

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R027-02

Effective May 31, 2002

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-15, NRS 679B.130 and 681A.130.

Section 1. Chapter 681A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. *“Commissioner” has the meaning ascribed to it in NRS 679A.060.*

Sec. 3. *“Division” has the meaning ascribed to it in NRS 679A.085.*

Sec. 4. *“Liabilities” means the gross liabilities of an assuming insurer which are attributable to reinsurance ceded by insurers domiciled in the United States and which are not otherwise secured by acceptable means and includes, without limitation:*

1. For business ceded by a domestic insurer authorized to write accident and health insurance and property and casualty insurance:

(a) Losses and allocated loss expenses paid by the ceding insurer that are recoverable from the assuming insurer;

(b) Reserves for reported losses and outstanding losses;

(c) Reserves for losses incurred but not reported;

(d) Reserves for allocated loss expenses; and

(e) Unearned premiums.

2. For business ceded by a domestic insurer authorized to write life, health and annuity insurance:

(a) Aggregate reserves for life policies and contracts less policy loans and net due and deferred premiums;

(b) Aggregate reserves for accident and health policies;

(c) Deposit funds and other liabilities without life or disability contingencies; and

(d) Liabilities for policy and contract claims.

Sec. 5. 1. A reinsurance agreement entered into in conjunction with a trust agreement and the establishment of a trust account may stipulate that assets deposited in the trust account must be valued according to their current fair market value and must consist only of:

(a) Cash in United States legal tender.

(b) Certificates of deposit issued by a United States bank and payable in United States legal tender.

(c) Investments of the types permitted by chapter 681B of NRS, if the investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary.

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

(1) Are rated “A” or higher, or its equivalent, by a securities rating agency recognized by the Securities Valuation Office, or if not so rated, are similar in structure and other material respects to other obligations of the same institution 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, that is licensed to insure obligations in this state and, after considering the insurance, are rated “AAA” or its equivalent by a securities rating agency recognized by the Securities Valuation Office; or

(3) Have been designated as Class One or Class Two by the Securities Valuation Office.

(e) The following equity interests:

(1) Investments in common shares or interests in a partnership of a solvent institution located in the United States if:

(I) The obligations and preferred shares, if any, of the solvent institution are eligible as investments pursuant to this section; and

(II) For solvent institutions that are not insurance companies, the equity interests of the solvent institution are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a to 78kk, or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for the equity interests are furnished through a nationwide automated quotations system approved by the National Association of Securities Dealers, Inc. A trust shall not invest in equity interests pursuant to this subparagraph in an amount exceeding 1 percent 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, if:

(I) All the obligations of the solvent institution are rated “A” or higher, or its equivalent, by a rating agency recognized by the Securities Valuation Office; and

(II) The equity interests of the solvent 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.

(f) Obligations issued, assumed or guaranteed by a multinational development bank if the obligations are rated “A” or higher, or its equivalent, by a rating agency recognized by the Securities Valuation Office.

(g) Securities of an investment company that is registered pursuant to the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., if the investment company:

(1) Invests at least 90 percent of its assets in the types of securities that qualify as an investment under paragraph (d) or subparagraph (2) of paragraph (e) or NRS 682A.070, or if the investment company invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in those provisions; or

(2) Invests at least 90 percent of its assets in the types of equity interests that qualify as an investment under subparagraph (1) of paragraph (e).

(h) Other types of investments specified by the reinsurance agreement.

2. For the purposes of paragraph (d) of subsection 1:

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

(b) An investment in any one mortgage-related security must not exceed 5 percent of the assets of the trust;

(c) The aggregate total investment in mortgage-related securities must not exceed 25 percent of the assets of the trust; and

(d) Preferred or guaranteed shares issued or guaranteed by a solvent institution located in the United States are permissible if all the obligations of the solvent institution qualify as investments under subparagraph (1) or (3) of paragraph (d) of subsection 1 and the investment in the shares does not exceed 2 percent of the assets of the trust.

3. For the purposes of paragraph (e) of subsection 1, investments in or loans upon the equity interests in any one institution must not exceed 1 percent of the assets of the trust. The cost of an investment in equity interests made pursuant to paragraph (e) of subsection 1, when added to the aggregate cost of other investments in equity interests then held pursuant to paragraph (e) of subsection 1, must not exceed 10 percent of the assets in the trust.

