



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Paterson
Governor

James J. Wynn
Superintendent

RESPONSE TO COMMENTS REGARDING PROPOSED
TENTH AMENDMENT TO REGULATIONS NO. 17, 20 AND 20-A
(11 NYCRR 125)
CREDIT FOR REINSURANCE [FROM UNAUTHORIZED INSURERS]

NAME	TOPIC	COMMENT	RESPONSE
Association of Bermuda Insurers and Reinsurers (“ABIR”), International Underwriting Association, AIG	125.4(h)(4)(iii) 125.4(h)(6)(c)(2)	We recommend modification of the filing requirement to read “a report similar to the applicable NAIC Filing Blank, either Schedule F or Schedule S.”	The requested change has been made.
New York Insurance Association (“NYIA”), CHUBB, American Insurance Association (“AIA”)	Loosening collateral requirements is imprudent.	Removing the current regulatory requirement for unauthorized reinsurers to post collateral equaling 100% of its share of policyholder claims and replacing it with a system that requires no posting of collateral if the non-authorized reinsurer has a AAA or equivalent financial rating coupled with Department review is placing a great deal of faith in a financial credit system that has recently proven to be extremely volatile.	NYSID believes that the review of the factors stated in 125.4(h)(4) mitigates against over-reliance on the credit rating agencies.
AIG	Single State Implementation	The industry would be better served by a more globally accepted template.	The proposal is consistent with the NAIC.
AIG	Reciprocity	Reg 20 could have the unintended consequence of creating or exacerbating an uneven playing field in the worldwide reinsurance market.	Section 125.4(h)(6)(iii)(b) requires that the domiciliary jurisdiction of the unauthorized alien assuming insurer allow U.S. assuming insurers access to the market of the domiciliary jurisdiction on terms and conditions that are at least as favorable as those provided by New York for unauthorized alien assuming insurers.
NYIA, AIA	Collateral ensures that	The only real method of ensuring an	NYSID believes reinsurers that



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	reinsurers meet their obligations.	assuming insurer can meet its obligations is by requiring the posting of reinsurance collateral.	qualify for reduced collateral will be in a position to meet their obligations by virtue of their financial strength coupled with NYSID review.
Property Casualty Insurers Association of America ("PCIAA"), Reinsurance Association of America ("RAA"), AIG	125.3(b)(1) and (2)	It should be clarified that the requirements in these paragraphs do not apply to affiliates of the ceding company.	It does apply to affiliates however, when you file for approval you can notify the Department if the company plans to exceed thresholds. The regulation merely requires notification if a ceding insurer's exposure differs from 125.3(b) even if to an affiliate.
PCIAA, AIG, AIA	125.4(h)	This section should be clarified so it clearly applies to "continuous cover" reinsurance agreements/	If the treaty is entered into or renewed after January 1, 2011 then 125.4 would apply, otherwise the treaty is not covered by that section.
PCIAA, AIA	125.4(h)	Companies with an A- rating should receive very limited relief, and companies with a B rating should receive no relief.	The proposed rating bands are consistent with the NAIC proposal. Financial strength ratings establish the maximum collateral relief allowable, however, the Superintendent has authority to lower the amount of relief based on many factors.
PCIAA	Claims paying history.	The regulation should require the Department to identify "slow paying" reinsurers.	The Department takes claims paying history into account when assigning a financial strength rating.



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			NYSID will work with industry to identify “slow paying” reinsurers.
PCIAA	Effectiveness of proposal.	Collateral reductions should be phased in over time.	The regulation is prospective in nature.
RAA	125.1	By applying to all authorized insurers the regulations is inconsistent with Dodd-Frank	The Department will conform the regulation to Dodd-Frank. In light of Dodd-Frank, NYSID will review its regulations to ensure that the proposed regulation does not conflict with pre-existing regulations or other laws.
RAA, AIG	Freedom to contract.	Mandating specific contractual provisions interferes with freedom to contract.	The terms provided by this amendment were added to facilitate the enforcement of judgments in non-US jurisdictions, especially when the recoverables are not fully collateralized. We have to be consistent with the NAIC proposal.
RAA	Enforcement.	The draft proposed regulations have no enforcement mechanism to address the situation where a non-U.S. reinsurer decides to withdraw from writing new business in the United States and then fails/refuses to pay its obligations, or to maintain collateral at levels that preserve a ceding company’s ability to take credit	The terms provided by this amendment were added to facilitate the enforcement of judgments in non-US jurisdictions, especially when the recoverables are not fully collateralized. We have to be consistent with the NAIC



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RAA	125.4(h)(1)	<p>on its financial statements.</p> <p>Where there is a group wide rating, or a rating agency has enhanced the rating of a subsidiary, or has assigned the parent's rating to the subsidiary, that rating determination should be considered to be the applicable rating under this subsection</p>	<p>proposal.</p> <p>The amendment requires that the rating agency financial strength rating be tied to an individual company. The Department considered the idea to utilize the group rating, but the Department's concern is that to allow group rating would, in some cases, result in an inaccurate evaluation of the financial strength of the individual company, without the parent assuming any legal obligation for the reinsurance payable by the company.</p>
RAA	125.4(h)(4)(vii)	The term "liquidation preference" is overly broad.	Consistent with the NAIC proposal.
Skadden Arps		The credit for reinsurance requirements of Reg 20 are not applied to authorized foreign insurers and accredited reinsurers in a consistent manner. Therefore the proposed amendment is inconsistent with Dodd-Frank.	The Department disagrees. Both foreign licensees and accredited reinsurers are required to file a Schedule F on a New York basis.
AIG, AIA	Strength rating categories.	There are too few rating bands	The proposed rating bands are consistent with the NAIC proposal. Financial strength ratings establish the maximum collateral relief allowable, however the Superintendent has authority to lower the amount of relief based on many factors.



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AIG, AIA	125.3(h)(5)(ii)	Having the ceding insurer reduce its credit based on the ceding insurer's experience is too subjective.	The proposed regulation expects ceding insurers to account for uncollectible net-of-collateral recoverables by reducing the credit taken for reinsurance.
AIA	Collateralization is necessary.	Collateralization was created in response to insurer insolvencies and secures New York insurer solvency. Reducing collateral may lessen capacity.	The amendment is intended to level the playing field for all reinsurers, based on their financial strength (among other things). Nothing in the regulation precludes the ceding insurer from requiring collateral from their non-U.S. licensed assuming reinsurers as part of their reinsurance negotiations when they feel such collateral would be prudent. Further, the proposed amendment will reduce transactional costs and increase reinsurance capacity. It also will bring New York in line with global insurance markets and worldwide accounting standards governing reinsurance contracts. Most jurisdictions outside the U.S. do not require non-domestic reinsurers to post collateral in order for authorized ceding insurers to take credit. Under the amendment, the most financially



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			healthy reinsurers need not post collateral, or at least not 100% collateral.
AIA		Affording reinsurers the ability to avoid the posting of collateral on such occasions would greatly prejudice the ability of insurers to ensure prompt payment of reinsurance recoverables for what could likely be tremendous exposures	The delay for posting collateral in the event of a catastrophe is subject to superintendent approval. In addition, the Department will add language from the NAIC proposal that the delay in the posting of collateral for catastrophe recoverables is contingent upon the continued timely payment of claims.
AIA	Reinsurer ceases writing.	If a reinsurer ceases writing in the U.S. market, the reinsurer would need to post 100% collateral for all existing contracts. AIA recommends that this also apply to U.S. licensed reinsurers who cease writing.	The Superintendent has the authority to increase collateral based on “any . . . information deemed relevant” by him. Therefore, the Superintendent can take into account whether a reinsurer ceases writing in the U.S. market when determining the required collateral.
AIA	Security fund	A security fund should be created.	<p>The idea of a security fund was extensively vetted at NAIC and was deemed not to be practical. US Reinsurers are not covered by an insolvency fund.</p> <p>The Superintendent has discretion to increase collateral</p>



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			based on the business practices or failure to pay claims of the reinsurer.
AIA	Diversification	Increasing diversification requirements on ceding insurers raises further burdens on insurers who already are assuming all the risks under the proposal.	The Department believes it is prudent risk management to diversify a ceding insurer's counterparty risk.
AIA	125.4(h)(6)(iii)(b)	An unauthorized alien reinsurer may take advantage of the reduced collateral option only if its domiciliary jurisdiction recognizes the U.S. regulatory system as equivalent for purposes of Solvency II.	Section 125.4(h)(6)(iii)(b) requires that the domiciliary jurisdiction of the unauthorized alien assuming insurer allows U.S. assuming insurers access to the market of the domiciliary jurisdiction on terms and conditions that are at least as favorable as those provided by New York for unauthorized alien assuming insurers.
AIA		Foreign reinsurers who currently hold accredited reinsurer status should retain it.	Agreed. Foreign reinsurers may retain their accredited status. The proposal is an alternative.
AIA		Reinsurance recoverables should include both ceded IBNR and unearned premium reserves.	Agreed and a change has been made.
AIA		Reinsurer information should be made available to cedents.	Reinsurer ratings will be publicly available.
AIA		The maximum collateral discount should be tied to the reinsurer's lowest financial strength rating.	The proposed rating bands are consistent with the NAIC proposal. Financial strength ratings establish the maximum collateral relief allowable, however, the Superintendent has



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			authority to lower the amount of relief based on many factors.
AIG	125.4(h)(1)	The language appearing in 125.4(h)(1) which states “unauthorized assuming insurer or any group described in subdivision (c)(1) or (d)(1) of this section....” is unclear.	Multi-beneficiary trusts will have to be established for (c)(1) and (d)(1) groups as well as maintain surplus of \$20 million and \$100 million, respectively, for contracts entered into prior to 1/1/2011. Collateral may be reduced after that date and separate trusts should be established.
AIG	125.4(h)(2)	The table heading “Cedent Credit Allowed (gross of collateral)” is unclear.	Agreed. A change has been made to (h)(2).
AIG	125.4(h)(4)(vii)	The language “except as provided in paragraph (6)(i)(c)” is unclear.	Agreed and a change has been made.
AIG	125.4(h)(6)(ii)(b)(1-2)	This section should be revised to require a reinsurer to notify its ceding insurers, in addition to the superintendent, of any change in the reinsurer’s domiciliary license or rating status.	A ceding insurer can negotiate ion for notification of any change in the reinsurer’s domiciliary license or rating statues to be included in the reinsurance treaty.
AIG	125.2(a)	The definition of “catastrophic loss” should be revised to include organizations in addition to PCS so that catastrophes that occur outside the U.S. are included in the defined term.	Agreed and a change has been made.
AIG		The Department should confirm that it intends to continue to allow the credit available to ceding insurers under 125.4(f) until such time that the proposed section 125.4(h) is effective.	The effective date of 125.4(f) has been changed to “prior to January 1, 2011”.
AIG		The Department must provide initial and	Agreed. The Department will



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		revised ratings of reinsurers meeting the requirements of Section 125.4(h) in a timeframe (no later than September 30) sufficient to allow ceding insurers time to obtain the appropriate amounts of collateral needed to take reserve credit.	address the issue upon implementation.
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