DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

INSURANCE

CREDIT FOR REINSURANCE

(By authority conferred on the director of the department of insurance and financial services by section 210 of 1956 PA 218, sections 31, 32, and 33 of 1969 PA 306, and E.R.O. 2013-1, MCL 500.210, MCL 24.231 to MCL 24.233, MCL 550.991)

R 500.1121 Rescinded.

History: 1996 AC; 2019 MR 1, Eff. Jan 2, 2019.

R 500.1122 Definitions.

Rule 2. As used in these rules:

(a) "Beneficiary" means the entity for whose sole benefit a trust or letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).

(b) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When a trust is established in conjunction with a reinsurance agreement, the grantor is the unlicensed assuming insurer.

(c) "Liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means and shall include all of the following:

(i) For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance all of the following:

(A) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer.

(B) Reserves for losses reported and outstanding.

(C) Reserves for losses incurred but not reported.

(D) Reserves for allocated loss expenses.

(E) Unearned premiums.

(ii) For business ceded by domestic insurers authorized to write life, health, and annuity insurance all of the following:

(A) Aggregate reserves for life policies and contracts net of 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.

(D) Liabilities for policy and contract claims.

(d) "Obligations" means any of the following:

(i) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer.

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(ii) Reserves for reinsured losses reported and outstanding.
(iii) Reserves for reinsured losses incurred but not reported.
(iv) Reserves for allocated reinsured loss expenses and unearned premiums.

History: 1996 AC; 2019 MR 1, Eff. Jan 2, 2019.

R 500.1123 Conditions applicable to a reinsurance agreement in conjunction with a trust agreement.

Rule 3. (1) A reinsurance agreement that is entered into in conjunction with a trust agreement and the establishment of a trust account under section 1105 of the insurance code of 1956, 1956 PA 218, MCL 500.1105, may contain any of the following provisions:

(a) A requirement that the assuming insurer enter into a trust agreement, establish a trust account for the benefit of the ceding insurer, and specify what the agreement is to cover.

(b) A stipulation that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit issued by a United States bank and payable in United States legal tender, and investments of the types permitted by chapter 9 of the insurance code of 1956, 1956 PA 218, MCL 500.901 to 500.947, or any combination of cash, certificates of deposit, or investments specified in this subrule, if the investments are issued by an entity that is not the parent, subsidiary, or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. If 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 subdivision instead of including the provisions in the reinsurance agreement.

(c) A requirement that the assuming insurer, before depositing assets with the trustee, execute assignments or endorsements in blank or 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, if necessary, negotiate the assets without the consent or signature from the assuming insurer or any other entity.

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

(e) A stipulation 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 insurer, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for 1 or more of the following purposes:

(i) 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 insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellation of the policies.

(ii) 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.

(iii) To pay or reimburse the ceding insurer for any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(iv) 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.

(2) The reinsurance agreement may also do any of the following:

(a) Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer the assets to the assuming insurer, if either of the following provisions is satisfied:

(i) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets that have a current fair market value equal to the market value of the assets withdrawn so as to maintain, at all times, the deposit in the required amount.

(ii) After withdrawal and transfer, the current fair market value of the trust account is not less than 102% of the required amount.

(b) Provide for the return of any amount withdrawn in excess of the actual amounts required under subrule (1)(e) of this rule.

(c) Provide for interest payments, at a rate that is not more than the prime rate of interest, on the amounts held pursuant to subrule (1)(e) of this rule.

(d) Permit the award by any arbitration panel or court of competent jurisdiction of any of the following:

(i) Interest at a rate different from that provided in subdivision (c) of this subrule.

(ii) Court or arbitration costs.

(iii) Attorney fees.

(iv) Any other reasonable expenses.

(3) A trust agreement that is in compliance with the provisions of these rules may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the director if established on or before the date of filing of the financial statement of the ceding insurer. Further, the amount of 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 not be more than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(4) Notwithstanding the effective date of this rule, any trust agreement or underlying reinsurance agreement in existence before July 1, 1996, will continue to be acceptable until June 30, 1997, at which time the agreements will have to be in full compliance with this rule for the trust agreement to be acceptable.

(5) The failure of any trust agreement to specifically identify the beneficiary as that term is defined in R 500.1122(a) shall not be construed to affect any actions or rights that the director may take or possess pursuant to the provisions of the laws of this state.

History: 1996 AC; 2019 MR 1, Eff. Jan 2, 2019.

R 500.1124 Requirements for letters of credit.

