WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

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OFFICE WEST VIRGINIA SECRETARY OF STATE

Form #6

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 40

TITLE OF RULE BEING AMENDED: Credit For Reinsurance

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) H.B. 4217

SECTION 64-7-2(e), PASSED ON March 12, 2004

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE FOLLOWING DATE: April 16, 2004

Authorized Signature

PROMULGATION HISTORY

WEST VIRGINIA INSURANCE COMMISSION

TITLE

CREDIT FOR REINSURANCE

TITLE 114, SERIES 40

5/28/03	Notice of Comment Period Filed
6/27/03	Last Date Comments Were Received
7/29/03	Agency Approved Legislative Rule Filed
1/11/04	Date Reviewed by Legislative Rule-Making Review Committee
4/16/04	Filing Date
4/16/04	Effective Date

114 CSR40
WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 40
CREDIT FOR REINSURANCE

Section

114 CSR40
WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 40
CREDIT FOR REINSURANCE

§114-40-1. Authority.

1.1. Scope. -- This legislative rule establishes the standards and procedural requirements which the commissioner considers necessary to carry out the provision of W. Va. Code §33-4-15a dealing with credit for reinsurance.

1.2. Authority. -- W. Va. Code §33-2-10.

1.3. Filing Date. -- April 16, 2004.

1.4. Effective Date. -- April 16, 2004.

§114-40-2. Credit for Reinsurance.

2.1. The commissioner shall allow a credit for reinsurance to a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of section 3, section 4, section 5, section 6, or section 7 of this rule.

2.2. A foreign ceding insurer or an alien ceding insurer which is transacting insurance in West Virginia and is domiciled in a jurisdiction that employs standards regarding credit for reinsurance that are not substantially similar to those applicable under W. Va. Code §33-4-1 et seq. shall be allowed a credit for reinsurance by the commissioner as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of section 3, section 4, section 5, section 6, or section 7 of this rule.

§114-40-3. Credit for Reinsurance - Reinsurer Licensed in This State.

Pursuant to W. Va. Code §33-4-15a(c)(1), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was licensed in this state as of any date on which statutory financial statement credit for reinsurance is claimed.

§114-40-4. Credit for Reinsurance - Accredited Reinsurers.

4.1. Pursuant to W. Va. Code §33-4-15a(c)(2), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which is accredited as a reinsurer in this state as of any date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer shall:

a. File a properly executed Form AR-1, as adopted by the National Association of Insurance Commissioners, as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records, pursuant to W. Va. Code §33-2-9;

b. File with the commissioner a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

c. File annually, on or before the first day of March a copy of its annual statement, and remit a $100.00 annual statement filing fee to the commissioner. The annual statement shall be a copy of the statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

d. Apply to the commissioner, pay a $100.00 application fee and maintain a surplus as regards policyholders in an amount not less than $20,000,000. The accredited reinsurer may not have been denied its accreditation by the commissioner within ninety (90) days of its application. In the case of companies which maintain a surplus as regards policyholders of less than $20,000,000, accreditation must have been approved by the commissioner. A letter of accreditation issued by the commissioner is evidence of approval; and

e. File any other information the commissioner requests to determine that the assuming insurer qualifies for accreditation under this section.

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

§114-40-5. Credit for Reinsurance - Reinsurer Domiciled and Licensed in Another State.

5.1. Pursuant to W. Va. Code §33-4-15a(c)(3), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which credit for reinsurance is claimed on the domestic insurer's statutory financial statement:

a. 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 W. Va. Code §33-4-15a and this rule;

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

c. Files a properly executed Form AR-1, as adopted by the National Association of Insurance Commissioners, with the commissioner as evidence of its submission to this state's authority to examine its books and records, pursuant to W. Va. Code §33-2-9.

5.2. The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

5.3. As used in this section, "substantially similar" standards means credit for reinsurance standards which the commissioner determines equal or exceed the standards of W. Va. Code §33-4-15a and this rule.

§114-40-6. Credit for Reinsurance - Reinsurers Maintaining Trust Funds.