4. For the purposes of paragraph (g) of subsection 1:

(a) An investment in an investment company qualifying under subparagraph (1) of paragraph (g) of subsection 1 must not exceed 10 percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies must not exceed 25 percent of the assets in the trust; and

(b) Investments in an investment company qualifying under subparagraph (2) of paragraph (g) of subsection 1 must not exceed 5 percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies must be included when calculating the permissible aggregate value of equity interests pursuant to subparagraph (1) of paragraph (e) of subsection 1.

5. As used in this section:

(a) “Manufactured home” has the meaning ascribed to it in 42 U.S.C. § 5402(6).

(b) “Mortgage-related security” means an obligation which is rated “AA” or higher, or its equivalent, by a securities rating agency recognized by the Securities Valuation Office and which:

(1) Represents ownership of one or more promissory notes or certificates of interest or represents participation in promissory notes, including any rights designed to ensure the servicing, or the receipt or timeliness of receipt by the holders of the notes, certificates or participation, of amounts payable under the notes, certificates or participation, that:

(I) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling, a mixed residential and commercial structure, or a residential manufactured home, regardless of whether the manufactured home is considered real or personal property under the laws of the state in which the manufactured home is located; and

(II) Were originated by:

(i) A savings and loan association, savings bank, commercial bank, credit union, insurance company or any other similar institution that is supervised and examined by a federal or state housing authority; or

(ii) A mortgage approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. §§ 1709 and 1715b or, if 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. § 1703; or

(2) Is secured by:

(I) One or more promissory notes or certificates of deposit or by participations in the notes, with or without recourse to the insurer of the notes and, by its terms, provides for payments or reasonable projections of payments; or

(II) Notes meeting the requirements of sub-subparagraphs (I) and (II) of subparagraph (I).

(c) “Promissory notes,” when used in connection with a manufactured home, includes a loan, an advance or a credit sale as evidenced by a retail installment sales contract or other instrument.

(d) “Securities Valuation Office” means the Securities Valuation Office of the National Association of Insurance Commissioners.

Sec. 6. *A specific security provided to a ceding insurer by an assuming insurer in accordance with NRS 681A.240 must be applied, until exhausted, for the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security before, and as a condition precedent to, the presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer in accordance with NAC 681A.320 and section 5 of this regulation.*

Sec. 7. *“Financial statement” means a quarterly, annual or other financial statement required to be filed pursuant to state law.*

Sec. 8. NAC 681A.005 is hereby amended to read as follows:

681A.005 As used in this chapter, unless the context otherwise requires, the words and terms defined by NRS 681A.260 to 681A.410, inclusive, and ~~[subsections 1 and 2 of this section]~~ *sections 2, 3 and 4 of this regulation* have the meanings ascribed to them in those sections.

~~[1. “Commissioner” has the meaning ascribed to it in NRS 679A.060.~~

~~—2. “Division” has the meaning ascribed to it in NRS 679A.085.]~~

Sec. 9. NAC 681A.190 is hereby amended to read as follows:

681A.190 1. No reinsurance agreement or amendment thereto may be used to reduce any liability or to establish any asset in any financial statement filed with the division, unless the agreement, amendment or a binding letter of intent has been duly executed by both parties no later than the last day covered by the financial statement.

2. A letter of intent, a reinsurance agreement or an amendment thereto must be executed within a reasonable time, not to exceed 90 days after the date of execution of the letter of intent for credit to be granted for the reinsurance ceded.

3. A reinsurance agreement must provide that:

(a) The agreement constitutes the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement; and

(b) Any change or modification to the agreement is void unless it is made by written amendment to the agreement and signed by both parties.

4. Credit will not be granted, or an asset or a reduction from liability allowed, to a ceding insurer for reinsurance transacted with assuming insurers that meet the requirements of NRS 681A.140 to 681A.240, inclusive, and NAC 681A.150 to 681A.190, inclusive, unless the reinsurance agreement includes:

(a) A proper insolvency clause pursuant to NRS 681A.230; and

(b) If the assuming insurer is an unauthorized assuming insurer, a provision in accordance with NRS 681A.210 whereby the assuming insurer has:

(1) Agreed to submit to the jurisdiction of an alternative dispute panel or court of competent jurisdiction within the United States;

(2) Agreed to comply with all requirements necessary to give the court or panel jurisdiction;

(3) Designated an agent upon whom all legal process may be served; and

(4) Agreed to abide by the final decision of the court or panel.

