

LCB File No. R027-02

**PROPOSED REGULATION OF THE DIVISION OF INSURANCE
OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**

**NOTICE OF WORKSHOPS TO SOLICIT COMMENTS
ON PROPOSED REGULATIONS**

February 25, 2002

The Department of Business and Industry, Division of Insurance (Division) is proposing new regulations pertaining to material reinsurance transactions and risk-based capital; filing of financial statements and NAIC accounting practices and procedures; holding companies; reinsurance; and NAIC accounting practices and procedures. A workshop has been set for 9:00 a.m., on March 27, 2002, at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested parties may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104. The purpose of the workshop is to solicit comments from interested persons on the following general topics addressed in the proposed regulations.

- 1. Material Reinsurance Transactions and Risk-Based Capital: Proposed regulation provides that domestic insurers must complete their risk-based capital calculations and reports in accordance with current NAIC risk-based capital instructions and provides for requirements of reporting material new ceded reinsurance agreements affecting in force life insurance business.**
- 2. Filing of Financial Statements and NAIC Accounting Practices and Procedures: Proposed regulation provides that domestic insurers must prepare their annual statements in accordance with the NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual.**
- 3. Holding Companies: Proposed regulation provides instructions as to the filing of Forms A, B, C, D and E; does away with the exemption for domestic company filings**
- 4. Reinsurance: Proposed regulation adopts all required elements of the NAIC Credit for Reinsurance Model Regulation, including specific provisions pertaining to trust agreements, insolvency clause in reinsurance agreements and the adoption of Form AR-1.**
- 5. NAIC Accounting Practices and Procedures: Proposed regulation updates certain NAIC publications, their applicability, location and current price.**

Members of the insurance industry, business community, and the public are also invited to comment on any impact the proposed regulations may have on small businesses. The Division

has reviewed the proposed regulations and determined that the regulations do not impose a direct or significant impact on a small business, or directly restrict the formation, operation, or expansion of a small business.

A copy of this notice and the proposed regulations will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulations will be available at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the **State of Nevada Register of Administrative Regulations** which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at **www.leg.state.nv.us**. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

This Notice of Workshop to Solicit Comments on Proposed Regulations has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

Department of Business and Industry
Division of Insurance
788 Fairview Drive, Suite 300
Carson City, NV 89701

Department of Business and Industry
Division of Insurance
2501 East Sahara Avenue, Suite 302
Las Vegas, NV 89104

Legislative Counsel Bureau
Capitol Complex
Carson City, NV 89710

Blasdel Building
Capitol Complex
Carson City, NV 89710

State Capitol
Capitol Complex
Carson City, NV 89710

Capitol Press Room
State Capitol Basement
Carson City, NV 89710

County Clerk
Courthouse
Carson City, NV 89710

Nevada State Library & Archives
Capitol Complex
Carson City, NV 89710

Carson City Library
900 North Roop Street
Carson City, NV 89701

Churchill County Library
553 South Maine Street
Fallon, NV 89406

Las Vegas Library
833 Las Vegas Blvd. North
Las Vegas, NV 89101

Douglas County Library
1625 Library Lane
P.O. Box 337
Minden, NV 89423

Elko County Library
720 Court Street
Elko, NV 89801

Goldfield Public Library
Fourth & Cook Street
P.O. Box 430
Goldfield, NV 89013

Eureka Branch Library
10190 Monroe Street
P.O. Box 293
Eureka, NV 89316

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445

Battle Mountain Branch Library
P.O. Box 141
Battle Mountain, NV 89820

Lincoln County Library
93 Main Street
P.O. Box 330
Pioche, NV 89043

Lyon County Library
20 Nevin Way
Yerington, NV 89447

Mineral County Library
First & A Street
P.O. Box 1390
Hawthorne, NV 89415

Tonopah Public Library
171 Central Street
P.O. Box 449
Tonopah, NV 89049

Pershing County Library
1125 Central Avenue
P.O. Box 781
Lovelock, NV 89419

Storey County Library
95 South R Street
P.O. Box 14
Virginia City, NV 89440

Washoe County Library
301 South Center Street
P.O. Box 2151
Reno, NV 89505

White Pine County Library
950 Campton Street
Ely, NV 89301

Clark County Library
1401 East Flamingo Road
Las Vegas, NV 89119

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify the Commissioner's secretary in writing at 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, or by calling no later than 5 working days prior to the hearing, (702) 687-4270, extension 260.