Rule 4. (1) A letter of credit used to reduce any liability for reinsurance ceded to an unauthorized reinsurer under section 1105 of the insurance code of 1956, 1956 PA 218, MCL

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500.1105, shall be clean, irrevocable, unconditional, and issued or confirmed by a qualified United States financial institution as that term is defined by section 1101 of the insurance code of 1956 1956 PA 218, MCL 500.1101. 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 R 500.1125(1).

(2) The heading of the letter of credit may include a boxed section that 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.

(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 not contingent upon reimbursement with respect thereto.

(4) The term of the letter of credit shall be for at least 1 year and shall contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The evergreen clause shall provide for a period of not less than 30 days' notice before the expiration date or nonrenewal of the letter of credit.

(5) The letter of credit shall state whether it is subject to and governed by the laws of this state, publication 600 of the International Chamber of Commerce entitled the Uniform Customs and Practice for Documentary Credits (UCP 600), or publication 590 of the International Chamber of Commerce entitled International Standby Practices (ISP 98), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

(6) If the letter of credit is made subject to publication 600 of the International Chamber of Commerce entitled the Uniform Customs and Practice for Documentary Credits (UCP 600), or publication 590 of the International Chamber of Commerce entitled International Standby Practices (ISP 98), or any successor publication, then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit if 1 or more of the occurrences specified in article 36 of publication 600, or any successor publication, occur.

(7) If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subrule (1) of this rule, then both of the following additional requirements shall be met:

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

(b) An evergreen clause shall provide for 30 days' notice before the expiration date or nonrenewal of the letter of credit.

History: 1996 AC; 2011 AACS; 2019 MR 1, Eff. Jan 2, 2019.

R 500.1125 Conditions applicable to reinsurance agreement in conjunction with letter of credit.

Rule 5. (1) A reinsurance agreement in conjunction with which a letter of credit is obtained may contain any of the following provisions:

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(a) A requirement that the assuming insurer provide letters of credit to the ceding insurer and specify what they are to cover.

(b) A stipulation 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 utilized by the ceding insurer or its successors in interest only for 1 or more of the following reasons:

(i) 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.

(ii) 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.

(iii) To pay or reimburse the ceding insurer in an amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(iv) 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 reinsurance agreement remain unliquidated and undischarged 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 such uses and purposes specified in paragraph (i) of this subdivision as may remain after withdrawal and for any period after the termination date.

(c) A requirement that all of the provisions of this subrule shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(2) Nothing contained in subrule (1) of this rule shall preclude the ceding insurer and assuming insurer from providing for either of the following:

(a) An interest payment, at a rate not more than the prime rate of interest, on the amounts held pursuant to subrule (1)(b) of this rule.

(b) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for subrule (1)(b) of this rule, or-any amounts that are subsequently determined not to be due.

History: 1996 AC; 2019 MR 1, Eff. Jan 2, 2019.

R 500.1126 Other security.

Rule 6. A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

History: 1996 AC; 2019 MR 1, Eff. Jan 2, 2019.

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R 500.1127 Reinsurance contract.

Rule 7. 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 section 1103 or 1105 of the insurance code of 1956, 1956 PA 218, MCL 500.1103 or 500.1105, after the effective date of these rules, unless the reinsurance agreement includes all of the following:

(a) A proper insolvency clause which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company.

(b) A provision pursuant to section 1103 of the insurance code of 1956, 1956 PA 218, MCL 500.1103, 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 served, and has agreed to abide by the final decision of the court or panel.

History: 1996 AC; 2019 MR 1, Eff. Jan 2, 2019.

R 500.1128 Contracts affected.

Rule 8. All new and renewal reinsurance transactions entered into on or after January 1, 2019 shall conform to the requirements of the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, and these rules if credit is to be given to the ceding insurer for the reinsurance.

History: 1996 AC; 2019 MR 1, Eff. Jan 2, 2019.

R 500.1129 Rescinded

History: 1996 AC; 2019 MR 1, Eff. Jan 2, 2019.

R 500.1130 Credit for reinsurance; reinsurer licensed in this state.

Rule 10. Pursuant to section 1103(2) of the insurance code of 1956, 1956 PA 218, MCL 500.1103, the director 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.

History: 2019 MR 1, Eff. Jan 2, 2019.

R 500.1131 Credit for reinsurance; certified reinsurers.

Rule 11. (1) Pursuant to section 1103(6) of the insurance code of 1956, 1956 PA 218, MCL 500.1103(6), the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this rule. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating

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assigned to the certified reinsurer by the director. The security shall be in a form consistent with sections 1103(6) and 1105 of the insurance code of 1956, 1956 PA 218, MCL 500.1103(6) and MCL 500.1105, and the requirements, as applicable, under R 500.1123, R 500.1124, R 500.1125, R 500.1126, and R 500.1133. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

Ratings	Security Required
Secure—1	0%
Secure—2	10%
Secure—3	20%
Secure—4	50%
Secure—5	75%
Vulnerable—6	100%

(2) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(3) The director shall require the certified reinsurer to post 100% security, for the benefit of the ceding insurer or its estate, upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.