Sec. 10. NAC 681A.250 is hereby amended to read as follows:

681A.250 As used in NAC 681A.250 to 681A.380, inclusive, *and sections 5, 6 and 7 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 681A.260, 681A.270 and 681A.280 *and section 7 of this regulation* have the meanings ascribed to them in those sections.

Sec. 11. NAC 681A.290 is hereby amended to read as follows:

681A.290 1. A trust agreement established for the purposes of NRS 681A.240 must provide for the creation of a trust account for the deposit of assets.

2. A trust agreement must be entered into between the beneficiary, the grantor and a trustee that is a qualified financial institution in the ~~United~~ *United* States. The failure of a trust agreement to identify specifically the beneficiary does not affect any rights or actions which the commissioner has or is authorized to take.

3. Except as otherwise provided in this subsection, all assets in the trust account must be held by the trustee at an office of the trustee in the United States. A bank may apply to the commissioner for permission to use a foreign branch office of the bank as trustee. If the commissioner approves the use of a foreign branch office as trustee:

(a) The written consent of the beneficiary must be obtained; and

(b) The trust agreement must provide that the beneficiary may deliver the written notice described in paragraph (a) of subsection 4 to the trustee at the principal office of the trustee in the United States.

4. A trust agreement must:

(a) Authorize the beneficiary to withdraw assets from the trust account at any time without notice to the grantor, subject only to written notice by the beneficiary to the trustee;

(b) Provide that no other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(c) Not be subject to any conditions or qualifications outside of the trust agreement, except in conjunction with a reinsurance agreement as set forth in NAC 681A.310;

(d) Be established for the sole benefit of the beneficiary;

(e) Require that notice of termination be delivered by the trustee to the beneficiary at least 30 days, but not more than 45 days, before termination of the trust account;

(f) Be made subject to and governed by the laws of the state in which the trust is established;

(g) Prohibit invasion of the trust corpus for the purpose of paying compensation to or reimbursing the expenses of the trustee; and

(h) Make the trustee liable for its own negligence, willful misconduct or lack of good faith.

5. A trust agreement must require the trustee to:

(a) Receive and hold all assets in a safe place;

(b) Determine that all assets are in such form that the beneficiary, or the trustee upon direction of the beneficiary, may negotiate any assets whenever necessary without the consent or signature of the grantor or any other person or entity;

(c) Furnish to the grantor and beneficiary a statement of all assets in the trust account upon its creation and at intervals of not less than the end of each calendar quarter;

(d) Notify the grantor and the beneficiary of any deposits to or withdrawals from the trust account within 10 days after the deposit or withdrawal is made;

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

(f) Except as otherwise provided in subsection 6, allow no substitutions or withdrawals of assets from the trust account without written instructions from the beneficiary.

6. The trustee may, upon call or maturity of any trust asset, withdraw the asset without the consent of the beneficiary if the proceeds are paid into the trust account and the beneficiary is notified.

7. Notwithstanding any provision in the trust instrument to the contrary, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all the assets of the trust fund. If the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile:

(a) The assets must be applied in accordance with the priority statutes and other laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation; and

(b) If the commissioner with regulatory oversight over the trust or a similar authority determines that the assets of the trust, or any part thereof, are not necessary to satisfy claims of the beneficiaries of the trust in the United States, the assets or any part thereof must be returned to the trustee for distribution in accordance with the trust agreement.

Sec. 12. NAC 681A.300 is hereby amended to read as follows:

681A.300 1. A trust agreement may authorize:

(a) The trustee to resign by delivering written notice to the beneficiary and grantor. Except as otherwise provided in subsection 2, a resignation is effective on the date specified in the written notice, but not less than 90 days after receipt of the notice by the beneficiary and grantor.

(b) The grantor to remove the trustee by delivering written notice to the trustee and the beneficiary. Except as otherwise provided in subsection 2, a written notice of removal is effective on the date specified in the notice, but not less than 90 days after receipt of the notice by the trustee and beneficiary.