DATED this _____ day of February, 2002.

By:
ALICE A. MOLASKY-ARMAN
Commissioner of Insurance

PROPOSED REGULATION OF THE DIVISION OF INSURANCE OF THE DEPARTMENT OF BUSINESS AND INDUSTRY

NOTICE OF INTENT TO ACT UPON REGULATIONS

Notice of Hearing for the Adoption of Regulations
of the Department of Business and Industry, Division of Insurance

The Department of Business and Industry, Division of Insurance (Division) will hold a public hearing at 9:00 a.m., on March 27, 2002, immediately following a public workshop, at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested persons may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of:

REGULATIONS CONCERNING REINSURANCE

The following information is provided pursuant to the requirements of NRS 233B.060:

1. The proposed regulation is needed to adopt the required elements of the NAIC Credit for Reinsurance Model Regulation, including specific provisions pertaining to trust agreements and language to be included in reinsurance agreements, and the adoption of Form AR-1 (Certificate of Assuming Insurer).
2. The proposed regulation requires insurers to have their reinsurance companies, if applicable, establish a trust, meeting all of the provisions and only investing its assets in allowed investments. It requires insolvency language to be included in reinsurance agreements.
3. Estimated economic effect of the regulation:
On the business which it is to regulate:
The proposed regulation should not have either an immediate or long-term impact on the insurers.
On the public:
The proposed regulations should have no economic impact on the public.
4. The Division may incur some additional expense to enforce the proposed regulation that cannot be measured at this time.
5. The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.
6. The proposed regulation does not establish any new fees or increase an existing fee.

Persons wishing to comment upon the proposed action of the Division may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Written submissions must be received by the Division on or before March 22, 2002. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed regulation will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation will be available at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the **State of Nevada Register of Administrative Regulations** which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

Department of Business and Industry
Division of Insurance
788 Fairview Drive, Suite 300
Carson City, NV 89701

Department of Business and Industry
Division of Insurance
2501 East Sahara Avenue, Suite 302
Las Vegas, NV 89104

