

## Clearinghouse Rule 17-004

### PROPOSED ORDER AMENDING, REPEALING, AND CREATING A RULE

#### Office of the Commissioner of Insurance

Agency 145 – Ch. INS 52, Wis. Admin. Code:

The Commissioner of Insurance proposes an order

**To amend** Ins 52.02, 52.02(2)(g), 52.02(4)(d), Ins 52.025 (title), 52.025(1), 52.025(2), 52.025(3), 52.03(1), 52.04(3), 52.05(2)(i), 52.05(2)(j), 52.06(2)(h), 52.06(2)(i),

**To repeal** Ins 52.02(3m)

**To create** Ins 52.02(2)(h), 52.02(4)(e)7., 52.02(4)(f), 52.02(4m), 52.065, Form CR-1

**Relating to** Credit for Reinsurance

The statement of scope for this rule SS: 004-15, was approved by the Governor on January 15, 2015, published in Register No. 710A1, on February 25, 2015, and approved by the Commissioner on March 10, 2015.

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### ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

**1. Statutes interpreted:**

ss. 620.03, 620.21, 620.22, 623.02, 623.02. 623.04, 623.32, and 627.23, Stats.

**2. Explanation of OCI's authority to promulgate the proposed rule under these statutes:**

The statutory authority for these rules are ss. 227.11 (2) (a) and 601.41 (3), Stats. Sections 620.03, 620.21, 620.22, 623.02, 623.02, 623.04, 623.32, Stats., generally regulate how insurers account for assets and liabilities. Section 627.23, Stat. specifically authorized insurers to accept reinsurance and states “[s]ubject to rules promulgated by the commissioner for calculation of its reserves and its surplus, and subject to sub. (3), an authorized insurer may also cede reinsurance to an unauthorized insurer.” The proposed rule regulates how an insurer may take credit for reinsurance to an unauthorized insurer as authorized by s. 627.23, Stat.

**3. Related statutes or rules:**

None

**4. The plain language analysis and summary of the proposed rule:**

The proposed rule would modernize Wisconsin's credit for reinsurance provisions by aligning them with the federal Nonadmitted and Reinsurance Reform Act and by adopting the most recent amendments to the National Association of Insurance Commissioners ("NAIC") model act and model regulation on which Wisconsin's rules are based. These revisions are an accreditation requirement by the NAIC for 2018.

The NAIC is a standard setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. It develops model laws and regulations using a committee structure that includes both members of the committee and interested regulators. The NAIC also provides an accreditation process for state insurance departments. Accreditation of the Office of the Commissioner of Insurance (OCI) by the NAIC helps Wisconsin insurers by ensuring that the OCI has full regulatory authority over its domestic insurers. It accomplishes this by subjecting domestic insurers to financial regulation only by their domestic commissioner if the state is accredited. Because Wisconsin is accredited, Wisconsin insurers are not subject to separate financial regulation in every state in which they do business.

As for the specific changes, chapter Ins 52, Wis. Adm. Code, has not been amended since 1995. The regulation as currently written requires that, for licensed insurers to take credit for reinsurance, the assuming reinsurer must place in trust collateral in an amount equal to the reinsurer's liability to the ceding insurer. The proposed rule would add the concept of a certified reinsurer. Certified reinsurers must meet certain financial requirements, must have a history of complying with the terms of the contracts and timely meet their obligation to pay claims, and must agree to report certain information to the commissioner. In addition, certified reinsurers must be domiciled in a qualified jurisdiction.

A qualified jurisdiction is a jurisdiction that is found by the commissioner to have an effective regulatory supervisory system, a history of cooperation with U.S. regulators, and is one in which U.S. judgments are recognized and enforced. If a reinsurer from a qualified jurisdiction is certified by the commissioner, they may be allowed to post less than 100% collateral on the risk they assume, as is traditionally required. The amount of collateral that is required to be posted by a certified reinsurer depends on the financial strength rating of the reinsurer. The higher the financial rating of the reinsurer, the less collateral is required potentially all the way down to 0%. Reinsurers certified at lower levels would have the same collateral requirements as current law to be credited. By making these revisions, Wisconsin would modernize its reinsurance provisions and these changes would be consistent with changes made or in the process of being made in other states.

**5. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

There are no federal regulations which address these activities.

**6. Comparison of similar rules in adjacent states as found by OCI:**

Adjacent states have substantially similar provision which may be found at the citations listed below.