2. A notice of resignation or removal is not effective until a successor trustee has been appointed and approved by the beneficiary and grantor, and all assets in the trust have been transferred to the new trustee.

3. A trust agreement may authorize the beneficiary to designate a natural person or entity to which all or part of the trust assets are to be transferred. Such a transfer may be conditioned upon the trustee receiving other specific assets before the transfer or simultaneously with the transfer.

4. A trust agreement may authorize the grantor to vote any shares of stock in the trust account and to receive payments of any dividends or interest upon any shares of stock or obligations included in the trust account. All such interest or dividends must be promptly

forwarded to the grantor upon receipt or deposited in a separate account established in the name of the grantor.

5. A trust agreement may authorize the trustee to invest and accept substitutions of any assets in the trust account if the consent of the beneficiary is obtained before the investment or substitution is made. The consent of the beneficiary is not necessary if the trust agreement:

- (a) Specifies categories of investments which are acceptable to the beneficiary; and
- (b) Authorizes the trustee to invest assets and accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and are consistent with the restrictions set forth in ~~subsection 2 of NAC 681A.320.~~ *section 5 of this regulation.*

6. A trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary must, upon written approval of the beneficiary, be delivered to the grantor.

Sec. 13. NAC 681A.310 is hereby amended to read as follows:

681A.310 1. If a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities or accident and health, and it is customary practice to provide a trust agreement for a specific purpose, such a trust agreement may, notwithstanding the provisions of NAC 681A.250 to 681A.380, inclusive, *and sections 5, 6 and 7 of this regulation*, to the contrary, provide that the ceding insurer shall 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 for:

(1) Any losses and allocated loss expenses paid by the ceding insurer but not recovered from the assuming insurer; or

(2) Any unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(b) To pay to the assuming insurer any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(c) If the ceding insurer has received notification of termination of the trust account and the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged 10 days before the termination date, to withdraw an amount equal to those obligations and deposit the amount in a qualified financial institution in the United States in a separate account in the name of the ceding insurer, apart from its general assets, in trust for such uses and purposes specified in paragraphs (a) and (b) as remain executory after the withdrawal and for any period after the termination date.

2. The reinsurance agreement entered into in conjunction with the trust agreement may contain the provisions set forth in ~~subsection 2 of NAC 681A.320~~ *section 5 of this regulation* if the requirements of this section are included in the trust agreement.

Sec. 14. NAC 681A.320 is hereby amended to read as follows:

681A.320 A reinsurance agreement entered into in conjunction with a trust agreement and the establishment of a trust account may:

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

2. ~~[Stipulate that assets deposited in the trust account must be valued according to their current fair market value and consist only of:~~
- ~~—(a) Cash in United States legal tender;~~
 - ~~—(b) Certificates of deposit issued by a United States bank and payable in United States legal tender;~~
 - ~~—(c) Investments of the types permitted by chapter 681B of NRS, if the investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary; and~~
 - ~~—(d) Other types of investments specified by the reinsurance agreement;~~

~~3.]~~ Require the assuming insurer, before he deposits 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, so that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate the assets without the consent or signature of the assuming insurer or any other entity;

~~4.]~~ 3. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent;

~~5.]~~ 4. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, which was 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 must be used and applied by the ceding insurer or its successor in interest by operation of law, including , without limitation , any liquidator, rehabilitator, receiver or conservator, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only:

(a) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(b) 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;

(c) 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. The account must include, but is not limited to, amounts for policy reserves, claims and losses incurred, including losses incurred but not reported, loss adjustment expenses and unearned premium reserves; and

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

~~16.1~~ 5. Grant the assuming insurer the right to seek approval, which may not be unreasonably or arbitrarily withheld, from the ceding insurer to withdraw from the trust account any of the trust assets and transfer those assets to the assuming insurer if:

(a) At the time of withdrawal, the assuming insurer replaces the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the amount required by the trust agreement; or

(b) After withdrawal and transfer, the market value of the trust account is not less than 102 percent of the required amount;

~~17.1~~ 6. Provide for:

(a) The return of any amount withdrawn for the purposes specified in paragraphs (a), (b) and (c) of subsection ~~[5]~~ 4 which are in excess of the actual amounts required for those purposes;

(b) The return of any amount withdrawn for the purpose specified in paragraph (d) of subsection ~~[5]~~ 4 which is subsequently determined not to be due under the reinsurance agreement; and

(c) Interest payments, at a rate not in excess of the prime rate of interest at the time of withdrawal, on the amounts held pursuant to paragraph (c) of subsection ~~[5; and~~
~~—8.]~~ 4; and

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

(a) Interest at a rate different from the rate provided in paragraph (c) of subsection ~~[7;]~~ 6;

(b) Court or arbitration costs;

(c) Attorney's fees; and

(d) Any other reasonable expenses.