Legislative Counsel Bureau
Capitol Complex
Carson City, NV 89710

Blasdel Building
Capitol Complex
Carson City, NV 89710

State Capitol
Capitol Complex
Carson City, NV 89710

Capitol Press Room
State Capitol Basement
Carson City, NV 89710

County Clerk
Courthouse
Carson City, NV 89710

Nevada State Library & Archives
Capitol Complex
Carson City, NV 89710

Carson City Library
900 North Roop Street
Carson City, NV 89701

Churchill County Library
553 South Maine Street
Fallon, NV 89406

Las Vegas Library
833 Las Vegas Blvd. North
Las Vegas, NV 89101

Douglas County Library
1625 Library Lane
P.O. Box 337
Minden, NV 89423

Elko County Library
720 Court Street
Elko, NV 89801

Goldfield Public Library
Fourth & Cook Street
P.O. Box 430
Goldfield, NV 89013

Eureka Branch Library
10190 Monroe Street
P.O. Box 293
Eureka, NV 89316

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445

Battle Mountain Branch Library
P.O. Box 141
Battle Mountain, NV 89820

Lincoln County Library
93 Main Street
P.O. Box 330
Pioche, NV 89043

Mineral County Library
First & A Street
P.O. Box 1390
Hawthorne, NV 89415

Lyon County Library
20 Nevin Way
Yerington, NV 89447

Tonopah Public Library
171 Central Street
P.O. Box 449
Tonopah, NV 89049

Pershing County Library
1125 Central Avenue
P.O. Box 781
Lovelock, NV 89419

Storey County Library
95 South R Street
P.O. Box 14
Virginia City, NV 89440

Washoe County Library
301 South Center Street
P.O. Box 2151
Reno, NV 89505

White Pine County Library
950 Campton Street
Ely, NV 89301

Clark County Library
1401 East Flamingo Road
Las Vegas, NV 89119

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify the Commissioner's secretary in writing at 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, or by calling no later than 5 working days prior to the hearing, (702) 687-4270, extension 260.

DATED this _____ day of February, 2002.

By:

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance

**PROPOSED REGULATION OF THE DIVISION OF INSURANCE
OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**

REGULATIONS FOR REINSURANCE

Explanation – Matter *bold/italics* is new, matter in ~~brackets/strikethrough~~ is material to be omitted.

Authority: NRS 679B.130 and NRS 681A.130

Section 1. 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 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.
3. *"Statutory financial statement" means quarterly, annual or other financial statements required by state law.*
4. *"Liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by U. S. domiciled insurers that are not otherwise secured by acceptable means, and, shall include:*
 - (a) For business ceded by domestic insurers authorized to write accident and health, 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.

(b) For business ceded by domestic insurers authorized to write life, health 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 health policies;

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

(4) Liabilities for policy and contract claims.

Sec. 2. 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.

(c) 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 Chapter 681A of the Nevada Revised Statutes (NRS), Sections 140 through 240 inclusive, and Nevada Administrative Code Sections 150 through 190 inclusive unless the reinsurance agreement:

(i) Includes a proper insolvency clause pursuant to Chapter 696B of NRS, Section 310, 320, and 330; and

(ii) Includes a provision pursuant to NAC 681A.180 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.

Sec. 3. 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 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 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. 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 thereof 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.

Sec. 4. 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) 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 NAIC, 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 NAIC; or

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

(e) An investment made pursuant to the provisions of Paragraph (1), (2) or (3) of this subsection shall be 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 (2)(a) and (2)(c) of this subsection, but shall not exceed two percent (2%) of the assets of the trust.

(f) As used in this regulation:

(I) "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 NAIC and that either:

(I.) 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:

(a) 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

(b) 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

(II.) 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 Items (1)(I.) and (1)(II.) of this subsection;

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

(g) Equity interests

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

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

(II.) 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. § 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 shall 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, if:

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

(II.) 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;

(h) 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 NAIC.

(i) Investment companies

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

(I.) Invests at least ninety percent (90%) of its assets in the types of securities that qualify as an investment under Paragraph (1), (2) or (3) 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 Paragraph (1), (2) or (3) of this subsection; or

(II.) Invests at least ninety percent (90%) of its assets in the types of equity interests that qualify as an investment under Paragraph (6)(a) of this subsection;

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

(I.) An investment in an investment company qualifying under Subparagraph (a)(i) of this paragraph 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

(II.) Investments in an investment company qualifying under Subparagraph (a)(ii) of this paragraph 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 (6)(a) of this subsection.

~~(d)~~ (j) Other types of investments specified by the reinsurance agreement;

3. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 9 of this regulation 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.

4. ~~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;

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

6. ~~5.~~ 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;

7. ~~6.~~ 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;

8. ~~[7.]~~ Provide for:

(a) The return of any amount withdrawn for the purposes specified in paragraphs (a), (b) and (c) of subsection 5 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 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

9. ~~[8.]~~ 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;

(b) Court or arbitration costs;

(c) Attorney's fees; and

(d) Any other reasonable expenses.

Sec.5 . NAC 681A.340 is hereby amended 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 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, 156 Fifth Avenue, Suite 308, New York, New York 10010, for the price of \$12.95.

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. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in NAC 681A.350.

8. The heading of the 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. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.