposited in trusts established pursuant to Section 38a-85 of the General Statutes and this section shall be valued according to their fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a qualified United States financial institution as defined in Section 38a-87(a) of the General Statutes, clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution, as defined in Section 38a-87(a) of the General Statutes, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent (5%) of total investments. No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under subparagraph (E) of subdivision (1) of this subsection, subparagraph (B) of subdivision (6) of this subsection, or subdivision (3) or (7) of this subsection, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of Section 38a-85 of the General Statutes shall be invested only as follows:

(1) Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by: (A)

The United States or by any agency or instrumentality of the United States; (B) A state of the United States; (C) A territory, possession or other governmental unit of the United States; (D) An agency or instrumentality of a state, territory, possession or other governmental unit referred to in subparagraph (B) or (C) of this subdivision if the obligations shall be by law (statutory of 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 subdivision if payable solely out of special assessments on properties benefited by local improvements; or (E) The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

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

(A) Are rated A or higher (or the equivalent) by 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) 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

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

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

(4) An investment made pursuant to the provisions of subdivision (1), (2) or (3) of this subsection shall be subject to the following additional limitations:

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

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

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

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

(5) As used in this section:

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

(i) Represents ownership of one 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 USC 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 USC Sections 1709 and 1715b, 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 USC Section 1703; or

(ii) 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 subclauses (i)(I) and (i)(II) of this subsection;

(B) ''Promissory note'' when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

(6) Equity interests

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

(i) The institution's obligations and preferred shares, if any, are eligible as investments under this subsection; and

(ii) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 USC Sections 78a to 78kk, inclusive, or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for the equity interests 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 subparagraph an amount exceeding one percent (1%) of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company; (B) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, are permissible if:

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

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

(C) An investment 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 subparagraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this subparagraph, shall not exceed ten percent (10%) of the assets in the trust;

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

(8) Investment companies

(A) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 USC Sections 80a-1 et seq., are permissible investments if the investment company:

(i) Invests at least ninety percent (90%) of its assets in the types of securities that qualify as an investment under subdivision (1), (2) or (3) of this subsection or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in subdivisions (1), (2) or (3) of this subsection; or

(ii) Invests at least ninety percent (90%) of its assets in the types of equity interests that qualify as an investment under subparagraph (A) of subdivision (6) of this subsection;

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

(i) An investment in an investment company qualifying under subparagraph (A)(i) of this subdivision shall not exceed ten percent (10%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent (25%) of the assets in the trust; and

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

(9) Letters of Credit

(A) In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the 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.

(B) The trust agreement shall provide that the trustee shall be liable for damages caused by its own negligence, willful misconduct or lack of good faith, including the failure of the trustee to draw against the letter of credit in circumstances where such draw would be required.

(e) A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 38a-88-6 of the Regulations of Connecticut State Agencies shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

(Effective November 26, 1991; amended July 7, 2004)

Sec. 38a-88-5. Credit for reinsurance required by law

Pursuant to Section 38a-85(f) of the General Statutes, the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Subsections (b), (c), (d) or (e) of Section 38a-85 of the General Statutes, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this Section, ''jurisdiction'' means any state, district or territory of the United States and any lawful national government.

(Effective November 26, 1991; amended July 7, 2004)

Sec. 38a-88-6. Reduction from liability for reinsurance ceded to an unauthorized assuming insurer

(a) Pursuant to Section 38a-86 of the General Statutes, the Commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 38a-85 of the General Statutes in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in Section 38a-87(b) of the General Statutes. This security may be in the form of any of the following:

(1) cash;

(2) securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;

(3) clean, irrevocable, unconditional and ''evergreen'' letters of credit issued or confirmed by a qualified United States institution, as defined in Section 38a-87(a) of the Statutes, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding company 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.

(4) Any other form of security acceptable to the Commissioner.

(b) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of Sections 38a-88-7, 38a-88-8, or 38a-88-9 of this regulation have been satisfied.