Sec. 15. NAC 681A.340 is hereby amended to read as follows:

681A.340 1. A letter of credit issued for the purposes of NRS 681A.240 ~~[.]~~ must stipulate that:

(a) To obtain money the beneficiary need only draw and present a sight draft under the letter of credit;

(b) The letter is not subject to any conditions or qualifications outside of the letter of credit, except as provided in a reinsurance agreement in conjunction with which the letter of credit is obtained; and

(c) The obligation of the qualified financial institution in the United States under the letter of credit is not contingent upon reimbursement with respect thereto.

2. A letter of credit must be *clean, irrevocable, unconditional and* issued or confirmed by a qualified financial institution in the United States, as ~~defined~~ *described* in NRS 681A.240, which is authorized to issue letters of credit. If a letter of credit is issued by a financial institution other than a qualified financial institution in the United States:

(a) The financial institution shall formally designate a qualified financial institution in the United States to confirm the letter of credit and to act as an agent for the receipt and payment of drafts; and

(b) The letter of credit must comply with the provisions of this section.

3. A letter of credit must contain a date of issuance and a date of expiration. The term of a letter of credit must be for at least 1 year. A letter of credit must contain a clause which prevents the expiration of the letter of credit without due notice from the issuer. The clause must require at least 30 days' notice before the expiration or nonrenewal of the letter of credit.

4. A letter of credit must state whether it is subject to and governed by the laws of this state or Publication 500 of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, and all drafts drawn thereunder must be presentable at an office in the United States of a qualified financial institution in the United States. A copy of Publication 500 may be obtained from the International Chamber of Commerce Publishing ~~Corporation,~~ *Inc.*, 156 Fifth Avenue, Suite ~~308,~~ *417*, New York, New York 10010, for the price of ~~\$12.95,~~ *\$14.95*.

5. If a letter of credit is made subject to Publication 500 of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, the letter of credit must provide for an extension of time to draw against the letter of credit if one or more of the events specified in Article 19 of Publication 500 occurs.

6. A letter of credit may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the division, if an acceptable letter of credit with the ceding insurer as beneficiary has been issued on or before the date the financial statement of the ceding insurer is filed. The allowable reduction for the letter of credit is the amount available under the letter of credit, except that the reduction may not exceed the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.

7. A letter of credit must not contain a reference to any other agreements, documents or entities except as otherwise provided in NAC 681A.350. The heading of a letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. Such a boxed section must be clearly marked to indicate that the information contained within the boxed section is for internal identification purposes only.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R027-02

The Commissioner of Insurance adopted regulations assigned LCB File No. R027-02 which pertain to reinsurance (chapter 681A of the Nevada Administrative Code) on April 26, 2002.

Notice date: 2/25/2002
Hearing date: 3/27/2002

Date of adoption by agency: 4/26/2002
Filing date: 5/31/2002

INFORMATIONAL STATEMENT

A hearing was held on March 27, 2002, at the offices of the Department of Business and Industry, Division of Insurance (Division), 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, with a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104, regarding the adoption of the regulation concerning reinsurance.

Public comment was solicited by posting notice of the hearing in the following public locations: 788 Fairview Drive, Legislative Counsel Bureau, Capitol Building Lobby, Carson City Courthouse, State Library, County Libraries, Capitol Press Room and the Division's Las Vegas Office.

In addition, the Division maintains a list of interested parties, comprised mainly of insurance companies, agencies and other persons regulated by the Division. These persons were notified of the hearing and that copies of the regulation could be obtained from or examined at the offices of the Division in Carson City.

Written and oral testimony was received by the Division. Copies of any comments received by the Division can be obtained from the Division at 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, (775) 687-4270.