6.1. Pursuant to W. Va. Code §33-4-15a(c)(4), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed in this section in a qualified United States financial institution as defined in W. Va. Code §33-4-5a(f), for the payment of the valid claims of its United States domestic ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

6.2. The following requirements apply to the following categories of assuming insurer:

a. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States domiciled insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20,000,000;

b. The trust fund for a group, including incorporated and individual unincorporated underwriters, shall consist of funds in trust in an amount not less than the group's several liabilities attributable to business written in the United States. In addition, the group shall maintain a trusteed surplus of which $100,000,000 shall be held jointly for the benefit of the United States ceding insurers of any member of the group. The incorporated members of the group shall not be 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. The group shall make available to the commissioner annual certifications by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter member of the group; and

c. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of $10,000,000,000 (calculated and

reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall consist of funds in trust in an amount not less than the assuming insurers' liabilities attributable to business ceded by United States ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of the group. In addition, the group shall maintain a joint 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 group shall file a properly executed Form AR-1, as adopted by the National Association of Insurance Commissioners, as evidence of the submission to this state's authority to examine the books and records, pursuant to W. Va. Code §33-2-9, of any of its members and shall certify that any member examined shall bear the expense of the examination. The group shall make available to the commissioner annual certifications by the members' domiciliary regulators and their independent public accountants of the solvency of each member of the group.

6.3. The trust shall be established in a form approved by the commissioner and shall comply with W. Va. Code §33-4-15a(d) and this section. The trust instrument shall provide that:

a. Contested claims are 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;

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

c. The trust is subject to examination as determined by the commissioner;

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

e. The trustees of the trust shall report no later than February 28 of each year to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31; and

f. Any amendment to the trust shall not be effective unless reviewed and approved in advance by the commissioner.

6.4. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains less than the amount required by this section 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 country or state of domicile:

a. 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 or other designated receiver, all of the assets of the trust fund;

b. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies;

c. If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part of the trust fund are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the commissioner shall return the assets, or any part of the trust fund, to the trustee for distribution in accordance with the trust agreement; and

d. The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this subsection.

6.5. For purposes of this rule, the term "liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers that are not otherwise secured by acceptable means, and includes:

a. For business ceded by domestic insurers authorized to write accident and sickness, and property and casualty insurance:

1. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

2. Reserves for losses reported and outstanding;

3. Reserves for losses incurred, but not reported;

4. Reserves for allocated loss expenses; and

5. Unearned premiums; and

b. For business ceded by domestic insurers authorized to write life, accident and sickness and annuity insurance:

1. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

2. Aggregate reserves for accident and sickness policies;

3. Deposit funds and other liabilities without life or disability contingencies; and

4. Liabilities for policy and contract claims.

6.6. Assets deposited in trusts established pursuant to W. Va. Code §33-4-15a (d) and this section shall be valued according to their fair market value and shall consist only of cash in U.S. dollars; certificates of deposit issued by a U.S. financial institution as defined in W. Va. Code §33-4-15a (f) and (g); clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in W. Va. Code §3-4-15a (f) and (g); and investments of the type specified in this subsection. However, investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent (5%) of total investments. No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under paragraph 5 of subdivision a, subdivision c, paragraph 2 of subdivision f, or subdivision g of this subsection, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of this section shall be invested in:

a. Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

1. The United States or by any agency or instrumentality of the United States;

2. A state of the United States;

3. A territory, possession or other governmental unit of the United States;

4. An agency or instrumentality of a governmental unit referred to in paragraphs 2 and 3 of this subdivision if the obligations are by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefitted by local improvements; or

5. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners;

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

1. Are rated A or higher (or the equivalent) by a securities rating agency

recognized by the Securities Valuation Office of the National Association of Insurance Commissioners, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

2. Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners; or

3. Have been designated as Class One or Class Two by the Securities Valuation Office of the National Association of Insurance Commissioners;

c. Obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners;

d. An investment made pursuant to the provisions of subdivisions a, b, or c of this subsection is subject to the following additional limitations:

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

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

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

4. Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under paragraphs 1 and 3, subdivision b of this subsection, but shall not exceed two percent (2%) of the assets of the trust.

e. As used in this rule:

1. "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners and that either:

A. Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing

of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:

1. Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

2. Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Section 1703; or

B. Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of parts 1 and 2, subparagraph A of this subdivision;

2. "Promissory note," when used in connection with a manufactured home, also includes a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

f. The following apply to equity interests:

