Chapter Ins 52

CREDIT FOR REINSURANCE

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Subchapter I — Requirements for Credit for Reinsurance

Ins 52.005 Purpose and intent. The purpose of this subchapter is to protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally. The intent is to ensure adequate regulation of insurers and reinsurers, and adequate protection for those to whom they owe obligations. In furtherance of this interest, the commissioner hereby provides that upon the insolvency of a non–United States insurer or reinsurer that provides security to fund its United States obligations in accordance with this subchapter, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. This subchapter sets forth rules and procedural requirements that the commissioner deems necessary to carry out the provisions of this subchapter. The actions and information required by this subchapter are declared to be necessary and appropriate in the public interest and for the protections of the ceding insurers in this state. The commissioner further declares that the matters contained in this subchapter are fundamental to the business of insurance in accordance with 15 USC 1011 to 1012.

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Ins 52.01 Definitions. In this subchapter, unless the context otherwise requires:

(1g) "Covered agreement" means an agreement entered into pursuant to Dodd–Frank Wall Street Reform and Consumer Protection Act, 31 USC 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

(1m) "Policyholder surplus" means capital and surplus.

(2) "Qualified United States financial institution" means an institution that:

(a) Is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state;

(b) Is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) Has been determined by either the commissioner or equivalent official of the ceding insurer's state of domicile, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner or equivalent official.

(3) "Qualified fiduciary United States financial institution" means an institution that:

(a) Is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state; and

(b) Is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies.

(4) "Reciprocal jurisdiction" is a jurisdiction, as designated by the commissioner pursuant to s. Ins 52.02 (4r) (b), of this subchapter, that meets one of the following conditions:

(a) A non–United States jurisdiction that is subject to an in–force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union.

(b) A United States jurisdiction that meets the requirements for accreditation under the financial standards and accreditation program of the national association of insurance commissioners.

(c) A qualified jurisdiction, as determined by the commissioner pursuant to s. Ins 52.02 (4m) (c), and which is not otherwise described in par. (a) or (b) of this subsection, consistent with the terms and conditions of in–force covered agreements, as specified by the commissioner, and which meets all of the following additional requirements:

1. Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a United States–domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction.

2. Does not require a United States–domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non–United States jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance.

3. Recognizes the United States state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the national association of insurance commissioners

shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction.

4. Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such qualified jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the national association of insurance commissioners.

(5) "Solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.

History: Cr. Register, July, 1993, No. 451, eff. 8−1−93; **CR 21−066: am. (intro.), renum. (1) to (1m), cr. (1g), (4), (5) Register May 2022 No. 797, eff. 6−1−22; correction in (4) (c) made under s. 35.17, Stats., Register May 2022 No. 797.**

Ins 52.02 Credit allowed a licensed ceding insurer. Except as provided by s. Ins 52.04 and unless otherwise prohibited by the commissioner with any such prohibition not to be in contravention of an applicable covered agreement, a 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:

(1) The reinsurer is licensed as an insurer in this state.

(2) The reinsurer is accredited in this state by the commissioner at the time credit is claimed or taken and the reinsurer:

(a) Files with the commissioner evidence of its submission to this state's jurisdiction;

(b) Submits to this state's authority to examine its books and records;

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

Note: Form AR−1 is published as Chapter Ins 52 Appendix A.

(d) 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;

(e) Files with the commissioner a certified copy of a letter or a certificate of authority or of compliance as evidence that it is licensed to transact insurance or reinsurance, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance, as required under par. (d);

(f) Files annually with the commissioner by March 1, or a later date approved in writing by 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 annually by June 1; and

(g) Unless otherwise specifically approved in writing by the commissioner, maintains policyholder surplus in an amount which is not less than $20,000,000.

(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.

(3) The reinsurer is domiciled and licensed 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 which the commissioner determines equal or exceed the standards applicable under this subchapter and the reinsurer or United States branch of an alien reinsurer:

(a) Submits to the authority of this state to examine its books and records;

(b) Files a form AR−1 with the commissioner to comply with par. (a); and

Note: Form AR−1 is published as Chapter Ins 52 Appendix A.

(c) Complies with one or more of the following:

1. The reinsurer or United States branch assumes the reinsurance under pooling arrangements among insurers in the same holding company system; or

2. The reinsurer maintains policyholder surplus in an amount not less than $20,000,000.

(4) The reinsurer complies with all of the following:

(a) The reinsurer maintains a trust fund in a qualified fiduciary United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest.

(b) The reinsurer reports annually, by March 1, or a later date which the commissioner approves in writing, to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund.

(c) The reinsurer maintains in a trust account funds equal to an amount that is not less than the assuming insurer's liabilities attributable to business written in the United States and, in addition, the reinsurer maintains a trusteed surplus of not less than $20,000,000.

(d) If the reinsurers are a group including incorporated and individual unincorporated underwriters, the reinsurers maintain in a trusteed account funds, 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 underwriters' several insurance and reinsurance liabilities attributable to business written in the United States. 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.

(e) The trust is established in a form approved by the commissioner or equivalent official of the ceding licensed insurer's state of domicile or entry. The trust instrument shall provide, and the trustees comply with, all of the following:

1. Contested claims shall be valid and enforceable out of funds in the trust if the claims remain unsatisfied 30 days after the entry of a final order of any court of competent jurisdiction in the United States.

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

3. The trust and the assuming insurer are subject to examination as determined by the commissioner.

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

5. No later than February 28 of each year, unless a later date is approved in writing by the commissioner or equivalent official of the ceding licensed insurer's state of domicile or entry, the trustees of the trust shall report to the commissioner or equivalent official of the ceding licensed insurer's state of domicile or entry in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

6. No amendment to the trust may be effective unless reviewed and approved in writing and in advance by the commissioner or equivalent official of the ceding licensed insurer's state of domicile or entry.