Considering the comments by those attending the hearing, or by those who submitted written comments, the Commissioner has issued an order adopting the regulation as a permanent regulation of the Division.

Based upon the testimony received at the hearing, language of the Legislative Counsel Bureau version of the regulation was revised as follows:

1. A new paragraph (e) has been added to subsection 2 of section 4 to read as follows:

“Statutory financial statement” means quarterly, annual or other financial statements required by state law.

2. Paragraph (a) of subsection 2 of section 4 is amended to read as follows:

Aggregate reserves for life policies and contracts less policy loans and net due and deferred premiums;

3. Sub-subparagraph (II) of subparagraph (1) of paragraph (e) of subsection 1 of section 5 is amended to read as follows:

For solvent institutions that are not insurance companies, the equity interests of the solvent institution are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a to 78kk, or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for the equity interests are furnished through a nationwide automated quotations system approved by the National Association of Securities Dealers, Inc. A trust shall not invest in equity interests pursuant to this sub-subparagraph in an amount exceeding 1 percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.

4. Subparagraph (2) of paragraph (e) of subsection 1 of section 5 is amended to read as follows:

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, if:

5. Sub-subparagraph (II) of subparagraph (2) of paragraph (e) of subsection 1 of section 5 is amended to read as follows:

The equity interests of the solvent 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.

6. Paragraph (g) of subsection 1 of section 5 is amended to read as follows:

Securities of an investment company that is registered pursuant to the Investment Company Act of 1940, 15 U.S.C. §§ 802, et seq., if the investment company:

7. Paragraph (a) of subsection 2 of section 5 is amended to read as follows:

An investment in or loans upon the obligations of an institution other than an institution that issues mortgage-related securities must not exceed 5 percent of the assets of the trust;

8. Paragraph (b) of subsection 2 of section 5 is amended to read as follows:

An investment in any one mortgage-related security must not exceed 5 percent of the assets of the trust;

9. Paragraph (a) of subsection 4 of section 5 is amended to read as follows:

An investment in an investment company qualifying under subparagraph (1) of paragraph (g) of subsection 1 must not exceed 10 percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies must not exceed 25 percent of the assets in the trust; and

10. Sub-sub-subparagraph (ii) of sub-subparagraph (II) of subparagraph (1) of paragraph (b) of subsection 5 of section 5 is amended to read as follows:

A mortgage approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. §§ 1709 and 1715b or, if 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. § 1703; or

11. Sub-subparagraph (II) of subparagraph (2) of paragraph (b) of subsection 5 of section 5 is amended to read as follows:

Notes meeting the requirements of subparagraphs (1) and (2) of paragraph (b).

12. Paragraph (a) of subsection 4 of section 8 is amended to read as follows:

A proper insolvency clause pursuant to NRS 681A.230; and

13. Paragraph (b) of subsection 4 of section 8 is amended to read as follows:

If the assuming insurer is an unauthorized assuming insurer, a provision in accordance with NRS 681A.210 whereby the assuming insurer has:

14. Subsection 7 of section 10 is amended to read as follows:

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 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. If the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile:

15. Paragraph (a) of subsection 7 of section 10 is amended to read as follows:

The assets must be applied in accordance with the priority statutes and other laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation; and

16. Paragraph (b) of subsection 7 of section 10 is amended to read as follows:

If the commissioner with regulatory oversight over the trust or a similar authority determines that the assets of the trust, or any part thereof, are not necessary to satisfy claims of the beneficiaries of the trust in the United States, the assets or any part thereof must be returned to the trustee for distribution in accordance with the trust agreement.

The economic impact of the regulation is as follows:

(a) Regulated Industry: Minimal.

(b) Public: None.

The regulation imposes no direct costs upon members of the public at large. The regulation imposes no direct cost upon the agency to enforce the regulation.

This regulation does not duplicate or overlap any other regulation.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

IN THE MATTER OF THE

CAUSE NO. **02.047**
LCB File No. **R027-02**

**REGULATION CONCERNING
REINSURANCE.**

**SUMMARY OF PROCEEDINGS
AND ORDER**

A hearing on the proposed regulation concerning holding companies was held before the Commissioner of Insurance (Commissioner), on March 27, 2002, at the offices of the Department of Business and Industry, Division of Insurance (Division), 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, with a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104. Immediately prior to the hearing, the Commissioner held a workshop concerning this matter.