(Effective November 26, 1991; amended July 7, 2004)

Sec. 38a-88-7. Trust agreements used to qualify for reduction from liability for reinsurance ceded to an unauthorized assuming insurer

(a) As used in this section:

(1) ''Beneficiary'' means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator. When estab-

lished in conjunction with a reinsurance agreement the beneficiary is the licensed ceding insurer.

(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 Subsection (b)(11) of this section, means:

(A) Reinsurance 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 for trust agreements qualified under Section 38a-88-6.

(1) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution as defined in Section 38a-87(b) of the General 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 represented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(C) it is not subject to any conditions or qualifications outside of the trust agreement; and

(D) it shall not contain references to any other agreements or documents except as provided for under subdivision (11) of this subsection.

(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 such assets to such 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 such asset upon condition that the proceeds are paid into the trust account.

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

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

(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. 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.

(10) The trust agreement shall provide that the trustee shall be liable for damages caused by its own negligence, willful misconduct or lack of good faith, including the failure of the trustee to draw against the letter of credit in circumstances where such draw would be required.

(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, 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, 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 such termination date, to withdraw amounts equal to such obligations and deposit such amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in Section 38a-87(b) of the General Statutes apart from its general assets, in trust for such uses and purposes specified in subparagraphs (A) and (B) above, as may remain executory after such withdrawal and for any period after such termination date.

(12) Notwithstanding other provisions of sections 38a-88-1 to 38a-88-12, inclusive, of the Regulations of Connecticut State Agencies, when a trust agreement is established to meet the requirements of Section 38a-88-6 of the Regulations of Connecticut State Agencies in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

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

(i) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners

of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

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

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

(C) Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in subparagraphs (A) and (B) of this subdivision 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 by Subsection (d)(1)(B) of this section, so long as these required conditions are included in the trust agreement.

(c) Permitted conditions for trust agreements qualified under Section 38a-88-6.

(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 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 90 days after the trustee and the beneficiary receive 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.

(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.

(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 such funds and to accept such substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in Subsection (d)(1)(B) of this section.

(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.

(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) Additional conditions applicable to reinsurance agreements.

(1) A reinsurance agreement may contain provisions that:

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

(B) stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in (United States dollars), certificates of deposit (issued by a United States bank and payable in United States dollars), and investments of the types permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The 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 subparagraph in lieu of including such provisions in the reinsurance agreement;

(C) require the assuming insurer, prior to depositing assets with the trustee, to execute assignments, endorsements in blank, or 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 any such assets without consent or signature from the assuming insurer or any other entity;

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

(E) 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:

(i) 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 because of cancellations of such policies;

(II) 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; and

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

(ii) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(2) The reinsurance agreement may also contain provisions that:

(A) give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(i) the assuming insurer shall, at the time of such 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

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

(B) provide for the return of any amount withdrawn in excess of the actual amounts required for subparagraph (E) of subdivision (1) of this subsection, and for interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant to subparagraph (E) of subdivision (1) of this subsection;

(C) permit the award by any arbitration panel or court of competent jurisdiction of:

(i) interest at a rate different from that provided in subparagraph (B) of subdivision (2) of this subsection;

(ii) court or arbitration costs;

(iii) attorney's fees; and

(iv) any other reasonable expenses.

(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.

(4) Existing agreements. Notwithstanding the effective date of this regulation, any trust agreement or underlying reinsurance agreement in existence prior to July 1, 1991 will continue to be acceptable until June 30, 1992, at which time the agreements will have to be in full compliance with this regulation for the trust agreement to be acceptable.

(5) The failure of any trust agreement to specifically identify the beneficiary as defined in subsection (a) of this section 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.