(4) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the director. The one-year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

(a) Line 1: Fire.
(b) Line 2: Allied Lines.
(c) Line 3: Farmowners multiple peril.
(d) Line 4: Homeowners multiple peril.
(e) Line 5: Commercial multiple peril.
(f) Line 9: Inland Marine.
(g) Line 12: Earthquake.
(h) Line 21: Auto physical damage.

(5) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to the losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(6) Nothing in this rule shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this rule.

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(7) The director shall post notice on the department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The director may not take final action on the application until at least 30 days after posting the notice required by this subrule.

(8) The director shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with subrules (1) through (6) of this rule. The director shall publish a list of all certified reinsurers and their ratings.

(9) In order to be eligible for certification, the assuming insurer shall meet all of the following requirements:

(a) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the director pursuant to subrule (15) of this rule.

(b) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than $250,000,000.00 calculated in accordance with subrule (10)(h) of this rule. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least $250,000,000.00 and a central fund containing a balance of at least $250,000,000.00.

(c) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the director. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the director in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include all of the following:

(i) Standard & Poor's.

(ii) Moody's Investors Service.

(iii) Fitch Ratings.

(iv) A.M. Best Company.

(v) Any other nationally recognized statistical rating organization.

(d) The certified reinsurer must comply with any other requirements reasonably imposed by the director.

(10) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, all of the following:

(a) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The director shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification.

Ratings	Best	S&P	Moody's	Fitch
Secure—1	A++	AAA	Aaa	AAA
Secure—2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-

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Secure—3	A	A+, A	A1, A2	A+, A
Secure—4	A-	A-	A3	A-
Secure—5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable—6	B, B-C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

(b) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations.

(c) For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers).

(d) For certified reinsurers not domiciled in the United States, a review annually of a form approved by the director.

(e) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership.

(f) Regulatory actions against the certified reinsurer.

(g) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subrule (10)(h) of this rule.

(h) For certified reinsurers not domiciled in the United States, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the director, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor). Upon the initial application for certification, the director will consider audited financial statements for the last 3 years filed with its non-U.S. jurisdiction supervisor.

(i) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding.

(j) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The director shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement.

(k) Any other information deemed relevant by the director.

(11) Based on the analysis conducted under subrule (10)(e) of this rule of a certified reinsurer's reputation for prompt payment of claims, the director may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the director shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subrule (10)(a) of this rule if the director finds either of the following:

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(a) More than 15% of the certified reinsurer’s ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed $100,000.00 for each cedent.

(b) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by 90 days or more exceeds $50,000,000.00.

(12) The assuming insurer must submit a properly executed form approved by the director as evidence of its submission to the jurisdiction of this state, appointment of the director as an agent for service of process in this state, and agreement to provide security for 100% of the assuming insurer’s liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The director shall not certify any assuming insurer that is domiciled in a jurisdiction that the director has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(13) The certified reinsurer must agree to meet applicable information filing requirements as determined by the director, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall be withheld from public disclosure. The applicable information filing requirements include all of the following:

(a) Notification within 10 days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore.

(b) Annually, the filing of a form approved by the director.

(c) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subdivision (d) of this subrule.

(d) Annually, audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the director, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer’s supervisor). Upon the initial certification, audited financial statements for the last 3 years filed with the certified reinsurer’s supervisor.

(e) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.

(f) A certification from the certified reinsurer’s domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction’s highest regulatory action level.

(g) Any other information that the director may reasonably require.

(14)(a) In the case of a downgrade by a rating agency or other disqualifying circumstance, the director shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of subrule (10)(a) of this rule.

(b) The director shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer’s certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the director to reconsider the certified reinsurer’s ability or willingness to meet its contractual obligations.

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(c) If the rating of a certified reinsurer is upgraded by the director, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the director shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the director, the director shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(d) Upon revocation of the certification of a certified reinsurer by the director, the assuming insurer shall be required to post security in accordance with section 1105 of the insurance code of 1956, 1956 PA 218, MCL 500.1105, in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with R 500.1122 to R 500.1123, the director may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of 3 months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the director to be at high risk of uncollectibility.

