

3901-3-09

Requirements for domestic insurers employing the services of reinsurance intermediaries.**(A) Purpose**

The purpose of this rule is to establish minimum contractual terms between domestic insurers, domestic reinsurers and reinsurance intermediaries. This rule also establishes standards for business assumed by domestic reinsurers through reinsurance intermediaries as reported in their annual statement.

The rule also sets out the information reinsurers and reinsurance intermediaries must maintain for the purpose of examination under section 3901.07 of the Revised Code as "documents of ... other persons that are relevant to [an] examination."

(B) Authority

This rule is promulgated pursuant to the authority vested in the superintendent under sections 3901.041 and 3901.07 of the Revised Code, and division (B) of section 3901.77 of the Revised Code.

(C) Definitions

As used in this rule:

- (1) "Insurer" means a person licensed to operate or to do business in this state under Chapter 1751. of the Revised Code or Title XXXIX of the Revised Code, who is domiciled in the state of Ohio.
- (2) "Person" means a person, firm, association or corporation.
- (3) "Qualified United States Financial Institution" means an institution that meets all of the following conditions:
 - (a) The institution is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state of the United States;
 - (b) The institution is regulated, supervised, and examined by authorities of the United States or any state of the United States having regulatory authority over banks and trust companies;
 - (c) The institution has been determined by either the superintendent of insurance, or the "Securities Valuation Office of the National Association of Insurance Commissioners" (NAIC), to meet such standards of financial condition and standing as are considered necessary and appropriate to

regulate the quality of financial institutions whose letters of credit will be acceptable to the superintendent.

- (4) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager.
- (5) "Reinsurance intermediary-broker" means a person, other than an officer or employee of the ceding insurer, that solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of such insurer.
- (6)
 - (a) "Reinsurance intermediary-manager" means a person who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and acts as an agent for the reinsurer whether known as a reinsurance intermediary-manager, manager or other similar term.
 - (b) "Reinsurance intermediary-manager" does not include any of the following:
 - (i) An employee of the reinsurer;
 - (ii) A United States manager of the United States branch of an alien reinsurer;
 - (iii) An underwriting manager that, pursuant to contract, manages all or part of the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to sections 3901.32 to 3901.37 of the Revised Code, and whose compensation is not based on the volume of premiums written;
 - (iv) The manager of a group, association, pool or organization of insurers that engages in joint underwriting or joint reinsurance and that are subject to examination by the insurance regulatory authority of the state in which the manager's principal business office is located.
- (7) "Reinsurer" means a person licensed in this state pursuant to Title XXXIX of the Revised Code as an insurer with the authority to assume reinsurance, who is domiciled in the state of Ohio.

(D) Required contract provisions between an insurer and a reinsurance intermediary-broker.

Transactions between the reinsurance intermediary-broker and the insurer it represents may only be entered into pursuant to a written authorization which specifies the responsibilities of each party. The authorization, at a minimum, shall provide all of the following:

- (1) The insurer may terminate the reinsurance intermediary-broker's authority at any time.
- (2) The reinsurance intermediary-broker shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing, to the reinsurance intermediary-broker, and remit all funds due to the insurer within thirty days after receipt.
- (3) All funds collected for the insurer's account shall be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank which is a "Qualified United States Financial Institution."
- (4) The reinsurance intermediary-broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks.
- (5) The reinsurance intermediary-broker shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.
- (6) The reinsurance intermediary-broker shall agree to maintain for at least ten years after the expiration of each contract of reinsurance transacted a complete record of each transaction showing all of the following:
 - (a) The type of contract, limits, underwriting restrictions, classes or risks, and territory;
 - (b) Period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation;
 - (c) Reporting and settlement requirements of balances;
 - (d) Rate used to compute the reinsurance premium;
 - (e) Names and addresses of assuming reinsurers;
 - (f) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker;
 - (g) Related correspondence and memoranda;

- (h) Proof of placement;
 - (i) Details regarding retrocessions handled by the reinsurance intermediary-broker including the identity of retrocessionaires and percentage of each contract assumed or ceded;
 - (j) Financial records, including premium and loss accounts;
 - (k) Written evidence:
 - (i) That the assuming reinsurer has agreed to assume the risk, where the reinsurance intermediary-broker, on behalf of a domestic ceding insurer, procures a reinsurance contract directly from the assuming reinsurer; or
 - (ii) That the assuming reinsurer has delegated binding authority to the representative, where the reinsurance intermediary-broker, on behalf of a domestic ceding insurer, procures a reinsurance contract placed through a representative, other than an employee, of the assuming reinsurer.
- (7) The reinsurance intermediary-broker shall agree to provide the ceding insurer with access, the right to copy, and the right to audit all accounts and records maintained by the reinsurance intermediary-broker related to the insurer's business in a form usable by the insurer.
- (8) The reinsurance intermediary-broker agrees to provide annually to the insurer copies of statements of the reinsurance intermediary-broker's financial condition prepared by an independent certified public accountant.
- (E) Prohibited acts - insurer
- (1) No insurer shall employ a reinsurance intermediary-broker that is not licensed by an insurance regulatory authority of any state of the United States of America as a reinsurance intermediary-broker.
 - (2) No insurer shall jointly employ an individual who also is employed by a reinsurance intermediary-broker with which the insurer transacts business, unless the reinsurance intermediary-broker is under common control with the insurer and subject to sections 3901.32 to 3901.37 of the Revised Code.
- (F) Required contract provisions between a reinsurer and a reinsurance intermediary-manager.