**Illinois:** 215 ILL. COMP. STAT. 5/173.1

**Iowa:** Iowa Code §§ 521B.101 to 521B.106

**Michigan:** Mich. Comp. Laws §§ 500.1101 to 500.1124

**Minnesota:** Minn. Stat. §§ 60A.09 to 60A.095

**7. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:**

OCI based this rule on the NAIC model law and regulations as adopted and that have been enacted or will likely be enacted by all 51 jurisdictions in the United States and Puerto Rico.

**8. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:**

See the attached Private Sector Fiscal Analysis.

**9. A description of the Effect on Small Business:**

This rule will have little or no effect on small businesses. This rule will reduce the collateral requirements of certain reinsurers with at least \$250 million in capital so would not affect small businesses. There may be some insurers that qualify as small businesses who cede risk to reinsurers but the rule is not expected to have any effect on their ability to take credit for reinsurance ceded and could make it easier to do business with a reinsurer.

**10. Agency contact person:**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at:

<https://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.as> or by contacting:

Phone: (608) 267-9586

Email: [karyn.culver@wisconsin.gov](mailto:karyn.culver@wisconsin.gov)

Address: 125 South Webster St – 2<sup>nd</sup> Floor, Madison WI 53703-3474  
Mail: PO Box 7873, Madison, WI 53707-7873

**11. Place where comments are to be submitted and deadline for submission:**

The deadline for submitting comments is 4:00 p.m. on March 3, 2017 as stated in the Notice of Hearing.

Mailing address:

Richard B. Wicka  
Legal Unit - OCI Rule Comment for Rule Ins 52  
Office of the Commissioner of Insurance  
PO Box 7873  
Madison WI 53707-7873

Street address:

Richard B. Wicka  
Legal Unit - OCI Rule Comment for Rule Ins 52  
Office of the Commissioner of Insurance  
125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53703-3474

Email address:

Richard B. Wicka  
richard.wicka@wisconsin.gov

Web site:

**<https://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx>**

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**The proposed rule changes are:**

**SECTION 1. Ins 52.02 is amended to read:**

**Ins 52.02** Except as provided by s. Ins 52.04 and unless otherwise prohibited by the commissioner, a ~~licensed~~ domestic insurer may take credit for ceded reinsurance as either an asset or a deduction from liability only if the reinsurer at all times complies with one or more of the following:

**SECTION 2. Ins 52.02(2)(g) is amended to read:**

**Ins 52.02(2)(g)** Unless otherwise specifically approved in writing by the commissioner, maintains policyholder surplus in an amount which is not less than ~~\$3,000,000~~ \$20,000,000.

**SECTION 3. Ins 52.02(2)(h) is created to read:**

**Ins 52.02(2)(h)** Demonstrates to the satisfaction of the commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is presumed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than \$20,000,000 and its

accreditation has not been denied by the commissioner within (90) days after submission of its application.

**SECTION 4. Ins 52.02(3m) is repealed.**

**SECTION 5. Ins 52.02(4)(d) is amended to read:**

**Ins 52.02(4)(d)** If the reinsurers are a group including incorporated and individual unincorporated underwriters, the reinsurers maintain in a trusteed account funds ~~equal to an amount that is not less than the group's aggregate liabilities attributable to business written in the United States, for reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group.~~ For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group. For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or before December 31, 1992, the reinsurer shall maintain in a trusteed account funds in amount not less than the respective underwriter's several insurance and reinsurance liabilities attributable to business written in the United States. ~~and, in~~ In addition, the group maintains a trusteed 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 incorporated members of the group are not engaged in any business other than underwriting as a member of the group and are subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group makes available to the commissioner or equivalent official of the ceding licensed insurer's state of domicile or entry an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants. For a domestic insurer, the certification shall be filed with the commissioner by June 1 unless otherwise approved in writing by the commissioner.

**SECTION 6. Ins 52.02(4)(e)7. is created to read:**

**Ins 52.02(4)(e)7.** Notwithstanding any other provision of the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund. 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. If the commissioner with regulatory oversight over the trust determines the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets to the trustee for distribution in accordance with the trust agreement. The grantor shall waive any right otherwise available to it under US law that is inconsistent with this provision.

**SECTION 7. Ins 52.02(4)(f) created to read:**

**Ins 52.02(4)(f)** If the commissioner has principal regulatory oversight of the trust, at any time after the assuming insurer has permanently discontinued writing new business for at least three years, the commissioner may authorize a reduction in the required trusteed surplus, but only after finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers.