(15)(a) If, upon conducting an evaluation under this rule with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the director determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the director shall publish notice and evidence of such recognition in an appropriate manner. The director may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(b) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the director shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The director shall determine the appropriate approach for evaluating the qualifications of such jurisdictions and create and publish a list of jurisdictions whose reinsurers may be approved by the director as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the director with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the director, include, but are not limited to, all of the following:

(i) The framework under which the assuming insurer is regulated.

(ii) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

(iii) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

(iv) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

(v) The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the director in particular.

(vi) The history of performance by assuming insurers in the domiciliary jurisdiction.

(vii) Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified

jurisdiction if the director has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(viii) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

(ix) Any other matters deemed relevant by the director.

(c) A list of qualified jurisdictions shall be published through the NAIC committee process. The director shall consider this list in determining qualified jurisdictions. If the director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the director shall provide thoroughly documented justification with respect to the criteria provided under subdivision (b)(i) to (ix) of this subrule.

(d) U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

(16)(a) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the director has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed form approved by the director and such additional information as the director requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

(b) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the director of any change in its status or rating within 10 days after receiving notice of the change.

(c) The director may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subrule (14)(a) of this rule.

(d) The director may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the director suspends or revokes the certified reinsurer's certification in accordance with subrule (14)(a) of this rule, the certified reinsurer's certification shall remain in good standing in this state for a period of 3 months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(17) In addition to the clauses required under R 500.1127, reinsurance contracts entered into or renewed under this rule shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this rule for reinsurance ceded to the certified reinsurer.

(18) The director shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

History: 2019 MR 1, Eff. Jan 2, 2019.

R 500.1132 Requirements for assets deposited in trusts established under MCL 500.1103.

Rule 12. (1) Assets deposited in trusts established pursuant to section 1103 of the insurance code of 1956, 1956 PA 218, MCL 500.1103, and this rule shall be valued according to their current fair market value and shall consist only of 1 or more of the following:

(a) Cash in U.S. dollars.

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(b) Certificates of deposit issued by a qualified U.S. financial institution as defined in section 1101 of the insurance code of 1956, 1956 PA 218, MCL 500.1101.

(c) Clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in section 1101 of the insurance code of 1956, 1956 PA 218, MCL 500.1101.

(d) Investments of the type specified in this rule, provided that the investments meet all of the following criteria:

(i) 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 5% of total investments.

(ii) No more than 20% of the total of the investments in the trust may be foreign investments authorized under subrule (2)(a)(v), (c), (d)(ii), or (e) of this rule, and no more than 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.

(2) The assets of a trust established to satisfy the requirements of section 1103 of the insurance code of 1956, 1956 PA 218, MCL 500.1103, shall be invested only in 1 or more of the following investments:

(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 any of the following:

(i) The United States or any agency or instrumentality of the United States.

(ii) A state of the United States.

(iii) A territory, possession or other governmental unit of the United States.

(iv) An agency or instrumentality of a governmental unit referred to in paragraphs (ii) and (iii) of this subdivision if the obligations shall be by law (statutory of 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 benefited by local improvements.

(v) 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 NAIC.

(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 meet 1 of the following requirements:

(i) 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.

(ii) 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.

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

(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 NAIC.

(d) Equity interests.

(i) Investments in common shares or partnership interests of a solvent U.S. institution are permissible if both of the following requirement are met:

(A) Its obligations and preferred shares, if any, are eligible as investments under this rule.

(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 USC 78a to 78qq, 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 Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this subparagraph in an amount exceeding 1% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.

(ii) 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 both of the following requirements are met:

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

(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.

(iii) An investment in or loan upon any one institution's outstanding equity interests shall not exceed 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.

(e) 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.

(f) Investment companies.

(i) Securities of an investment company registered pursuant to the investment company act of 1940, 15 USC 80a, are permissible investments if the investment company meets either of the following:

(A) Invests at least 90% of its assets in the types of securities that qualify as an investment under subrule (2)(a), (b), or (c) of this rule or invests in securities that are determined by the director to be substantively similar to the types of securities set forth in subrule (2)(a), (b), or (c) of this rule.

(B) Invests at least 90% of its assets in the types of equity interests that qualify as an investment under subdivision (d)(1) of this subrule;

(ii) Investments made by a trust in investment companies under this subrule shall not exceed either of the following limitations:

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(A) An investment in an investment company qualifying under paragraph (i)(A) of this subdivision shall not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed 25% of the assets in the trust.

(B) Investments in an investment company qualifying under paragraph (i)(B) of this subdivision shall not exceed 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 subdivision (d)(i) of this subrule.

(g) Letters of Credit.

(i) In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the director) 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.