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 federal law that is inconsistent with this provision.

8. 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 30% of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers.

(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 shall be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to par. (c) of this subsection. 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.

2. The assuming insurer shall 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 a 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 shall 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 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 shall 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, or both. The applicant shall 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.

Note: Forms CR−F and CR−S are published as Chapter Ins 52 Appendices D to H.

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 90 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 subd. 3. g.

g. For certified reinsurers not domiciled in the U.S., audited financial statements, regulatory filings, and actuarial opinion, as filed with the non−U.S. jurisdiction supervisor with a translation into English. Upon initial application for certification, the commissioner shall consider audited financial statements for the last 2 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 shall 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% of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if its 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.

Note: Form CR−1 is published in Chapter Ins 52 Appendix B.

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, Stats. 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.

Note: Forms CR−F and CR−S are published as Chapter Ins 52 Appendices D to H.

c. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subd. 3. f.

d. Annually, the most recent audited financial statements, regulatory filings, and actuarial opinion, as filed with the certified reinsurer's supervisor with a translation into English. Upon the initial certification, audited financial statements for the last 2 years filed with the certified reinsurer's supervisor.

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

f. Annually, 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. 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 shall 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 shall be maintained in a 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 100% 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 U.S. 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 that 15% of the certified reinsurers ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 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 90 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 agreements 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 sub. (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 sub. (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 sub. (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 par. (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 90 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. Qualified jurisdictions shall be determined using the following criteria:

1. In order to determine whether the domiciliary jurisdiction of a non−U.S. 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 on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non−U.S. jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction shall 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 U.S. 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.

(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. The commissioner's recognition of another accredited jurisdiction's certification is subject to the following conditions:

Note: Form CR–1 is published as Chapter Ins 52 Appendix B.

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 s. Ins 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 subchapter, 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.

(4r) The reinsurance is ceded to an assuming insurer that has been recognized by the commissioner as a reinsurer in a reciprocal jurisdiction, in accordance with pars. (a) to (h).

(a) Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting each of the conditions set forth below.

1. The assuming insurer shall be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction.

2. The assuming insurer shall have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in subd. 7., according to the methodology of its domiciliary jurisdiction, in the following amounts:

a. No less than $250,000,000; or

b. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, the minimum capital and surplus equivalents, net of liabilities, or own funds of the equivalent of at least $250,000,000, and, a central fund containing a balance of the equivalent of at least $250,000,000.

3. The assuming insurer shall have and maintain on an ongoing basis, a minimum solvency or capital ratio, as applicable, as set forth in subd. 3. a. to c. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must meet the applicable requirement in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed:

a. If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in s. Ins 52.01 (4) (a), the ratio specified in the applicable covered agreement;

b. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in s. Ins 52.01 (4) (b), a risk–based capital ratio of 300% of the authorized control level, calculated in accordance with the formula developed by the national association of insurance commissioners; or

c. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in s. Ins 52.01 (4) (c), after consultation with the reciprocal jurisdiction and considering any recommendations published through the national association of insurance commissioners committee process, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency.

4. The assuming insurer shall agree to submit and provide adequate assurance, in the form of a properly executed Form RJ–1, of its agreement to the following:

Note: Form RJ–1 is published as Chapter Ins 52 Appendix C.

a. The assuming insurer must agree to provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in subd. 2. or 3., or if any regula-

tory action is taken against it for serious noncompliance with applicable law.

b. The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process. The commissioner may also require that such consent be provided and included in each reinsurance agreement under the commissioner's jurisdiction. Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

c. The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained.

d. Each reinsurance agreement shall include a provision requiring the assuming insurer to provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.

e. The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state's ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide 100% security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of s. Ins 52.02 (4m) or 52.04.

f. The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in subd. 5.

5. The assuming insurer or its legal successor must provide, if requested by the commissioner, on behalf of itself and any legal predecessors, the following documentation to the commissioner:

a. For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

b. For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

c. Prior to entry into the reinsurance agreement and not more than semi−annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and

d. Prior to entry into the reinsurance agreement and not more than semi−annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in subd. 6.

6. The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

a. More than 15% of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the commissioner;

b. More than 15% of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer $100,000, or as otherwise specified in a covered agreement; or

c. The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds $50,000,000, or as otherwise specified in a covered agreement.

7. The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements set forth in subds. 2. and 3.

8. Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

(b) 1g. The commissioner shall timely create and publish electronically a list of reciprocal jurisdictions.

1r. A list of reciprocal jurisdictions is published through the national association of insurance commissioners committee process. The commissioner's list shall include any reciprocal jurisdiction as defined in s. Ins 52.01 (4) (a) and (b) and shall consider any other reciprocal jurisdiction included on the national association of insurance commissioners list. The commissioner may approve a jurisdiction that does not appear on the national association of insurance commissioners list of reciprocal jurisdictions as provided by applicable law, regulation or in accordance with criteria published through the national association of insurance commissioners committee process.

2. The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the national association of insurance commissioners committee process, except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined in s. Ins 52.01 (4) (a) or (b). Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer which has its home office or is domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to this subchapter.

(c) 1g. The commissioner shall timely create and publish electronically a list of assuming insurers that have satisfied the conditions set forth in this subsection and to which cessions shall be granted credit in accordance with this subsection.

1r. If a national association of insurance commissioners accredited jurisdiction has determined that the conditions set forth in par. (a) have been met, the commissioner has the discretion to defer to that jurisdiction's determination and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The commissioner may accept financial documentation filed with another national association of insurance commissioners accredited jurisdiction or with the national association of insurance commissioners in satisfaction of the requirements of par. (a).

