Rules of
Department of Insurance
Division 200—Financial Examination
Chapter 2—Reinsurance and Assumptions

Title 20—DEPARTMENT OF INSURANCE

Division 200—Financial Examination
Chapter 2—Reinsurance and Assumptions

20 CSR 200-2.100 Credit for Reinsurance

PURPOSE: This rule sets forth rules and procedural requirements which the director deems necessary to carry out the provisions of the Law on Credit Reinsurance, section 375.246, RSMo. The actions and information required by this rule are declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

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

(2) Pursuant to section 375.246.1(1), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers which were licensed in this state as of the date of the ceding insurer's statutory financial statement.

(3) Credit for Reinsurance—Accredited Reinsurers.

(A) Pursuant to section 375.246.1(2), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which is accredited as a reinsurer in this state as of the date of the ceding insurer's statutory financial statement. An accredited reinsurer is one which—

1. Files with the director the following:

A. A properly executed application for approval as an authorized reinsurer, the form of which is set forth as Exhibit 1 of this rule;

B. A certified copy of a letter or a certificate of authority or of compliance as evidence that the company is licensed to transact insurance or reinsurance in at least one (1) 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 (1) state;

C. A properly executed appointment of the director to acknowledge or receive service of process, the form of which is set forth as Exhibit 2 of this rule;

D. A properly executed Form AR-1, which is set forth as Exhibit 3 of this rule, as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;

E. A copy of its articles of incorporation or association, as amended, duly certified by the proper officer of the state under whose laws it is organized or incorporated;

F. A copy of its bylaws, certified by its secretary;

G. A biographical sketch of its directors and officers as listed in its annual statement, accompanied by the original signatures of those directors and officers, the form of which is set forth as Exhibit 4 of this rule;

H. A copy of the registration statement of any holding company system if it is a member of such a system; and

I. Its most currently dated audited finanical report;

2. Files with the director in addition to its initial application, and annually after that, prior to March 1 of each year, a certified copy of the annual statement it has 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, including an actuarial certification and management discussion and analysis;

3. Includes, with the documents required to be filed under preceding provisions of this section, the appropriate filing fees as set forth in section 374.230, RSMo; and

4. Maintains a surplus as regards policyholders in an amount not less than twenty (20) million dollars and whose accreditation has not been denied by the director within ninety (90) days of its submission or, in the case of companies with a surplus as regards policyholders of less than twenty (20) million dollars, whose accreditation has been approved by the director.

(B) If the director determines that the assuming insurer has failed to meet or maintain any of these qualifications, s/he, upon written notice and hearing, may revoke the accreditation. No credit shall be allowed a domestic ceding insurer with respect to reinsurance ceded on or after December 31, 1991, if the assuming insurer's accreditation has been denied or revoked by the director after notice and hearing.

(4) Credit for Reinsurance—Qualified Reinsurer Domiciled and Licensed in Another State.

(A) Pursuant to section 375.246.1(3), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which is qualified as a reinsurer as of the date of the ceding insurer's statutory financial statement. A qualified reinsurer is one which—

1. Files the following with the director:

A. A properly executed application for approval as an authorized reinsurer, the form of which is set forth as Exhibit 1 of this rule;

B. Certified copy of a letter or a certificate of authority or of compliance as evidence that the company is licensed to transact insurance or reinsurance in at least one (1) 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 (1) state; and

C. A properly executed appointment of the director to acknowledge or receive service of process, the form of which is set forth as Exhibit 2 of this rule;

2. Files with the director in addition to its initial application, and annually after that, prior to March 1 of each year, a certified copy of the annual statement it has 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, including an actuarial certification and management discussion and analysis required as part of the National Association of Insurance Commissioner (NAIC) annual statement requirements;

3. Files with the director a properly executed Form AR-2, the form of which is set forth as Exhibit 5 of this rule, as evidence of its submission to this state's authority to examine its books and records;

4. Is domiciled and licensed in (or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed in) a state which employs standards regarding credit for reinsurance substantially similar to those applicable under the Law on Credit Reinsurance, section 375.246, RSMo (the Act) and this rule;

5. Includes with the documents required to be filed under preceding provisions of this section the appropriate filing fees as set forth in section 374.230, RSMo; and

6. Maintains a surplus as regards policyholders in an amount not less than twenty (20) million dollars.

(B) The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, substantially similar

standards means credit for reinsurance standards which the director determines equal or exceed the standards of the Act and this rule.

(5) Credit for Reinsurance—Reinsurers Maintaining Trust Funds.

(A) Pursuant to section 375.246.1(4), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of the date of the ceding insurer's statutory financial statement, maintains a trust fund in an amount prescribed in this rule in a qualified United States financial institution as defined in section 375.246.3(2), RSMo, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the director substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the director to determine the sufficiency of the trust fund.