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

A. Its obligations and preferred shares, if any, are eligible as investments under this subsection; and

B. The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. ss 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the National Association of Securities Dealers, Inc. A trust may not invest in equity interests under this paragraph an amount exceeding one percent (1%) of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

2. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development are permissible, if:

A. All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners; and

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

3. An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent (1%) of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten percent (10%) of the assets in the trust;

g. Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners.

h. The following apply to investment companies:

1. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. s 802, are permissible investments if the investment company:

A. Invests at least ninety percent (90%) of its assets in the types of securities that qualify as an investment under subdivisions a, b, or c of this subsection or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in subdivisions a, b, or c of this subsection; or

B. Invests at least ninety percent (90%) of its assets in the types of equity interests that qualify as an investment under paragraph 1, subdivision f of this subsection;

2. Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:

A. An investment in an investment company qualifying under subparagraph A, paragraph 1 of this subdivision shall not exceed ten percent (10%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent (25%) of the assets in the trust; and

B. Investments in an investment company qualifying under subparagraph B, paragraph 1 of this subdivision shall not exceed five percent (5%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to paragraph 1, subdivision f of this subsection.

i. The following apply to letters of credit:

1. In order for a letter of credit to qualify as an asset of the trust, the trustee has the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

2. The trust agreement shall provide that the trustee is liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where the draw would be required is considered to be negligence and/or willful misconduct.

j. A specific security provided to a ceding insurer by an assuming insurer pursuant to section 8 of this rule shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

§114-40-7. Credit for Reinsurance Required by Law.

Pursuant to W. Va. Code §33-4-15a(c)(5), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of W. Va. Code §§33-4-15a(c)(1); 33-4-15a(c)(2); 33-4-15a(c)(3); and 33-4-15a(c)(4), but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means a state, district or territory of the United States and any lawful national government.

§114-40-8. Asset or Reduction From Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer.

8.1. Pursuant to W. Va. Code §33-4-15a(e), the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of W. Va. Code §33-4-15a(c) in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under the reinsurance contract. The 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 W. Va. Code §33-4-15a(f). This security may be in the form of any of the following:

a. Cash;

b. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners 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 W. Va. Code §33-4-15a(f), effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

d. Any other form of security acceptable to the commissioner.

8.2. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to subdivisions a, b, c and d, subsection 8.1 of this section shall be allowed only when the requirements of sections 9, 10 or 11 of this rule are satisfied.

§114-40-9. Trust Agreements Qualified Under Section 8.

9.1. As used in this section:

a. "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 a conservator, rehabilitator or liquidator).

b. "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.

c. "Obligations," as used in subdivision 9.2.k. of this section means:

1. Reinsured losses and allocated loss expenses paid by the ceding company, 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.

9.2. Required conditions.

a. 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 W. Va. Code §33-4-15a(f).

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

c. All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

d. The trust agreement shall provide that:

1. The beneficiary has 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;

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

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

4. It shall not contain references to any other agreements or documents except as provided for under subdivision k of this subsection.

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

f. The trust agreement shall require the trustee to:

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

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

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 ten (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 the asset upon condition that the proceeds are paid into the trust account.

g. 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.

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

i. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee has the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

j. The trust agreement shall provide that the trustee is liable for its own negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where the draw would be required is considered to be negligence and/or willful misconduct.

k. 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, a trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

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 one hundred and two percent (102%) of the actual amount required to fund the assuming insurer's 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 obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to

withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in W. Va. Code §33-4-15a(f) apart from its general assets, in trust for those uses and purposes specified in paragraphs 1 and 2 of this subdivision as may remain executory after the withdrawal and for any period after the termination date.

l. Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of Section 8 of this rule in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary practice to provide a trust agreement for a specific purpose, a trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

1. To pay or reimburse the ceding insurer for:

A. The assuming insurers's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

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

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

3. Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and discharged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in paragraphs 1 and 2 of this subdivision as may remain executory after withdrawal and for any period after the termination date.

m. Notwithstanding any other provisions in the trust instrument, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of the its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that the assets

of the trust fund or any part of the trust fund are not necessary to satisfy claims of the U.S. beneficiaries of the trust, the assets or any part of them shall be returned to the trustee for distribution in accordance with the trust agreement.