2. When requesting that the commissioner defer to another national association of insurance commissioners accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ−1 and additional information as the commissioner may require. Notwithstanding the foregoing, the commissioner will not impose any requirement that conflicts with an applicable covered agreement. A state that has received such a request will notify other states through the national association of insurance commissioners committee process and provide relevant information with respect to the determination of eligibility.

Note: Form RJ−1 is published as Chapter Ins 52 Appendix C.

(d) 1g. If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this

subsection, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection.

1r. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with s. Ins 52.04.

2. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of s. Ins 52.04.

(e) Before denying statement credit or imposing a requirement to post security with respect to par. (d) or adopting any similar requirement that will have substantially the same regulatory impact as security, the commissioner shall:

1. Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in par. (a);

2. Provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which the commissioner determines that a shorter period is necessary for policyholder and other consumer protection;

3. After the expiration of 90 days or less, as set out in subd. 2, if the commissioner determines that no or insufficient action was taken by the assuming insurer, the commissioner may impose any of the requirements as set out in this subsection; and

4. Provide a written explanation to the assuming insurer of any of the requirements set out in this subsection.

(f) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

(g) Nothing in this subsection shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by this subchapter or other applicable law or regulation.

(h) 1g. Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed on or after June 1, 2022, and only with respect to losses incurred and reserves reported on or after the later of (i) the date on which the assuming insurer has met all eligibility requirements pursuant to this subsection, and (ii) the effective date of the new reinsurance agreement, amendment, or renewal.

1r. This paragraph does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this subsection, as long as the reinsurance qualifies for credit under any other applicable provision of this subchapter.

2. Nothing in this subsection shall authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement.

3. Nothing in this subsection shall limit, or in any way alter, the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(5) The reinsurance ceded to the reinsurer is with respect to the insurance of risks located in jurisdictions where the reinsurance by the reinsurer is required by applicable law or regulation of that jurisdiction. For the purpose of this subsection "jurisdiction" means a state, district or territory of the United States or any lawful national government.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93; am. (4) (d), Register, December, 1995, No. 480, eff. 1–1–96; CR 17–004: am. (intro.), (2) (g), cr. (2) (h), r. (3m), am. (4) (d), cr. (4) (e) 7., 8., (4m) Register December 2017 No. 744, eff. 1–1–18; correction in (2) (h), (4) (e) 7., 8., (4m) (a) 3. (intro.), b., d., f., 4., 5. (intro.), c. to e., 6. b., d., g., (b) 3., (c) 1., 6. (intro.), e. made under s. 35.17, Stats., and correction in (4m) (a) 5. c. made under s. 13.92 (4) (b) 7., Stats., Register December 2017 No. 744; **CR 21–066: am. (intro.), (3) (intro.), (4m) (a) 3. g., 5. d., (e), cr. (4r) Register May 2022 No. 797, eff. 6–1–22; correction in (4m) (a) 3. g., 5. d., (4r) (a) 3. (intro.), 4. a., e., 7., (b) 1r., 2. made under s. 35.17, Stats., and renumbered (4r) (b) (intro.), 1., (c) (intro.), 1., (d) (intro.), 1., (h) (intro.), 1. to (4r) (b) 1g., 1r., (c) 1g., 1r., (d) 1g., 1r., (h) 1g., 1r. under s. 13.92 (4) (b) 1., Stats., Register May 2022 No. 797.**

Ins 52.025 Revocation of accreditation or certification. (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), 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), (4), (4m), or (5) an insurer may not take credit for reinsurance ceded to the reinsurer under s. Ins 52.02 (2), (3), (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.

(2) For the purpose of accreditation under s. Ins 52.02 (2) 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.

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

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93; CR 17–004: am. (intro.), (1), (2), cr. (3) Register December 2017 No. 744, eff. 1–1–18; correction in (3) made under s. 35.17, Stats., Register December 2017 No. 744.

Ins 52.03 Insolvency clause and jurisdiction; financial reinsurance disallowed. (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), (4), and (4m) only if the reinsurer in a written reinsurance agreement does all of the following:

(a) Agrees that if the reinsurer fails to perform its obligations under the terms of the reinsurance agreement, the reinsurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal.

(b) Designates the commissioner or a designated attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding insurer.

(2) Subsection (1) (a) and (b) do not affect or supersede the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if the obligation is created in the agreement and complies with ch. 645, Stats.

(2m) Except as permitted by s. Ins 52.02 (5), a ceding domestic insurer may take credit for reinsurance under a reinsurance agreement effective on or after January 1, 1980, only if the agreement provides that the reinsurer assumes all credit risks of an intermediary relating to payments to an intermediary if the agreement by its terms requires payment to an intermediary.

(3) A ceding domestic insurer may not take credit for reinsurance unless the assuming insurer in the reinsurance contract:

(a) Undertakes to protect the ceding insurer from loss or liability on coverage the ceding insurer issues not only in form but in fact; and

(b) Includes a proper insolvency clause under s. 645.58 (1), Stats., or for an alien or nondomestic insurer includes an insolvency clause which guarantees payment of the liability of the reinsurer without diminution because of the insolvency of the ceding insurer.

(4) A ceding domestic insurer may take credit for reinsurance ceded only to the extent the ceding insurer has established adequate gross reserves on the business ceded.

(5) A ceding domestic insurer may not take credit for reinsurance ceded in excess of the amount of the gross reserves carried on the business, or portion of the business, ceded.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93; am. (1) (intro.), (b) and (2), renum. (1) (c) to be (2m) and am., cr. (4) and (5), Register, December, 1995, No. 480, eff. 1–1–96; CR 17–004: am. (1) Register December 2017 No. 744, eff. 1–1–18.