**SECTION 8. Ins 52.02(4m) is created to read:**

**Ins 52.02(4m)** The reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this state and secures its obligations in accordance with the requirements of this subsection.

(a) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

1. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to paragraph (c) of this subsection.
2. The assuming insurer must maintain minimum capital and surplus, or its equivalent, of not less than \$250,000,000. This requirement may also be satisfied by a group including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents, net of liabilities, of at least \$250,000,000 and central fund containing a balance of at least \$250,000,000. For certified reinsurers not domiciled in the U.S., minimum capital and surplus shall be determined on a U.S. GAAP basis.
3. The assuming insurer must apply for certification and maintain current financial strength rating from two or more approved rating agencies. Approved rating agencies include Fitch Investor Service, Inc., Standard & Poor's Corporation, Moody's Investors Service, Inc., and A.M. Best Company. The commissioner shall assign a rating to each certified reinsurer and publish a list of all certified reinsurers and their ratings. The commissioner shall post notice on the office's website promptly upon receipt of any application of certification including instructions on how members of the public may comment on the application. The commissioner shall issue a written notice to an assuming insurer no sooner than 30 days after receipt of the application indicating whether the assuming insurer has been approved for certification. If approved as a certified reinsurer, the notice shall include the rating assigned by the

commissioner in accordance with this subdivision. Each certified reinsurer shall be rated on a legal entity basis, with consideration given to the group rating when the commissioner deems appropriate, except that a group including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the rating process include the following:

a. The certified reinsurer’s financial strength rating from an approved rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table that follows. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from approved rating agencies will result in the loss of eligibility for certification.

Ratings	A.M. Best	S&P	Moody’s	Fitch
Secure-1	A++	AAA	Aaa	AAA
Secure-2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure-3	A	A+, A	A1, A2	A+, A
Secure-4	A-	A-	A3	A-
Secure-5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable-6	Any other lower rating	Any other lower rating	Any other lower rating	Any other lower rating

b. The Commissioner may consider the applicant’s business practices in dealing with its ceding insurers, including compliance with contractual terms and obligations. If reinsurance obligations to U.S. cedents that are in dispute and that are more than 90 days past due exceed 5% of its reinsurance obligations to U.S. cedents as of the end of its prior financial reporting year; or the applicant’s reinsurance obligations to any of the top 10 U.S. cedents (based on the amount of outstanding reinsurance obligations as of the end of its prior financial reporting year) that are in dispute and are more than 90 days past due exceed 10% of its total reinsurance obligations to that U.S. cedent, then the applicant must provide notice to the commissioner that reinsurance obligations in dispute and past due exceed the amounts described and a detailed explanation regarding the reasons for the amount of disputed or overdue claims. The applicant must also provide a description of the applicant’s business practices in dealing with U.S. ceding insurers, and a statement that the applicant commits to comply with all contractual requirements applicable to reinsurance contracts with U.S. ceding insurers. Upon receipt of such notice and explanation, the Commissioner may request additional information concerning the applicant’s claims practices with regard to any or all U.S. ceding insurers.

- c. For certified reinsurers domiciled in the U.S., a review of the most recent National Association of Insurance Commissioners Annual Statement Blank. For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F or Form CR-S that are required to be filed under this subsection.
  - d. The history of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on analysis of ceding insurers, Schedule F reporting of overdue reinsurance recoverables including the proportion of obligations that are more than ninety days past due or are in dispute, with specific emphasis placed on obligations payable to companies that are in administrative supervision or receivership.
  - e. Regulatory actions against the certified reinsurer.
  - f. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subdivision paragraph (g).
  - g. For certified reinsurers not domiciled in the U.S., audited financial statements on a U.S. GAAP basis, regulatory filings, and actuarial opinion filed with the non-U.S. jurisdiction supervisor. Audited IFRS basis statements are allowed in lieu of a U.S. GAAP basis statement if they include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the commissioner's approval, audited IFRS basis statements with reconciliation to U.S. GAAP certified by an officer of the company. Upon initial application for certification, the commissioner shall consider audited financial statements for the previous three years filed with its non-U.S. jurisdiction supervisor.
  - h. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding.
  - i. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement;
  - j. Any other information deemed relevant by the commissioner.
4. The assuming insurer must agree to submit to the jurisdiction of this state by submitting a properly executed Form CR-1, appointing the commissioner as its agent for service of process in this state, and agreeing to provide security of 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The commissioner shall not certify an assuming insurer that is domiciled in a jurisdiction the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.