The Division received one written comment from Marsha Cohen, Senior Vice President, Reinsurance Association of America. Approximately 17 individuals attended the hearing. Peggy Willard-Ross and Bruce Heffner, representing the Division, testified at the workshop. Bob Burch, representing the Division, testified at both the workshop and the hearing.

Mr. Burch testified that the intent of the regulation was to define “Statutory financial statement” and “Liabilities”; to require certain wording in a reinsurance agreement pertaining to an “insolvency clause” and submission by an unauthorized insurer to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction in the United States; to

require that assets deposited in trust pursuant to a reinsurance agreement be valued according to current fair market value, consist only of certain investments and in amounts not exceeding certain thresholds; to require wording in the trust instrument that the trustee comply with an order of the Commissioner with regulatory oversight over the trust in the event the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings; and to require letters of credit used as assets of the trust be clean, irrevocable and unconditional in addition to requirements already existing in this regulation.

Mr. Burch testified that, during the workshop, the Commissioner questioned why the version prepared by the Legislative Counsel Bureau (LCB) was remarkably different from the Division's proposed draft regulation. A telephone call was made to the LCB; personnel there stated that the drafting methodology caused the versions to be significantly different. The Commissioner expressed concern that the LCB version might not be accepted by the National Association of Insurance Commissioners (NAIC) as substantially similar to the NAIC Model Regulation which has been adopted by 49 accredited states. The Commissioner also stated that Nevada's accreditation by the NAIC, which was awarded to the Division on March 17, 2002, was dependent upon the Commissioner's commitment to adopt language substantially similar to the NAIC Model not later than the hearing on March 27, 2002.

Although the testimony inferred that the language of the NAIC Model Regulation has been so significantly changed by the LCB that it tended to inhibit reinsurers from reinsuring domestic insurers, the Commissioner determined that the essence of time dictated immediate adoption due to Nevada's accreditation, but that the Division would make every effort to later conform the language to national standards.

Bob Burch testified that the LCB version omitted the definition for statutory financial statement.

Commissioner Molasky-Arman questioned whether the language of the regulation itself referred to the words statutory financial statement.

Bob Burch responded that the regulation does refer to this wording.

Commissioner Molasky-Arman directed that the definition for “statutory financial statement” be added back to section 4 of LCB’s version of the regulation.

Bob Burch testified the wording added by the Division to the definition of liabilities was changed in the LCB version, which, in paragraph (a) of subsection 2 of section 4, deleted the word “net” prior to “due and deferred” and also changed the wording from “deferred premiums” to “deferred payments.”

Commissioner Molasky-Arman directed that the wording be restored to the Division’s proposal to coincide with insurance accounting.

Bob Burch testified that in the LCB version, paragraphs (a) and (b) of subsection 2 of section 5, and paragraph (a) of subsection 4 of section 5, which address the assets deposited in the trust, the LCB version changed the wording from “An investment” to “Investments.”

Commissioner Molasky-Arman noted that there is a difference between a single investment and aggregate investments; thus, the wording must be changed back to the Division’s wording.

Bob Burch testified the LCB version changed the wording in sub-subparagraph (II) of subparagraph 1 of paragraph (e) of subsection 1 of section 5 from “shall” to “may” with respect to the trust investing in equity interests and also deleted the wording, “even though the

equity interests are not so registered and are not issued by an insurance company” at the end of the sentence which states equity interests exceeding 1 percent of the assets of the trust.

Commissioner Molasky-Arman commented the wording must be “shall” rather than “may” and that the wording deleted must be restored.

Bob Burch testified that paragraph (g) of subsection 1 of section 5 of the LCB version misquoted the citation using “80a-1” rather than the model regulation site of “802.”

Commissioner Molasky-Arman directed that the citation be corrected.

Bob Burch testified that sub-sub-subparagraph (ii) of sub-subparagraph (II) of subparagraph (1) of paragraph (b) of subsection 5 of section 5 of the LCB version misquoted the citation regarding the Secretary of Housing and Urban Development using “U.S.C.” instead of “U.S.C.A.”