Ins 52.04 Reduction from liability for reinsurance ceded by a licensed insurer to an assuming insurer. Unless otherwise ordered by the commissioner, an insurer may take credit for a reduction in liability for reinsurance ceded to a reinsurer even if the credit is not permitted under s. Ins 52.02 in an amount not exceeding the lesser of the liabilities carried by the ceding insurer or the amount of funds held by or on behalf of the ceding insurer, but only if the funds are held in the United States and are security for the payment of obligations under the reinsurance contract and if the funds meet one of the following:

(1) Are included under a security arrangement and are subject to withdrawal solely by, and are under the exclusive control of, the ceding insurer, and the form of the funds and the security agreement are approved by the commissioner or the equivalent official of the state of domicile or entry of the ceding insurer.

(2) Are unencumbered, are securities listed by the securities valuation office of the national association of insurance commissioners and qualifying as admitted assets or cash, are withheld by the ceding insurer, and are subject to withdrawal solely by, and are under the exclusive control of, the ceding insurer;

(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

(4) Are available under a clean, irrevocable, unconditional and evergreen letter of credit which is issued or confirmed by a qualified United States institution and are subject to withdrawal solely by, and are under the exclusive control of, the ceding insurer and the letter of credit is in the possession of the ceding insurer and the ceding insurer, reinsurer and letter of credit comply with s. Ins 52.06. A letter of credit meeting applicable standards of issuer acceptability as of the date of issue or confirmation continues to meet those standards for the purpose of this subsection if after issuance or confirmation the financial institution fails to meet applicable standards of issuer acceptability. The letter of credit continues to be acceptable as funds until its expiration, extension, renewal, modification or amendment, whichever first occurs.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93; CR 17–004: am. (3) Register December 2017 No. 744, eff. 1–1–18.

Ins 52.05 Trust agreements qualifying for security.
(1) In this section:

(a) "Beneficiary" means the person for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law, including, but not limited to, any liquidator, rehabilitator, receiver, or conservator.

(b) "Grantor" means the person that has established a trust, including, but not limited to, an unlicensed, unaccredited assuming insurer that establishes a trust.

(c) "Reinsurance obligations" means:

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

2. Reserves for reinsured losses reported and outstanding;

3. Reserves for reinsured losses incurred but not reported; and

4. Reserves for allocated reinsured loss expenses and unearned premiums.

(2) A ceding insurer may take credit under s. Ins 52.04 (3) only if:

(a) There is a written trust agreement between the beneficiary, the grantor and a trustee and the trustee is a qualified fiduciary United States financial institution.

(b) The trust agreement creates a trust account and all the assets are deposited in the trust account.

(c) The trustee holds all assets in the trust account at the trustee's office in the United States, except that a bank may apply for the permission of the commissioner or equivalent official of the ceding insurer's state of domicile or entry to use a foreign branch office of the bank as trustee for trust agreements established under this section. If the commissioner or equivalent official approves the use of a foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in par. (d) 1. must also be presentable, as a matter of legal right, at the trustee's principal office in the United States.

(d) The trust agreement provides that:

1. The beneficiary may 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;

2. No statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

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

4. It does not contain references to any other agreements or documents except as provided under par. (k).

(e) The trust agreement is established for the sole benefit of the beneficiary.

(f) The trust agreement requires the trustee to:

1. Receive assets and hold all assets in a safe place;

2. Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any of the assets, without consent or signature from the grantor or any other person;

3. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

4. Notify the grantor and the beneficiary within 10 days, of any deposits to or withdrawals from the trust account;

5. Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

6. 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.

(g) The trust agreement provides that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(h) The trust agreement provides that it is subject to and governed by the laws of the state in which the trust is established.

(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.

(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.

(k) Notwithstanding other provisions of this subchapter, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, and where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may, notwithstanding any other conditions in this subchapter, provide that the ceding insurer agrees 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:

1. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

2. To make payment to the assuming insurer of any amounts held in the trust account that exceed 102% of the actual amount required to fund the assuming insurer's reinsurance obligations under the specific reinsurance agreement; or

3. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire reinsurance obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the reinsurance obligations and deposit those amounts in a separate account in the name of the ceding insurer in any qualified fiduciary United States financial institution apart from its general assets and in trust for the uses and purposes specified in subds. 1. and 2. which remain executory after the withdrawal and for any period after the termination date.

(L) Either the reinsurance agreement entered into in conjunction with the trust agreement or the trust agreement stipulates that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of one or more of the following:

1. United States legal tender cash;

2. Certificates of deposit issued by a United States bank and payable in United States legal tender issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary; or

3. Investments which are admitted assets, permitted under ch. 620, Stats., and not excluded from the calculation of compulsory surplus, if the investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary.

(m) Any trust agreement provision which permits the trustee to resign only allows resignation to be effective not less than 90 days after receipt by the beneficiary and grantor of written notice of resignation and only after 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.

(n) Any trust agreement provision which permits the grantor to remove the trustee only allows removal to be effective not less than 90 days after receipt of notice of the removal by the trustee and beneficiary and only after 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.

(o) Any trust agreement provision which allows the grantor 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 requires the trustee to promptly on receipt forward dividends or interest to the grantor or promptly deposit dividends or interest in a separate account established in the grantor's name.

(p) Any trust agreement provision which gives the trustee authority to invest, or accept substitutions of, any funds in the account, requires the trustee to obtain the prior approval of the beneficiary for each investment or substitution, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in par. (L).

(q) Any trust agreement provision which permits or requires the trustee, upon termination of the trust account, to deliver assets not withdrawn by the beneficiary to the grantor, also prohibits the trustee from delivering the assets until the beneficiary gives written approval.