5. The certified reinsurer must agree to meet applicable filing requirements. All information submitted by certified reinsurers which is not otherwise public information subject to disclosure shall be withheld from public disclosure under s. 601.465, Wis. Stat. The filing requirements are as follows:

a. Notification within 10 days of any regulatory actions taken against the certified reinsurer, any changes in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing changes and the reasons therefore.

b. Annually, Form CR-F or CR-S, as applicable.

c. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subdivision paragraph d.

d. Annually, audited financial statements, regulatory filings, and actuarial opinion as filed with the certified reinsurer's supervisor. Upon the initial certification, audited financial statements for the last three years filed with the certified reinsurer's supervisor. Audited financial statements should be provided on a U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with permission of the commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an office of the company.

e. At least annually, an updated list of all disputed and overdue reinsurance claims which meet the thresholds described in subdivision 3.b. regarding reinsurance assumed from U.S. domestic ceding insurers.

f. A certification for the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level.

g. A reinsurer must file an annual renewal application for certification by October 1st to be considered for certification for the next calendar year.

h. Any other information deemed relevant by the commissioner.

6. The certified reinsurer must secure its obligations assumed from U.S. ceding insurers at a level consistent with the rating set by the commissioner. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with the rating assigned to the reinsurer by the commissioner and must be maintained in form that is consistent with s. Ins 52.05 and this section, for multibeneficiary trusts. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

a. Ratings	Security Required
Secure -1	0%

Secure -2	10%
Secure -3	20%
Secure -4	50%
Secure - 5	75%
Vulnerable - 6	100%

b. The commissioner shall require the certified reinsurer to post one hundred percent security, for the benefit of the ceding insurer or its estate, upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

c. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of up to one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence that is likely to result in significant insured losses as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner in compliance with its contractual obligations as set forth in the reinsurance agreement under which the claims are ceded. Reinsurance recoverables for only the following lines of business as reported on the National Association of Insurance Commissioners annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

- Line 1: Fire
- Line 2: Allied Lines
- Line 3: Farmowners multiple peril
- Line 4: Homeowners multiple peril
- Line 5: Commercial multiple peril
- Line 9: Inland Marine
- Line 12: Earthquake
- Line 21: Auto physical damage

d. Based on an analysis of a certified reinsurer's history of prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to US ceding insurers. The commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level if the commissioner finds that more than 15 percent of the certified reinsurers ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety days or more which are not in dispute and which exceed \$100,000 for each cedent or the aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety days or more exceeds \$50,000,000.

e. In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall assign by written notice a new rating to the certified reinsurer pursuant to this section. The certified reinsurer shall meet the security requirements applicable to its new rating for all business assumed as a certified reinsurer by the date specified by the

commissioner in the written notice. If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the applicable security requirements of its new rating for reinsurance agreement entered into after the date of the upgrade. For reinsurance agreements entered into before the date of the upgrade, the certified reinsurer shall post security as required by the certified reinsurer's rating before the upgrade.

f. If a certified reinsurer maintains a trust to fully secure its obligations under par.(4)(c) and chose to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations under par.(4)(c) and for its obligations under this subsection. As a condition for certification, the reinsurer shall have bound itself by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other trust account.

g. The minimum trusteed surplus requirements provided in par.4(c)and (d) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that such trust shall maintain a minimum of trusteed surplus of \$10,000,000.

h. If the security held by the certified reinsurer under this subsection is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency and has the discretion to impose further reductions in allowable credit if there is a material risk that the certified reinsurer's obligations will not be paid in full.

i. A certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100% of its obligations.

7. The assuming insurer must satisfy any other requirements for certification deemed relevant by the commissioner.

(b) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying the requirements of paragraph (a):

1. The association shall satisfy its minimum capital and surplus requirement through capital and surplus equivalents, net of liabilities, of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association.

2. The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members.

3. Within ninety days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide the commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member or, if certification is unavailable, financial statements prepared by independent public accountants of each underwriter member of the association.

(c) The commissioner shall create and publish electronically a list of qualified jurisdictions under which an assuming insurer licensed and domiciled therein is eligible to be considered for certification by the commissioner.

1. In order to determine whether the domiciliary jurisdiction of a non-US insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and ongoing, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-US jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final US judgments and arbitration awards.