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

1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business written in the United States, and in addition, a trusteed surplus of not less than twenty (20) million dollars;

2. The trust fund for a group of individual unincorporated underwriters shall consist of funds in trust in an amount not less than the group's aggregate liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which one hundred (100) million dollars shall be held jointly for the benefit of the United States ceding insurers of any member of the group. The group shall make available to the director annual certifications by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter member of the group; and

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

(C) That trust shall be established in a form approved by the director and complying with section 375.246.1., RSMo and this section. The trust instrument shall provide that—

1. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States;

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

3. The trust shall be subject to examination as determined by the director;

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, shall have outstanding obligations under reinsurance agreements subject to the trust;

5. No later than February 28 of each year, the trustees of the trust shall report to the director in writing setting forth the balance of 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; and

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

(6) Credit for Reinsurance Required by Law. Pursuant to section 375.246.1(5), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 375.246.1(1), (2), (3) or (4), RSMo, but only with respect to the insurance of risks located in jurisdictions where that reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, jurisdiction means any state, district or territory of the United States and any lawful national government.

(7) Reduction From Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer. Pursuant to section 375.246.2., RSMo, the director shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 375.246.1., RSMo, in an amount not exceeding the liabilities carried by the ceding insurer. That reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under it. That security must be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in section 375.246.3(2), RSMo. This security may be in the form of any of the following:

(A) Cash;

(B) Securities listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets;

(C) Clean, irrevocable, unconditional and evergreen letters of credit issued or confirmed by a qualified United States institution, as defined in section 375.246.3(1), RSMo, effective no later than December 31 of the year for which filing is being made and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation), notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, shall continue to be acceptable as security until their expiration, extension, renewal, modification or amendment whichever first occurs; and

(D) Any other form of security acceptable to the director and approved by the attorney general. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to subsections (7)(A)—(C) of this rule shall be allowed only when the requirements of section (8), (9) or (10) of this rule are met.

(8) Trust Agreements Qualified Under Section (7).

(A) As used in this section—

1. Beneficiary means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes, and is limited to, the court-appointed domiciliary receiver

(including conservator, rehabilitator or liquidator);

2. Grantor means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer; and

3. Obligations, as used in paragraph (8)(B)11. of this rule, means—

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

B. Reserves for reinsured losses reported and outstanding;

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

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

(B) Required Conditions.

1. The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution as defined in section 375.246.3(2), RSMo.

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

3. All assets in the trust account shall be held by the trustee at the trustee's office in the United States, except that a bank may apply for the director's permission to use a foreign branch office of that bank as trustee for trust agreements established pursuant to this section. If the director approves the use of that 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 subparagraph (8)(B)4.A. of this rule also must be presentable, as a matter of legal right, at the trustee's principal office in the United States.

4. The trust agreement shall provide that—

A. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

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

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

D. It shall not contain references to any other agreements or documents except as provided for under paragraph (8)(B)11. of this rule.

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

6. The trust agreement shall require the trustee to—

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

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

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

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

E. Take immediately, upon written demand of the beneficiary, any 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 these assets to the beneficiary; and

F. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset may withdraw the asset upon condition that the proceeds are paid into the trust account.

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

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

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

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

11. Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, this trust agreement, notwithstanding any other conditions in this rule, may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

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

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

C. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to that termination date, to withdraw amounts equal to those obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in section 375.246.3(2), RSMo, apart from its general assets, in trust for those uses and purposes specified in subparagraphs (8)(B)11.A. and B. as may remain executory after withdrawal and for any period after the termination date.

12. The reinsurance agreement entered into in conjunction with a trust agreement may contain, but need not contain, the provisions required by subparagraph (8)(D)1.B. of this rule, so long as the required conditions are included in the trust agreement.

(C) Permitted Conditions.

1. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not fewer than ninety (90) days after receipt by the beneficiary and grantor of the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not fewer than ninety (90) days after receipt by the trustee and the beneficiary of the notice, provided that this resignation or removal shall not be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor, and all assets in the trust have been duly transferred to the new trustee.

2. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and from time-to-time to receive payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends either shall be forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

3. The trustee may be given authority to invest and accept substitutions of any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest those 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 subparagraph (8)(D)1.B. of this rule.

4. The trust agreement may provide that the beneficiary, at any time, may designate a party to which all or part of the trust assets are to be transferred. That transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

5. The trust agreement may provide that, upon termination of the trust account, all assets not withdrawn previously by the beneficiary, with written approval by the beneficiary, shall be delivered over to the grantor.

(D) Additional Conditions Applicable to Reinsurance Agreements.