(Effective November 26, 1991; amended July 7, 2004, May 30. 2007)

Sec. 38a-88-8. Letters of credit used to qualify for reduction from liability for reinsurance ceded to an unauthorized assuming insurer

(a) The letter of credit must be clean, irrevocable, unconditional and issued or confirmed by a qualified United States financial institution as defined in Section 38a-87(a) of the General Statutes. 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. 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 or entities, except as provided in Subsection (i)(1) of this section. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then

the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

(b) The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for such letter of credit. 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 United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(d) 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 30 days' notice prior to expiration date or non-renewal.

(e) 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 any successor publication, and all drafts thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

(f) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), or any successor publication, then the letter of credit shall specifically address and provide 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 17 of Publication 500 or any other successor publication occur.

(g) The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to Section 38a-87(a) of the General Statutes.

(h) If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection (g) of this section, then the following additional requirements shall be met:

(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

(2) The "evergreen clause" shall provide for 30 days notice prior to expiration date for non-renewal.

(i) 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 such 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: (I) 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;

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

(III) 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 United States financial institution apart from its general assets, in trust for such uses and purposes specified in Subdivision (1)(B)(i) of this subsection as may remain after withdrawal and for any period after the termination date.

(C) All of the following provisions of Subdivision (1) of this subsection shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(2) Nothing contained in Subdivision (1) of this subsection 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 Subsection (i)(1)(B) of this section; 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.

(Effective November 26, 1991; amended July 7, 2004)

Sec. 38a-88-9. Other security

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

(Effective November 26, 1991; amended July 7, 2004)

Sec. 38a-88-10. Reinsurance contract

Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of Sections 38a-88-1 to 38a-88-4, inclusive, and Section 38a-88-6 of this regulation or otherwise in compliance with Section 38a-85 of the General Statutes after the adoption of this regulation unless the reinsurance agreement:

(a) Includes a proper insolvency clause that provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be payable under a reinsurance agreement entered into by the assuming insurer on the basis of reported claims allowed by the liquidation court, without diminution because of the insolvency of the ceding insurer. Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except: (1) where the contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer, or (2) where the assuming insurer, with the consent of the direct insured(s), has assumed such policy obligations of the ceding

insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees;

(b) Notwithstanding subsection (a) of this section, in the event that a life and health insurance guaranty association has made the election to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, then the reinsurer's liability to pay covered reinsured claims shall continue under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims shall only be made by the reinsurer pursuant to the direction of the guaranty association or its designated successor. Any payment made at the direction of the guaranty association or its designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for said claim payment;

(c) The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated any defenses which it deems available to the ceding insurer, or its liquidator; and

(d) Includes a provision pursuant to Section 38a-85(g) of the General Statutes 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 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.

(Effective November 26, 1991; amended July 7, 2004)

Sec. 38a-88-11. Contracts affected

Sections 38a-88-1 to 38a-88-10, inclusive, shall apply to reinsurance agreements which have had an inception, anniversary or renewal date not less than six months after January 1, 1991, with respect to all cessions under such agreements after such inception, anniversary or renewal date.

(Effective November 26, 1991; amended July 7, 2004)

Sec. 38a-88-12. Severability

If any provision of this regulation, or the application thereof to any person or circumstance, is for any reason held to be invalid, the remainder of the regulations and the application of such provision to other persons or circumstances shall not be affected thereby.

(Effective November 26, 1991; amended July 7, 2004)

(see appendix next page)

Appendix A

FORM AR - 1

CERTIFICATE OF ASSUMING INSURER

I, _____ , _____
(name of senior officer) (title of officer)

of _____ , the assuming insurer
(name of assuming insurer)
under a reinsurance agreement(s) with one or more insurers domiciled in the State of Connecticut, hereby certify that

_____ :
(name of assuming insurer)

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

2. Designates the Insurance Commissioner of the State of Connecticut as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement(s) instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of the State of Connecticut to examine its books and records and agrees to bear the expense of any such examination.

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

Dated: _____ _____
(name of assuming insurer)

BY: _____
(name of officer)

_____
(title of officer)

(Effective November 26, 1991; amended July 7, 2004)