9.3. Permitted conditions.

a. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after receipt of the notice by the beneficiary and grantor and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after receipt of the notice by the trustee and the beneficiary. No resignation or removal is 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.

b. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. The trustee shall promptly forward to the grantor, or deposit in a separate account established in the grantor's name, any interest or dividends received by the trustee.

c. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in paragraph 2, subdivision a, subsection 9.4 of this section.

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

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

9.4. Additional conditions applicable to reinsurance agreements.

a. A reinsurance agreement may contain provisions that:

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

2. Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States dollars), certificates

of deposit (issued by a United States bank and payable in United States dollars), and investments of the types permitted by Chapter 33 of the West Virginia Code or any combination of these assets, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including them in the reinsurance agreement;

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

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

5. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be used 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 the company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

A. To pay or reimburse the ceding insurer for the assuming insurer's share of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;

B. To pay or 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;

C. Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; and

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

b. The reinsurance agreement may also contain provisions that:

1. Give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets

to the assuming insurer, provided:

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

B. After withdrawal and transfer, the market value of the trust account is no less than one hundred and two percent (102%) of the required amount.

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

2. Provide for:

A. The return of any amount withdrawn in excess of the actual amounts required for subparagraphs A, B and C, paragraph 5, subdivision a of this subsection, or in the case of subparagraph D, paragraph 5, subdivision a of this subsection, any amounts that are subsequently determined not to be due; and

B. Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to subparagraph C, paragraph 5, subdivision a of this subsection.

3. Permit the award by any arbitration panel or court of competent jurisdiction of:

A. Interest at a rate different from that provided in subparagraph B, paragraph 2, subdivision b of this subsection,

B. Court or arbitration costs,

C. Attorney's fees; and

D. Any other reasonable expenses.

c. 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 the commissioner 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 the reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

d. Existing agreements. Notwithstanding the effective date of this rule, any trust agreement or underlying reinsurance agreement in existence prior to January 1, 1993, will continue

to be acceptable until the expiration or renewal date of the agreement, at which time the agreement will have to be in full compliance with this rule for the trust agreement to be acceptable.

e. The failure of any trust agreement to specifically identify the beneficiary as defined in subsection 1 of this section shall not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

§114-40-10. Letters of Credit Qualified Under Section 8.

10.1. The letter of credit must be clean, irrevocable and unconditional and issued or confirmed by a qualified United States financial institution as defined in W. Va. Code §33-4-15a(f). The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in subdivision a, subsection 10.9 of this section. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including a conservator, rehabilitator or liquidator).

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

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

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

10.5. The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), 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.

10.6. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 17 of Publication

500, occur.

10.7. The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to W. Va. Code §33-4-15a(f).

10.8. If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection 10.7 of this section, then the following additional requirements shall be met:

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

b. The "evergreen clause" shall provide for thirty (30) days' notice prior to the expiration date for nonrenewal.

10.9. Reinsurance agreement provisions.

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

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

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

A. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies;

B. To pay or reimburse the ceding insurer for the assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

C. Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

D. Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire

obligations under the specific reinsurance remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in this subsection as may remain after withdrawal and for any period after the termination date.

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

b. Nothing contained in subdivision a of this subsection precludes the ceding insurer and assuming insurer from providing for:

1. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to subparagraph C, paragraph 2, subdivision a of this subsection; or

2. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required in paragraph 2, subdivision b of this subsection, or in the case of subparagraph D, paragraph 2, subdivision a of this subsection, any amounts that are subsequently determined not to be due.

§114-40-11. Other Security.

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

§114-40-12. Reinsurance Contract.

Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of sections 3 , 4, 5, 6 or 8 of this rule or otherwise in compliance with W. Va. Code §33-4-15a(c) after the adoption of this rule unless the reinsurance agreement:

12.1. Includes a proper insolvency clause pursuant to W. Va. Code §33-4-15(c); and

12.2. Includes a provision pursuant to W. Va. Code §33-4-15a(c)(6) whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court or panel.

§114-40-13. Contracts Affected.

All new and renewal reinsurance transactions entered into after the effective date of this rule shall conform to the requirements of W. Va. Code §33-4-15a and this rule if credit is to be given to the ceding insurer for the reinsurance.