Transactions between a reinsurance intermediary-manager and the reinsurer it represents in the capacity of a reinsurance intermediary-manager shall be entered into only pursuant to a written contract, specifying the responsibilities of each party. The contract shall be approved by the reinsurer's board of directors. The reinsurer shall maintain a copy of the approved contract for review at the request of the superintendent of insurance. The contract, at a minimum, shall provide all of the following:

- (1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.
- (2) The reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the reinsurance intermediary-manager, and shall remit all funds due under the contract to the reinsurer on at least a monthly basis.
- (3) Any funds collected for the reinsurer's account shall be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank that is a "Qualified United States Financial Institution." The reinsurance intermediary-manager shall retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer it represents.
- (4) For at least ten years after the expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing all of the following:
 - (a) The type of contract, limits, underwriting restrictions, classes or risks, and territory;
 - (b) Period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation, and disposition of outstanding reserves on covered risks;
 - (c) Reporting and settlement requirements of balances;
 - (d) Rate used to compute the reinsurance premium;
 - (e) Names and addresses of reinsurers;

- (f) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;
 - (g) Related correspondence and memoranda;
 - (h) Proof of placement;
 - (i) Details regarding retrocessions handled by the reinsurance intermediary-manager pursuant to paragraph (F)(14) of this rule, including the identity of retrocessionaires and percentage of each contract assumed or ceded;
 - (j) Financial records, including premium and loss accounts;
 - (k)
 - (i) Written evidence that the assuming reinsurer has agreed to assume the risk, where the reinsurance intermediary-manager, on behalf of a ceding insurer, places a reinsurance contract directly from the assuming reinsurer; or
 - (ii) Written evidence that the assuming reinsurer has delegated binding authority to the representative, where the reinsurance intermediary-manager, on behalf of a ceding insurer, places a reinsurance contract through a representative, other than an employee, of the assuming reinsurer.
- (5) The reinsurer shall have access to and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to the reinsurer's business in a form usable by the reinsurer.
- (6) The contract cannot be assigned in whole or in part by the reinsurance intermediary-manager.
- (7) The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.
- (8) The rates, terms, and purposes of commissions, charges, and other fees that the reinsurance intermediary-manager may levy against the reinsurer.
- (9) If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:
- (a) All claims shall be reported to the insurer in a timely manner;

- (b) A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that any of the following applies:
 - (i) The claim has the potential to exceed the limit set by the reinsurer;
 - (ii) The claim involves a coverage dispute;
 - (iii) The claim may exceed the reinsurance intermediary-manager's claims settlement authority;
 - (iv) The claim is open for more than six months;
 - (v) The claim is closed by payment of an amount set by the reinsurer.
- (c) All claim files shall be the joint property of the reinsurer and the reinsurance intermediary-manager. However, upon an order of rehabilitation or liquidation of the reinsurer such files shall become the sole property of the reinsurer or its estate, but the reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis.
- (d) Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.
- (10) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, the interim profits shall not be paid until one year after the end of each underwriting period for property business, five years after the end of each underwriting period for casualty business, and not until the adequacy of reserves on remaining claims has been verified pursuant to paragraph (F)(15) of this rule.
- (11) The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified public accountant.
- (12) The reinsurer shall periodically, but at least semi-annually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.
- (13) The reinsurance intermediary-manager shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with such insurer pursuant to the contract.

- (14) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer. The officer shall not be affiliated with the reinsurance intermediary-manager.
- (15) If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. This opinion shall be in addition to any other required loss reserve certification. As used in this paragraph, "actuary" means a person who is a member in good standing of the "American Academy of Actuaries".
- (16) Within the scope of its actual or apparent authority the acts of the reinsurance intermediary-manager are deemed to be the acts of the reinsurer on whose behalf it is acting.
- (17) The reinsurance intermediary-manager shall maintain a bond for the protection of the reinsurer in an amount, and from an insurer, acceptable to the superintendent of insurance.
- (18) The reinsurer shall require the reinsurance intermediary-manager to maintain an errors and omissions policy.

(G) Prohibited acts - reinsurer

- (1) No reinsurer shall employ a reinsurance intermediary-manager that is not licensed by an insurance regulatory authority of any state of the United States of America, as a reinsurance intermediary-manager.
- (2) No reinsurer shall permit its reinsurance intermediary-manager to do any of the following:
 - (a) Cede retrocessions on behalf of the reinsurer. However, the reinsurance intermediary-manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. The guidelines shall include all of the following:
 - (i) A list of reinsurers with which automatic agreements are in effect;
 - (ii) For each such reinsurer, the coverages and amounts or percentages that may be reinsured;
 - (iii) Commission schedules.

- (b) Commit the reinsurer to participate in reinsurance syndicates.
 - (c) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which he is appointed.
 - (d) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one per cent of the reinsurer's policyholder's surplus as of the thirty-first day of December of the last complete calendar year.
 - (e) Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer.
 - (f) Jointly employ an individual who is employed by the reinsurer unless the reinsurance intermediary-manager is under common control with the reinsurer subject to sections 3901.32 to 3901.37 of the Revised Code.
 - (g) Appoint a sub-reinsurance intermediary-manager.
- (3) A reinsurer shall not appoint to its board of directors, any officer, director, employee, controlling shareholder or subproducer of its reinsurance intermediary-manager.

(H) Severability

If any paragraph, term or provision of this rule be adjudged invalid for any reason, the judgment shall not affect, impair or invalidate any other paragraph, term or provision of this rule, but the remaining paragraphs, terms and provisions shall be and continue in full force and effect.

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CERTIFIED ELECTRONICALLY

Certification

02/03/2021

Date

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