(ii) The trust agreement shall provide that the trustee shall be 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 such draw would be required shall be deemed to be negligence and/or willful misconduct.

(3) A specific security provided to a ceding insurer by an assuming insurer pursuant to section 1103(5) of the insurance code of 1956, 1956 PA 218, MCL 500.1103(5), 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 rule.

(4) An investment made pursuant to the provisions of subrule (2)(a), (b), or (c) of this rule shall be subject to all of the following additional limitations:

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

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

(c) The aggregate total investment in mortgage-related securities shall not exceed 25% of the assets of the trust.

(d) 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 subrule (2)(b)(i) and (iii) of this rule, but shall not exceed 2% of the assets of the trust.

(5) As used in this rule:

(a) “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 meets either of the following provisions:

(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 meet both of the following requirements:

(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

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manufactured home as defined in 42 USC 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located.

(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 USC 1709 and 1715b, 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 USC 1703.

(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 paragraph (i)(A) and (B) of this subdivision.

(b) "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.

History: 2019 MR 1, Eff. Jan 2, 2019.

R 500.1133 Trust agreements under MCL 500.1105.

Rule 13. (1) Reinsurance trusts established under section 1105 of the insurance code 1956, 1956 PA 218, MCL 500.1105, shall comply with the requirements of R 500.1123 and this rule.

(2) The trust agreement shall be entered into between the beneficiary, the grantor, and a trustee. The trustee shall be a qualified United States financial institution as defined by section 1101 of the insurance code of 1956, 1956 PA 218, MCL 500.1101.

(3) The trust agreement shall create a trust account into which assets shall be deposited.

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

(5) The trust agreement shall provide for all of the following:

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

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

(c) The trust agreement shall not be subject to any conditions or qualifications outside of the trust agreement.

(d) The trust agreement shall not contain references to any other agreements or documents, except as provided for under subrules (12) and (13) of this rule.

(6) The trust agreement shall be established for the sole benefit of the beneficiary.

(7) The trust agreement shall require the trustee to do all of the following:

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

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

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

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

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(e) 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.

(f) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary. However, 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 the condition that the proceeds are paid into the trust account.

(8) The trust agreement shall provide that written notice of termination shall be delivered by the trustee to the beneficiary not less than 30 days, but not more than 45 days, before termination of the trust account.

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

(10) 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 shall have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the director, 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.

(11) The trust agreement shall provide that the trustee shall be 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 such draw would be required shall be deemed to be negligence and/or willful misconduct.

(12) 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, the 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 any of the following purposes:

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

(b) To make payment to the assuming insurer of any amounts held in the trust account that are more than 102% of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement.

(c) Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days before the termination date, to withdraw amounts equal to the obligations and deposit the amounts in a separate account apart from its general assets in the name of the ceding insurer in any qualified United States financial institution as defined in section 1101 of the insurance code of 1956, 1956 PA 218, MCL 500.1101, in trust for the uses and purposes specified in subdivisions (a) and (b) of this subrule as may remain executory after the withdrawal and for any period after the termination date.

(13) Notwithstanding other provisions of these rules, when a trust agreement is established in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks,

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where it is customary to provide a trust agreement for a specific purpose, the 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, only for 1 or more of the following purposes:

(a) To pay or reimburse the ceding insurer for either of the following:

(i) The assuming insurer'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.

(ii) 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.

(b) To pay 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.

(c) 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 undischarged 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 subdivisions (a) and (b) of this subrule as may remain executory after withdrawal and for any period after the termination date.

(14) Either the reinsurance agreement or the trust agreement shall stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit issued by a United States bank and payable in United States legal tender, and investments of the types permitted by chapter 9 of the insurance code of 1956, 1956 PA 218, MCL 500.901 to 500.947, or any combination of cash, certificates of deposit, or investments, 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 5% of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities, or accident and health risks, then the provisions required by this subrule must be included in the reinsurance agreement.

(15) The trust agreement may provide that the trustee may resign upon the delivery of a written notice of resignation which is effective not less than 90 days after receipt by the beneficiary and grantor of the notice and that the trustee may be removed by the grantor by the delivery, to the trustee and the beneficiary, of a written notice of removal which is effective not less than 90 days after receipt by the trustee and the beneficiary of the notice. However, a resignation or removal is not 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.

(16) The grantor may have the full and unqualified right 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. The interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

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(17) The trustee may be given authority to invest and accept substitutions of any funds in the account if the investment or substitution is made with the 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 which are consistent with the restrictions in R 500.1123(1)(c).

(18) 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's receipt, either before the transfer or simultaneous with the transfer, of other specified assets.

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

History: 2019 MR 1, Eff. Jan 2, 2019.