Commissioner Molasky-Arman noted that the NAIC model refers to the annotated code and that “U.S.C.A.” should, therefore be stated. The correct site should be used.

Bob Burch testified a reference citation in sub-subparagraph (II) of subparagraph (2) of paragraph (b) of subsection 5 of section 5 by the LCB within the regulation regarding promissory notes was incorrect and that the citation should be “subparagraphs (1) and (2) of paragraph (b)” rather than “sub-subparagraphs (I) and (II) of subparagraph (1) of paragraph (b).”

Commissioner Molasky-Arman requested the correction to the proper citation be made.

The letter from Marsha Cohen denoted an incorrect statutory reference and an incorrect regulatory reference. The letter also requested the inclusion of wording to make clear that the provisions of NAC 681A.190(c) apply to both life and casualty agreements.

Commissioner Molasky-Arman directed that the related statutory and regulatory references so noted be corrected.

Bob Burch testified that subsection 7 of section 10 of the LCB version relating to wording required in the trust agreement significantly changed the wording in the model regulation, which was included in the Division's draft.

Commissioner Molasky-Arman commented that subsection 7 of section 10 of the LCB version made the provision ambiguous and also grammatically tortured.

Attendees at the hearing agreed that the Division's draft language was more understandable than the LCB version.

Commissioner Molasky-Arman directed the wording be revised to the Division's original wording.

Based upon the testimony received at the hearing, the regulation is changed from the proposed regulation as follows:

1. A new paragraph (e) has been added to subsection 2 of section 4 to read as follows:

“Statutory financial statement” means quarterly, annual or other financial statements required by state law.

2. Paragraph (a) of subsection 2 of section 4 is amended to read as follows:

Aggregate reserves for life policies and contracts less policy loans and net due and deferred premiums;

3. Sub-subparagraph (II) of subparagraph (1) of paragraph (e) of subsection 1 of section 5 is amended to read as follows:

For solvent institutions that are not insurance companies, the equity interests of the solvent institution are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a to 78kk, or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for the equity interests are furnished through a nationwide automated quotations system approved by the National Association of Securities Dealers, Inc. A trust shall not invest in equity interests pursuant to this sub-subparagraph in an amount exceeding 1 percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.

4. Subparagraph (2) of paragraph (e) of subsection 1 of section 5 is amended to read as follows:

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, if:

. . .

5. Sub-subparagraph (II) of subparagraph (2) of paragraph (e) of subsection 1 of section 5 is amended to read as follows:

The equity interests of the solvent 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.

6. Paragraph (g) of subsection 1 of section 5 is amended to read as follows:

Securities of an investment company that is registered pursuant to the Investment Company Act of 1940, 15 U.S.C. §§ 802, et seq., if the investment company: . . .

7. Paragraph (a) of subsection 2 of section 5 is amended to read as follows:

An investment in or loans upon the obligations of an institution other than an institution that issues mortgage-related securities must not exceed 5 percent of the assets of the trust;

8. Paragraph (b) of subsection 2 of section 5 is amended to read as follows:

An investment in any one mortgage-related security must not exceed 5 percent of the assets of the trust;

9. Paragraph (a) of subsection 4 of section 5 is amended to read as follows:

An investment in an investment company qualifying under subparagraph (1) of paragraph (g) of subsection 1 must not exceed 10 percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies must not exceed 25 percent of the assets in the trust; and

10. Sub-sub-subparagraph (ii) of sub-subparagraph (II) of subparagraph (1) of paragraph (b) of subsection 5 of section 5 is amended to read as follows:

A mortgage approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. §§ 1709 and 1715b or, if 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. § 1703; or

11. Sub-subparagraph (II) of subparagraph (2) of paragraph (b) of subsection 5 of section 5 is amended to read as follows:

Notes meeting the requirements of subparagraphs (1) and (2) of paragraph (b).

12. Paragraph (a) of subsection 4 of section 8 is amended to read as follows:

A proper insolvency clause pursuant to NRS 681A.230; and

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ORDER

Based upon the information presented at the hearing, it is hereby ordered that the proposed regulation relating to reinsurance, LCB File No. R027-02, be adopted, as amended, as a permanent regulation of the Division.

SO ORDERED this _____ day of April, 2002.

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance