

R590. Insurance, Administration.

R590-114. Letters of Credit.

R590-114-1. Authority.

This rule is adopted pursuant to Section 31A-2-201(3), which authorizes rules to implement the Insurance Code, and Section 31A-17-404(3), which provides for a rule to determine the form of letters of credit used as security to protect a ceding insurer in a transaction of reinsurance.

R590-114-2. Purpose and Scope.

A. The purpose of this rule is to determine, in accordance with the guidelines of Section 31A-17-404(3), the form of letter of credit security which will be acceptable to protect a ceding insurer in a transaction of reinsurance in which the alternative security factors of Section 31A-17-404(3) or 31A-17-404(6) are not present and funds of the reinsurer are retained by the ceding insurer in the form of a letter of credit. Security is maintained in order that credit for the reinsurance may be allowed the ceding insurer as either an asset or a deduction from liabilities. The allowance or disallowance of credit in reinsurance transactions may be used to determine compliance with other financial requirements of the Insurance Code.

B. This rule shall apply to all persons transacting insurance under the Utah Insurance Code.

R590-114-3. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

A. "Clean" shall refer to a letter of credit which does not require the presentation of any documents other than a sight draft for a draw upon available funds.

B. "Evergreen clause" shall refer to a provision in a letter of credit which prevents expiration of the letter unless advance notice is given by the issuer.

R590-114-4. Rule.

A. Letter of Credit requirements. A letter of credit issued to comply with Section 31A-17-404(3)(c)(iii), shall meet the following requirements. Full compliance with this rule shall be accomplished if the letter of credit takes the form of the "Model Letter of Credit", which is available from the Insurance Department. Letters of credit:

1. Shall be issued by a bank or trust company which is a member of the Federal Reserve system;
2. Shall name the ceding insurer as the sole beneficiary;
3. Shall be "clean", as defined;
4. Shall be unconditional and not subject to any

qualifications outside the letter of credit;

5. May not contain references to any other agreements, documents or entities;

6. Shall be irrevocable, and may not be reduced or revoked without the written consent of the beneficiary;

7. Shall contain an "evergreen clause", as defined;

8. Shall have a term of not less than one year and shall be automatically extended for not less than one additional year unless the issuer, not less than 30 days prior to expiration, notifies both the ceding insurer and the reinsurer that the letter will not be renewed;

9. Shall state that the obligation of the bank is not contingent upon reimbursement;

10. Shall state whether it is subject to the laws of this state;

11. Shall provide that all drafts drawn be presentable at a bank office in the United States;

12. May contain a boxed reference section with the name of the applicant and other appropriate information for internal identification only, not to affect the terms of the letter or the obligations of the bank.

B. Nonrenewal or withdrawal of a letter of credit. In the event of nonrenewal or withdrawal of a letter of credit, the ceding insurer shall be able to withdraw the balance of the letter of credit and place the resulting sums in trust to secure continuing obligations under the reinsurance contract until it receives a renewal letter of credit or an alternative form of security which meets the standards of this rule or the Insurance Code.

C. Inspection. A letter of credit used as security under this rule shall be readily available for inspection by the commissioner or his designee upon request.

R590-114-5. Separability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected.

KEY: insurance

Date of Enactment or Last Substantive Amendment: 1994

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