(3) A trust agreement under s. Ins 52.04 (3) may permit the beneficiary to at any time designate a party to which all or part of the trust assets are to be transferred. The transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(4) A ceding insurer may take credit under s. Ins 52.04 (3) only if there is a written reinsurance agreement entered into in conjunction with a trust agreement which complies with sub. (2) and the reinsurance agreement:

(a) Requires the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifies what the agreement is to cover;

(b) Also contains the provision the trust agreement is required to have under sub. (2) (L), except the reinsurance agreement is not required to also have that provision if the reinsurance agreement covers only risks other than life, annuities or accident and health;

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

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

(e) Stipulates 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, but not limited to, by any liquidator, rehabilitator, receiver or conservator of the ceding insurer, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

1. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;

2. To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding

insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

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

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

(f) If it gives the assuming insurer the right to seek to withdraw from the trust account all or any part of the trust assets, restricts that right by requiring:

1. The prior written approval by the ceding insurer which the reinsurance agreement may require the ceding insurer to not unreasonably or arbitrarily withhold; and

2. That withdrawal may be approved or permitted only if after the withdrawal the market value of the trust account is no less than 102% of the required amount or if the assuming insurer, at the time of withdrawal, replaces 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.

(g) Does not require the return of amounts withdrawn under the provision required under par. (e) except the reinsurance agreement may require the ceding insurer to return:

1. Any amount withdrawn in excess of the actual amounts required for par. (e) 1., 2., or 3., or in the case of par. (e) 4., any amounts that are subsequently determined not to be due; and

2. Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held under par. (e) 3.

(h) If it permits the award of attorneys' fees or costs or interest at a rate other than provided under par. (g) 2., permits it only as the result of an award by any arbitration panel or court of competent jurisdiction and only of:

1. Interest at a rate different from that provided in par. (g) 2;
2. Court or arbitration costs;
3. Attorneys' fees; or
4. Any other reasonable expenses.

(5) The failure of any trust agreement to specifically identify the beneficiary shall not be construed to affect any actions or rights which the commissioner or equivalent official may take or possess pursuant to the provisions of the laws of the state of domicile or entry of the licensed insurer.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93; am. (4) (b), Register, December, 1995, No. 480, eff. 1–1–96; CR 17–004: am. (2) (i), (j) Register December 2017 No. 744, eff. 1–1–18; **CR 21–066: am. (2) (k) (intro.) Register May 2022 No. 797, eff. 6–1–22.**

Ins 52.06 Letters of credit. (1) In this section "beneficiary" means the insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law, including, but not limited to, a court–appointed domiciliary receiver, including, but not limited to, a conservator, rehabilitator or liquidator.

(2) A ceding insurer may take credit under s. Ins 52.04 (4) only if the letter of credit complies with all of the following:

(a) The letter of credit is clean, irrevocable and unconditional.

(b) The letter of credit contains an issue date and date of expiration and stipulates 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.

(c) The letter of credit states that it is not subject to any condition or qualifications outside of the letter of credit.

(d) The letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in sub. (3) (a) and (b).

(e) If the heading of the letter of credit includes a section which includes notations to provide a reference for the letter of credit, the section shall be boxed section and clearly marked to indicate that the information is for internal identification purposes only.

(f) The letter of credit states that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement.

(g) The term of the letter of credit is for at least one year and the letter of credit contains a clause which prevents the expiration of the letter of credit unless the issuer gives written notice to the ceding insurer. The "evergreen clause" shall provide for a period of no less than 30 days' notice to the ceding insurer prior to the expiration date for nonrenewal.

(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 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.

(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 600), 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 36 of Publication 600 occur.

(j) The letter of credit is issued or confirmed by a qualified United States financial institution authorized to issue letters of credit.

(k) If the letter of credit is issued by a financial institution which is not a qualified United States financial institution:

1. The issuing financial institution formally designates the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

2. The letter of credit "evergreen clause" under par. (g) requires the confirming qualified United States financial institution to give written notice to the ceding insurer at least 30 days prior to expiration date for nonrenewal.

(3) A ceding insurer may take credit under s. Ins 52.04 (4) only if there is a written reinsurance agreement in conjunction with the letter of credit and the reinsurance agreement:

(a) Requires the assuming insurer to provide letters of credit to the ceding insurer, specifies what the letters of credit are to cover, and provides that the provisions required under this paragraph and par. (b) apply without diminution because of insolvency by either the ceding or assuming insurer.

(b) Except as permitted under par. (d), stipulates that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer under the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and may be utilized by the ceding insurer or its successors in interest including, but not limited to, by any liquidator, rehabilitator, receiver or conservator of the ceding insurer, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for one or more of the following reasons:

1. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;

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

3. To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account shall include, but not be limited to, amounts for pol-

icy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses and unearned premium reserves; and

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

(c) Does not require the return of amounts drawn under the letter of credit except the reinsurance agreement may require the ceding insurer to return:

1. Any amount withdrawn in excess of the actual amounts required for par. (b) 1., 2., or 3., or in the case of par. (b) 4., any amounts that are subsequently determined not to be due; and

2. Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held under par. (b) 3.

(d) Requires a trust agreement to accomplish to the purpose of par. (b), instead of including that provision in the reinsurance agreement, and the trust agreement is incorporated in the reinsurance agreement or separately executed except a trust agreement may be used only if the reinsurance agreement covers risks other than life, annuities and health and if it is customary practice to provide a letter of credit for a specific purpose.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93; CR 17–004: am. (2) (h), (i) Register December 2017 No. 744, eff. 1–1–18.

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 50% 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 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than 20% 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.

History: CR 17–004: cr. Register December 2017 No. 744, eff. 1–1–18; corrections made under s. 35.17, Stats., Register December 2017 No. 744.

Ins 52.07 Applicability. (1) This subchapter applies to determine whether credit may be taken for:

(a) Any reinsurance ceded under agreements entered into on or after August 1, 1993; or

(b) Any reinsurance ceded if the reinsurance agreement is renewed by agreement on or after August 1, 1993.