2. The commissioner shall consider the list of qualified jurisdictions published through the National Association of Insurance Commissioners in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the National Association of Insurance Commissioners list, the commissioner shall provide a justification for determining the jurisdiction is qualified. Factors to be considered in determining whether to recognize a qualified jurisdiction include:

- a. The framework under which the assuming insurer is regulated.
- b. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
- c. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.
- d. The form and substance of financial reports required to be filed or made publically available by reinsurers in the domiciliary jurisdiction and the accounting principles used.
- e. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular.
- f. The history of performance by assuming insurers in the domiciliary jurisdiction.

- g. Any documented evidence of substantial problems with enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final U.S. judgments and arbitration awards.
  - h. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors.
  - i. Any other matters deemed relevant by the commissioner.
3. U.S. jurisdictions that meet the requirements for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program shall be recognized as qualified jurisdictions.
  4. If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

(d) If an applicant has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and has the discretion to defer to the rating assigned by that jurisdiction if the assuming insurer submits Form CR-1 and such additional information as the commissioner requires.

1. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this State as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within 10 days of receiving notice of the change.
2. The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with this section.
3. The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with Section 52.025, the certified reinsurer's certification shall remain in good standing in this state for a period of three months, which may be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(e) A certified reinsurer that ceases to assume new business from ceding insurers domiciled in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this chapter, and the commissioner shall assign a rating that takes into account the reasons why the reinsurer is not assuming new business.

(f) In addition to the clauses required under this chapter, reinsurance contracts entered or renewed under this subsection shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

(g) The commissioner shall comply with all reporting and notification requirements that may be established by the National Association of Insurance Commissioners with respect to certified reinsurers and qualified jurisdictions.

(h) Credit for reinsurance under this subsection shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer.

(i) Nothing in this subsection shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers in this subsection.

(j) The commissioner may retain at the certified reinsurer's expense such experts as shall be necessary to assist in the review of an initial application for certification and on an ongoing basis. Any experts so retained shall be under the direction and control of the commissioner. The commissioner may retain such experts as may be necessary to evaluate the supervisory systems of jurisdictions under evaluation for eligibility to become a qualified jurisdiction and on an ongoing basis. The expense for such experts shall be paid by the reinsurers seeking certification from that jurisdiction.

**SECTION 9. Ins 52.025 (title) is amended to read:**

**Ins 52.025 Revocation of accreditation or certification.**

**SECTION 10. Ins 52.025(1) is amended to read:**

**Ins 52.025(1)** The commissioner may revoke the accreditation or certification of a reinsurer under s. Ins 52.02. If the accreditation or certification of a reinsurer is revoked, a licensed insurer may not take credit for ceded reinsurance to the reinsurer under s. Ins 52.02 (2), (3), or (4m) ~~or (3m)~~, regardless of when the reinsurance was ceded or the reinsurance contract executed. If a reinsurer does not comply with any provision of s. Ins 52.02 (2), (3), ~~(3m)~~, (4), (4m) or (5) an insurer may not take credit for reinsurance ceded to the reinsurer under s. Ins 52.02 (2), (3), ~~(3m)~~, (4), (4m) or (5), regardless of whether the reinsurer is or remains accredited or certified and regardless of when the reinsurance was ceded or the reinsurance contract executed.

**SECTION 11. Ins 52.025(2) is amended to read:**

**Ins 52.025(2)** For the purpose of accreditation under s. Ins 52.02 (2) ~~or an order disallowing credit under s. Ins 52.02 (3m)~~, it is presumed that a reinsurer should not be accredited or take credit if the reinsurer has a policyholder surplus of less than \$20,000,000.

**SECTION 12. Ins 52.025(3) is created to read:**

**Ins 52.025(3)** The commissioner may revoke the certification of a reinsurer under Ins 52.02(4m) at any time if the certified reinsurer fails to meet the requirements of Ins 52.02(4m).

**SECTION 13. Ins 52.03(1) is amended to read:**

**Ins 52.03(1)** Except as permitted by s. Ins 52.02 (5), a ceding domestic insurer may take credit for reinsurance ceded to a reinsurer which does not comply with s. Ins 52.02 (1), (2), (3), ~~and~~ (4), and (4m), only if the reinsurer in a written reinsurance agreement does all of the following:

**SECTION 14. Ins 52.04(3) is amended to read:**

**Ins 52.04(3)** Are securities listed by the securities valuation office of the national association of insurance commissioners, including those deemed exempt from filing as defined by the purposes and procedures manual of the securities valuation office, and qualifying as admitted assets or cash, are held in a trust for the exclusive benefit of the ceding insurer and the ceding insurer, reinsurer, reinsurance contract and trust comply with s. Ins 52.05; or

**SECTION 15. Ins 52.05(2)(i) is amended to read:**

**52.05(2)(i)** The trust agreement prohibits 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, 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.