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

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

B. Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender) and investments of the types permitted by the Insurance Code or any combination of the previously mentioned; provided, that investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, then that trust agreement may contain the provisions required by paragraph (8)(D)1. in lieu of including those provisions in the reinsurance agreement;

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

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

E. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including, without limitation, any liquidator, rehabilitator, receiver or conservator of that company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(I) 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 cancellation of those policies;

(II) 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;

(III) 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. That 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

(IV) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

2. The reinsurance agreement also may contain provisions that—

A. Give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account any part of the trust assets and transfer those assets to the assuming insurer; provided—

(I) The assuming insurer, at the time of that withdrawal, shall replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(II) After that withdrawal and transfer, the market value of the trust account is no less than one hundred two percent (102%) of the required amount. The ceding insurer shall not unreasonably or arbitrarily withhold its approval;

B. Provide for—

(I) The return of any amount withdrawn in excess of the actual amounts—required for parts (8)(D)1.E.(I)—(III) or, in the case of part (8)(D)1.E.(IV), any amounts that are subsequently determined not to be due; and

(II) Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to part (8)(D)1.E.(III); and

C. Permit the award by any arbitration panel or court of competent jurisdiction of—

(I) Interest at a rate different from that provided in part (8)(D)1.B.(II);

(II) Court of arbitration costs;

(III) Attorney's fees; and

(IV) Any other reasonable expenses.

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

4. Existing agreements. Notwithstanding the effective date of this rule, January 1, 1992, any trust agreement or underlying reinsurance agreement in existence prior to January 1, 1991 will continue to be acceptable until December 31, 1991, at which time the agreements will have to be in full compliance with this rule for the trust agreement to be acceptable.

5. The failure of any trust agreement to specifically identify the beneficiary as defined in subsection (8)(A) of this rule shall not be construed to affect any actions or rights which the director may take or possess pursuant to the provisions of the laws of this state.

(9) Letters of Credit Qualified Under Section (7).

(A) The letter of credit must be clean, irrevocable and unconditional, and issued or confirmed by a qualified United States financial institution as defined in section 375.246.3(1), RSMo. The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need

only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in paragraph (9)(I)1. of this rule. As used in this section, beneficiary means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes, and is limited to, the court-appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

(B) The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for that letter of credit. The boxed section shall be clearly marked to indicate that the information is for internal identification purposes only.

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

(D) The term of the letter of credit shall be for at least one (1) year and shall contain an evergreen clause which prevents the expiration of the letter of credit without due notice from the issuer. The evergreen clause shall provide for a period of no less than thirty (30) days' notice prior to expiry date or nonrenewal.

(E) The letter of credit shall state whether it is subject to or governed by the laws of this state or the *Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce* (Publication 400) and all drafts drawn under the letter of credit shall be presentable at an office in the United States of a qualified United States financial institution.

(F) If the letter of credit is made subject to the *Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce* (Publication 400), then the letter of credit specifically shall address and make provision for an extension of time to draw against the letter of credit in the event that one (1) or more of the occurrences specified in Article 19 of Publication 400 occur.

(G) The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to section 375.246.3(1), RSMo.

(H) If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection (9)(G) of this rule, then the following additional requirements shall be met:

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

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

(I) Reinsurance Agreement Provisions.

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

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

B. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer, pursuant to the provisions of the reinsurance agreement, may be drawn upon at any time, notwithstanding any other provisions in that agreement and shall be utilized by the ceding insurer or its successors in interest only for one (1) or more of the following reasons:

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

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

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

(IV) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement; and

C. Apply all of the previously mentioned provisions of paragraph (9)(I)1. of this rule without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

2. Nothing contained in paragraph (9)(I)1. of this rule shall preclude the ceding insurer and assuming insurer from providing for—

A. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to part (9)(I)1.B.(III) of this rule; or

B. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the previously mentioned or, in the case of part (9)(I)1.B.(IV) of this rule, any amounts that are subsequently determined not to be due.

3. When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then that reinsurance agreement, in lieu of subparagraph (9)(I)1.B. of this rule, may require that the parties enter into a trust agreement which may be incorporated into the reinsurance agreement or be a separate document.

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

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

(11) Reinsurance Contract. Credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of section (2), (3), (4), (5) or (7) of this rule or otherwise in compliance with section 375.246.1., RSMo after the adoption of this rule unless the reinsurance agreement includes:

(A) A proper insolvency clause which shall be substantially similar to the following:

1. In the event of the insolvency of the company, this reinsurance shall be payable directly to the company, or to its liquidator, receiver, conservator or statutory successor on the basis of the liability of the company without diminution because of the insolvency of the company or because the liquidator, receiver, conservator or statutory successor of the company has failed to pay all or a portion of any claim. It is agreed, however, that the liquidator, receiver, conservator or statutory successor of the company shall give written notice to the reinsurers of the pendency of a claim against the company indicating the policy or bond reinsurance which claim would