(2) Section Ins 6.73 continues to apply for the purpose of determining whether credit may be taken for reinsurance which is not subject to this subchapter under sub. (1).

Note: Ins 6.73 was repealed eff. 8–1–93.

(3) This subchapter and ch. Ins 55 are in addition to and do not limit the commissioner's authority under s. 618.21 (1) (a), 618.23 (1) (a), 618.26 (1) (a), 623.11, 623.12 or 623.21, or ch. 645, Stats., or s. Ins 51.80. Even if credit for reinsurance is permitted under this chapter and ch. Ins 55, the commissioner may under those provisions require a licensed insurer to exclude the effects of the credit for the purpose of determining compliance with security or compulsory surplus.

(4) Nothing in this subchapter or ch. Ins 55 relieves an insurer or an officer or director of an insurer or an accountant or actuary from responsibility under s. 627.23 (3), Stats., or fiduciary or professional responsibility, to assess the financial condition of a reinsurer. Accreditation by the commissioner does not create a presumption that a reinsurer is in compliance with this subchapter or that it is in sound financial condition and no reinsurer or officer, employee or agent of a reinsurer may make such a representation.

(5) Except to the extent necessary to prevent a conflict with an applicable covered agreement, this subchapter does not limit or change the requirements for town mutual insurers under ss. 612.31 and 612.33, Stats. This subchapter applies to the state life fund.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register February 2013 No. 686; **CR 21–066: am. (1) (intro.), (2) to (5) Register May 2022 No. 797, eff. 6–1–22.**

Subchapter II — Credit for Reinsurance Involving Term and Universal Life Reserve Financing

Ins 52.20 Purpose, intent, and applicability. In addition to provisions contained at s. Ins 2.80, the following apply to this subchapter:

(1) PURPOSE AND INTENT. The purpose and intent of this subchapter is to establish uniform, national standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premium, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees; and to ensure that, with respect to each such financing arrangement, funds consisting of primary security and other security are held by or on behalf of ceding insurers in the forms and amounts required. In general, reinsurance that is ceded for reserve financing purposes has one or more of the following characteristics: some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer are issued by the ceding insurer or its affiliates; or are not unconditionally available to satisfy the general account obligations of the ceding insurer; or create a reimbursement, indemnification or other similar obligation on the part of the ceding insurer or any if its affiliates, other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

(2) APPLICABILITY. This subchapter shall apply to reinsurance treaties that cede liabilities pertaining to covered policies issued by any life insurance company domiciled in this state. Subchapter I and this subchapter shall both apply to such reinsurance treaties; provided, that in the event of a direct conflict between the provisions of this subchapter and subch. I, the provisions of this subchapter shall apply, but only to the extent of the conflict.

History: CR 21–066: cr. Register May 2022 No. 797, eff. 6–1–22; correction in (intro.) made under s. 35.17, Stats., Register May 2022 No. 797.

Ins 52.21 Exemptions. This subchapter does not apply to the situations described below:

(1) Reinsurance of:

(a) Policies that satisfy the criteria for exemption set forth in s. Ins 2.80 (5) (k) or (L) that were issued prior to June 1, 2022.

(b) Portions of policies that satisfy the criteria for exemption set forth in s. Ins 2.80 (5) (j), that were issued prior to June 1, 2022.

(c) Any universal life policy that meets the following requirements:

1. Secondary guarantee period, if any, is 5 years or less.

2. Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the commissioners standard ordinary valuation tables and valuation interest rate applicable to the issue year of the policy; and

3. The initial surrender charge is not less than 100% of the first year annualized specified premium for the secondary guarantee period.

(d) Credit life insurance.

(e) Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

(f) Any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

(2) Reinsurance ceded to an assuming insurer that meets the applicable requirements of s. Ins 52.02 (4);

(3) Reinsurance ceded to an assuming insurer that meets the applicable requirements of s. Ins 52.02 (1), (2), or (3), and that in addition:

(a) Prepares statutory financial statements in compliance with the national association of insurance commissioners accounting practices and procedures manual, without any departures from national association of insurance commissioners statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer pursuant to statement of statutory accounting principles no. 1; and

(b) Is not in a company action level event, regulatory action level event, authorized control level event, or mandatory control level event as those terms are defined in s. Ins 51.01, when its risk–based capital is calculated in accordance with the life risk–based capital report including overview and instructions for companies, as the same may be amended by the national association of insurance commissioners from time to time, without deviation; or

(4) Reinsurance ceded to an assuming insurer that meets the applicable requirements of s. Ins 52.02 (1), (2), or (3), and that in addition, the following:

(a) Is not an affiliate, as that term is defined in s. Ins 40.01 (2), of the insurer ceding the business to the assuming insurer; or any insurer that directly or indirectly ceded the business to that ceding insurer;

(b) Prepares statutory financial statements in compliance with the national association of insurance commissioners accounting practices and procedures manual;

(c) Is both licensed or accredited in at least 10 states, including its state of domicile, and is not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and

(d) Is not, or would not be, below 500% of the authorized control level risk based capital as that term is defined in s. Ins 51.01 (3), when calculated in accordance with the life risk based capital report including overview and instructions for companies, as the same may be amended by the national association of insurance commissioners from time to time, without deviation, and without recognition of any departures from national association of insurance commissioners statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus; or

(5) Reinsurance ceded to an assuming insurer that:

(a) Meets the requirements of s. Ins 52.02 (4m) or (4r); or

(b) Maintains at least $250,000,000 in capital and surplus when determined in accordance with the national association of insurance commissioners accounting practices and procedures manual, including all amendments thereto adopted by the national association of insurance commissioners, excluding the impact of any permitted or prescribed practices; and is

1. Licensed in at least 26 states; or

2. Licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.

(6) Reinsurance not otherwise exempt under subs. (1) to (5), if the commissioner, after consulting with the national association of insurance commissioners financial analysis working group or other group of regulators designated by the national association of insurance commissioners, as applicable, determines under all the facts and circumstances that all of the following apply:

(a) The risks are clearly outside of the intent and purpose of this regulation as provided in s. Ins 52.20 (1),

(b) The risks are included within the scope of this regulation only as a technicality; and,

(c) The application of this regulation to those risks is not necessary to provide appropriate protection to policyholders.