**SECTION 16. Ins 52.05(2)(j) is amended to read:**

**52.05(2)(j)** The trust agreement provides that the trustee is liable for its own negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against a letter of credit in circumstances where such a draw would be required shall be deemed negligence and willful misconduct.

**SECTION 17. Ins 52.06(2)(h) is amended to read:**

**52.06(2)(h)** The letter of credit states whether it is subject to and governed by the laws of this state or the uniform customs and practice for documentary credits of the international chamber of commerce (Publication 400-600) and that all drafts drawn

under the letter of credit are presentable at an office in the United States of a qualified United States financial institution.

**SECTION 18. Ins 52.06(2)(i) is amended to read:**

**52.06(2)(i)** If the letter of credit is made subject to the uniform customs and practice for documentary credits of the international chamber of commerce (Publication ~~400600~~), the letter of credit specifically addresses and makes provision for an extension of time to draw against the letter of credit if any of the occurrences specified in Article ~~1936~~ of Publication ~~400~~ 600 occur.

**SECTION 19. Ins 52.065 is created to read:**

**Ins 52.065 Concentration Risk. (1)** A ceding insurer shall take steps to manage its reinsurance recoverable balances proportionate to its own book of business. A domestic ceding insurer shall notify the commissioner within 30 days after reinsurance recoverable from any single assuming insurer, or group of affiliated assuming insurers, exceeds fifty percent of the domestic ceding insurer's last reported surplus to policyholders, or after it determined that reinsurance recoverable from any single assuming insurer, or of affiliated assuming insurers, is likely to exceed this limit. The notification shall include an explanation demonstrating that the exposure is safely managed by the domestic ceding insurer.

**(2)** A ceding insurer shall take steps to diversity its reinsurance program. A domestic ceding insurer shall notify the commissioner within thirty days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty percent of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall include an explanation demonstrating that the exposure is safely managed by the domestic ceding insurer.

**SECTION 20. Form CR-1 is created to read:**

FORM CR-1  
CERTIFICATE OF CERTIFIED REINSURER

I, \_\_\_\_\_,  
(name of officer)

\_\_\_\_\_  
(title of officer)

of \_\_\_\_\_,  
(name of assuming insurer)



the assuming insurer under a reinsurance agreement with one or more insurers domiciled in \_\_\_\_\_,  
(name of state)

in order to be considered for approval in this state, hereby certify that \_\_\_\_\_ (“Assuming Insurer”):  
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in \_\_\_\_\_ for the adjudication of any issues  
(ceding insurer’s state of domicile)

arising out of the reinsurance agreement, 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 to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of \_\_\_\_\_ as its lawful attorney upon  
(ceding insurer’s state of domicile)

whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Agrees to provide security in an amount equal to 100% of liabilities attributable to U.S. ceding insurers if it resists enforcement of a final U.S. judgment or properly enforceable arbitration award.

4. Agrees to provide notification within 10 days of any regulatory actions taken against it, any change in the provisions of its domiciliary license or any change in its rating by an approved rating agency, including a statement describing such changes and the reasons therefore.

5. Agrees to annually file information comparable to relevant provisions of the NAIC financial statement for use by insurance markets in accordance with INS 52.02(4M)(a) 5.

6. Agrees to annually file the report of the independent auditor on the financial statements of the insurance enterprise.

7. Agrees to annually file audited financial statements, regulatory filings, and actuarial opinion in accordance with Ins 52.02(4M)(a) 5.

8. Agrees to annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.

9. Is in good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction.

Dated: \_\_\_\_\_  
(name of assuming insurer)

BY: \_\_\_\_\_  
(name of officer)  
\_\_\_\_\_  
(title of officer)

**SECTION 21.** These chapters may be enforced under ss. 601.41, 601.64, 601.65, Stats., or any other enforcement provision of chs. 600 to 646, Stats.

**SECTION 22.** These changes will take effect on the first day of the month after publication, as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin, this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Theodore K. Nickel  
Commissioner of Insurance