(d) The commissioner shall publicly disclose any decision made pursuant to this subsection to exempt a reinsurance treaty from this regulation, as well as the general basis therefor and including a summary description of the treaty.

History: CR 21–066: cr. Register May 2022 No. 797, eff. 6–1–22; correction in (1) (c) 1., (4) (a), (b) made under s. 35.17, Stats., Register May 2022 No. 797.

Ins 52.22 Definitions. In this subchapter, unless the context otherwise requires:

(1) "Actuarial method" means the methodology used to determine the required level of primary security.

(2) "Covered policies" means the following: subject to the exemptions described in s. Ins 52.21 covered policies are those policies, other than grandfathered policies, of the following policy types:

(a) Life insurance policies with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or,

(b) Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

(3) "Grandfathered policies" means policies of the types in sub. (2) that were issued prior to January 1, 2015; and ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in s. Ins 52.21, had that section then been in effect.

(4) "Non–covered policies" means any policy that does not meet the definition of covered policies, including grandfathered policies.

(5) "Other security" means any security acceptable to the commissioner other than security meeting the definition of primary security.

(6) "Primary security" means the following forms of security:

(a) Cash meeting the requirements of s. Ins 52.04 (1);

(b) Securities listed by the securities valuation office meeting the requirements of s. Ins 52.04 (2) and (3), but excluding any synthetic letter of credit, contingent note, credit–linked note, or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer of any of its affiliates; and

(c) For security held in connection with funds–withheld or modified coinsurance reinsurance treaties, primary security may include any of the following:

1. Commercial loans in good standing of CM3 quality and higher, as assigned by the national association of insurance commissioners;

2. Policy loans; and

3. Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

(7) "Required level of primary security" means the dollar amount determined by applying the actuarial method to the risks ceded with respect to covered policies, but not more than the total reserve ceded.

(8) "Universal life insurance policy" has the meaning provided under s. Ins 2.80 (3) (L).

(9) "Valuation manual" means the valuation manual adopted by the national association of insurance commissioners as

described s. 623.06 (9) (b), Stats., with all amendments adopted by the national association of insurance commissioners that are effective for the financial statement date on which credit for reinsurance is claimed.

(10) "VM−20" means the requirements for principle−based reserves for life products, including all relevant definitions, from the valuation manual.

History: CR 21−066: cr. Register May 2022 No. 797, eff. 6−1−22.

Ins 52.23 Actuarial method. (1) ACTUARIAL METHOD. The actuarial method to establish the required level of primary security for each reinsurance treaty subject to this regulation shall be VM−20, applied on a treaty−by−treaty basis, including all relevant definitions, from the valuation manual as then in effect, applied as follows:

(a) For covered policies described in s. Ins 52.22 (2) (a), the actuarial method is the greater of the deterministic reserve or the net premium reserve regardless of whether the criteria for exemption testing can be met. However, if the covered policies do not meet the requirements of the stochastic reserve exclusion test in the valuation manual, then the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the net premium reserve. In addition, if such covered policies are reinsured in a reinsurance treaty that also contains covered policies described in s. Ins 52.22 (2) (b), the ceding insurer may elect to instead use par. (b) below as the actuarial method for the entire reinsurance agreement. Whether this paragraph or par. (b) are used, the actuarial method must comply with any requirements or restrictions that the valuation manual imposes when aggregating these policy types for purposes of principle−based reserve calculations.

(b) For covered policies described in s. Ins 52.22 (2) (b), the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the net premium reserve, regardless of whether the criteria for exemption testing can be met.

(c) Except as provided in par. (d), the actuarial method is to be applied on a gross basis to all risks with respect to the covered policies as originally issued or assumed by the ceding insurer.

(d) If the reinsurance treaty cedes less than 100% of the risk with respect to the covered policies then the required level of primary security may be reduced as follows:

1. If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the covered policies, the required level of primary security, as well as any adjustment under subd. 3., may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;

2. If the reinsurance treaty in a non−exempt arrangement cedes only the risks pertaining to a secondary guarantee, the required level of primary security may be reduced by an amount determined by applying the actuarial method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the covered policies, except that for covered policies for which the ceding insurer did not elect to apply the provisions of VM−20 to establish statutory reserves, the required level of primary security may be reduced by the statutory reserve retained by the ceding insurer on those covered policies, where the retained reserve of those covered policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;

3. If a portion of the covered policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the required level of primary security may be reduced by the amount resulting by applying the actuarial method including the reinsurance section of VM−20 to the portion of the covered policy risks ceded in the exempt arrangement, except that for covered policies issued prior to January 1, 2017, this adjustment is not to exceed [c_x/ (2 * number of reinsurance premiums per year)] where c_x is calculated using the same mortality table used in calculating the net premium reserve; and

4. For any other treaty ceding a portion of risk to a different reinsurer, including but not limited to stop loss, excess of loss and other non−proportional reinsurance treaties, there will be no reduction in the required level of primary security.

5. It is possible for any combination of subds. 1. to 4. above to apply. Such adjustments to the required level of primary security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the required level of primary security due to the cession of less than 100% of the risk.

6. The adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

(e) In no event will the required level of primary security resulting from application of the actuarial method exceed the amount of statutory reserves ceded.

(f) If the ceding insurer cedes risks with respect to covered policies, including any riders, in more than one reinsurance treaty subject to this subchapter, in no event will the aggregate required level of primary security for those reinsurance treaties be less than the required level of primary security calculated using the actuarial method as if all risks ceded in those treaties were ceded in a single treaty subject to this subchapter;

(g) If a reinsurance treaty subject to this subchapter cedes risk on both covered and non−covered policies, credit for the ceded reserves shall be determined as follows:

1. The actuarial method shall be used to determine the required level of primary security for the covered policies, and s. Ins 52.24, shall be used to determine the reinsurance credit for the covered policy reserves; and,

2. Credit for the non−covered policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of subd. 1., is held by or on behalf of the ceding insurer in accordance with ss. Ins 52.02 and 52.04. Any primary security used to meet the requirements of this subdivision may not be used to satisfy the required level of primary security for the covered policies.

(2) VALUATION USED FOR PURPOSES OF CALCULATIONS. For the purposes of both calculating the required level of primary security pursuant to the actuarial method and determining the amount of primary security and other security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:

(a) For assets, including any such assets held in trust, that would be admitted under the national association of insurance commissioners accounting practices and procedures manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and

(b) For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM−20 shall be included in the actuarial method if adopted by the national association of insurance commissioners Life Actuarial (A) Task Force no later than the December 31st on or immediately preceding the valuation date for which the required level of primary security is being calculated. The tables of asset spreads and asset default costs shall be incorporated into the actuarial method in the manner specified in VM−20.

History: CR 21−066: cr. Register May 2022 No. 797, eff. 6−1−22.

Ins 52.24 Requirements applicable to covered policies to obtain credit for reinsurance: opportunity for remediation. (1) REQUIREMENTS. Subject to the exemptions in s. Ins 52.21 and sub. (2), credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to covered policies pursuant to ss. Ins 52.02 or 52.04 if, and only if, in addition to all other requirements imposed by law or regulation, the following requirements are met on a treaty–by–treaty basis:

(a) The ceding insurer's statutory policy reserves with respect to the covered policies are established in full and in accordance with the applicable requirements of s. 623.06, Stats., and related regulations and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this regulation does not exceed the proportionate share of those reserves ceded under the contract, and

(b) The ceding insurer determines the required level of primary security with respect to each reinsurance treaty subject to this regulation and provides support for its calculation as determined to be acceptable to the commissioner; and

(c) Funds consisting of primary security, in an amount at least equal to the required level of primary security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of s. Ins 52.04, on a funds withheld, trust, or modified coinsurance basis; and

(d) Funds consisting of other security, in an amount at least equal to any portion of the statutory reserves as to which primary security is not held pursuant to par. (c) are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of s. Ins 52.04; and

(e) Any trust used to satisfy the requirements of this section shall comply with all of the conditions and qualifications of ss. Ins 52.04 and 52.05, except that:

1. Funds consisting of primary security or other security held in trust, shall for the purposes identified in s. Ins 52.23 (2), be valued according to the valuation rules set forth in s. Ins 52.23 (2), as applicable; and

2. There are no affiliate investment limitations with respect to any security held in such trust if such security is not needed to satisfy the requirements of par. (c); and

3. The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the primary security within the trust, when aggregated with primary security outside the trust that is held by or on behalf of the ceding insurer in the manner required by par. (c), below 102% of the level required by par. (c) at the time of the withdrawal or substitution; and

4. The determination of reserve credit under s. Ins 52.05 (2), shall be determined according to the valuation rules set forth in s. Ins 52.23 (2), as applicable; and

(f) The reinsurance treaty has been approved by the commissioner.

(2) REQUIREMENTS AT INCEPTION DATE AND ON AN ON–GOING BASIS: REMEDIATION. (a) The requirements of sub. (1) must be satisfied as of the date that risks under covered policies are ceded, if such date is on or after June 1, 2022, and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under sub. (1) (c) or (d) with respect to any reinsurance treaty under which covered policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

(b) Prior to the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of s. Ins 52.20 (2) shall perform an analysis, on a treaty–by–treaty basis, to determine, as to each reinsurance treaty under which covered policies have been ceded, whether as of the end of the immediately preceding calendar quarter, the valuation date, the requirements of sub. (1) (c) and (d) were satisfied. The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of primary security actually held pursuant to sub. (1) (c), unless either of the following are met:

1. The requirements of sub. (1) (c) and (d) were fully satisfied as of the valuation date as to such reinsurance treaty; or

2. Any deficiency has been eliminated before the due date of the quarterly or annual statement to which the valuation date relates through the addition of primary security and/or other security, as the case may be, in such amount and in such form as would have caused the requirements of sub. (1) (c) and (d) to be fully satisfied as of the valuation date.

(c) Nothing in par. (b) shall be construed to allow a ceding company to maintain any deficiency under sub. (1) (c) or (d) for any period of time longer than is reasonably necessary to eliminate it.

History: CR 21–066: cr. Register May 2022 No. 797, eff. 6–1–22.

Ins 52.25 Severability. If a provision of this regulation is held invalid, the remainder shall not be affected.

History: CR 21–066: cr. Register May 2022 No. 797, eff. 6–1–22.

Ins 52.26 Prohibition against avoidance. No insurer that has covered policies as to which this subchapter applies, as set forth in s. Ins 52.20 (2), shall take any action or series of actions or enter into any transaction or arrangement or series of transactions or arrangements if the purpose of such action, transaction or arrangement or series thereof is to avoid the requirements of this regulation, or to circumvent its purpose and intent, as set forth in s. Ins 52.20 (1).

History: CR 21–066: cr. Register May 2022 No. 797, eff. 6–1–22.