

§782. Limited certificate of authority required

1. Limited certificate of authority. In order to securitize one or more ceding insurers' risks, a special purpose reinsurance vehicle shall obtain a limited certificate of authority from the superintendent according to the provisions of this section.

[PL 2003, c. 249, §2 (NEW).]

2. Application. A special purpose reinsurance vehicle organizer seeking to obtain a limited certificate of authority for a special purpose reinsurance vehicle shall file an application for a limited certificate of authority with the superintendent and pay the application fee specified in section 601, subsection 1. A complete application must include the following:

A. An affidavit verifying that each prospective organizer meets the requirements of this subchapter; [PL 2003, c. 249, §2 (NEW).]

B. A representation that the prospective organizer intends to form a special purpose reinsurance vehicle that operates in accordance with the requirements under this subchapter; [PL 2003, c. 249, §2 (NEW).]

C. The proposed name of the special purpose reinsurance vehicle; [PL 2003, c. 249, §2 (NEW).]

D. Biographical affidavits of all organizers setting forth their legal names, any names under which they have conducted or are conducting their affairs and any names of any person affiliated, as defined in section 222, with any organizer, together with such other biographical information as the superintendent may request; [PL 2003, c. 249, §2 (NEW).]

E. The source and form of the minimum capital to be contributed to the special purpose reinsurance vehicle; [PL 2003, c. 249, §2 (NEW).]

F. Any persons with which the special purpose reinsurance vehicle is or upon formation will be affiliated as defined in section 222; [PL 2003, c. 249, §2 (NEW).]

G. The names and biographical affidavits of the proposed members of the board of directors and principal officers of the special purpose reinsurance vehicle pursuant to section 790, setting forth their legal names, any names under which they have conducted or are conducting their affairs and any names of any person affiliated, as defined in section 222, with any proposed director or officer, together with such other biographical information as the superintendent may request; [PL 2003, c. 249, §2 (NEW).]

H. A plan of operation, consisting of a description of the contemplated insurance securitization or securitizations, the special purpose reinsurance vehicle contract and related transactions, which must include:

(1) Draft documentation or at the discretion of the superintendent a written summary of all material agreements that are planned in order to effectuate the insurance securitization or securitizations and the related contract, including the names of the ceding insurers, the nature of the risks being assumed and the maximum amounts, purpose and nature and the interrelationships of the various transactions required to effectuate the insurance securitization or securitizations;

(2) The investment strategy of the special purpose reinsurance vehicle and a representation that the investment strategy complies with the investment requirements set forth in this subchapter and that the strategy includes investment practices or other provisions to preserve asset values that facilitate attainment of full funding during the term of the insurance securitization or securitizations with assets that can be monetized in response to a triggering event without a substantial loss in value;

(3) A description of the method by which losses covered by the contract that may develop after the termination of the contract period are to be addressed under the provisions of the contract;

(4) If applicable, a representation that the special purpose reinsurance vehicle contract with the ceding insurer, the security agreement or trust agreement under section 784, subsection 4, paragraph D-1 or E and any trusts holding assets that secure the obligations of the special purpose reinsurance vehicle under the contract are structured in accordance with the requirements under this subchapter ; and

(5) If protected cells are to be used, a description of the procedures for maintaining and safeguarding separate accounts as required by section 784-A, subsection 1 and an application for approval of each initial protected cell as required by section 784-A, subsection 2. [PL 2007, c. 386, §7 (AMD).]

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3. Additional information. The superintendent shall notify the special purpose reinsurance vehicle organizer if any additional information is needed in order to review the application and shall approve or deny the application within 60 days after determining that the application is complete.

A. The superintendent shall approve the application and issue a limited certificate of authority under this section if the superintendent finds that:

(1) The proposed plan of operation provides a reasonable expectation of a successful operation;

(2) The terms of the contract and related transactions comply with this subchapter and any applicable rules adopted by the superintendent;

(3) The proposed plan of operation is not hazardous to any ceding insurer or to policyholders; and

(4) The insurance regulator of the state of domicile of each ceding insurer has notified the superintendent in writing that it has not disapproved the transaction. The superintendent may waive this requirement for a ceding insurer whose domiciliary state does not have a substantially similar law if the superintendent finds that the domiciliary regulator has had notice and adequate opportunity to review the proposal and has not objected. [PL 2003, c. 249, §2 (NEW).]

B. In evaluating the expectation of a successful operation, the superintendent shall consider, among other factors, whether the proposed organizer, directors and officers of the proposed special purpose reinsurance vehicle are of good character and not reasonably believed to be affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions or other insurance or business relations, with any person known to have been involved in the improper manipulation of assets, accounts or reinsurance. [PL 2003, c. 249, §2 (NEW).]

C. If the superintendent denies the application or if the superintendent withholds consent to a proposed transaction involving a domestic ceding insurer under a similar law of another jurisdiction the proposed organizer or ceding insurer has the right to a hearing upon a timely request filed pursuant to section 229. [PL 2003, c. 249, §2 (NEW).]

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4. Approval. Upon approval of the application by the superintendent and the issuance of a limited certificate of authority, the special purpose reinsurance vehicle may be acquired or formed and, in accordance with the approved plan of operation, the special purpose reinsurance vehicle may enter into contracts and conduct other activities within the scope of the filed plan of operation.

[PL 2003, c. 249, §2 (NEW).]

5. Reinsurance activities. The limited certificate of authority must state that the special purpose reinsurance vehicle's authorization to be involved in the business of insurance is limited only to the

reinsurance activities that the special purpose reinsurance vehicle is allowed to conduct pursuant to this subchapter.

[PL 2003, c. 249, §2 (NEW).]

6. Documentation of insurance securitization. The special purpose reinsurance vehicle organizer shall provide a complete set of the documentation of the insurance securitization to the superintendent upon closing of any transactions, including an opinion of legal counsel with respect to compliance with this subchapter and any other applicable laws as of the effective date of any transaction.

[PL 2007, c. 386, §8 (AMD).]

7. Changes in plan of operation. Any material change to the special purpose reinsurance vehicle's plan of operation filed pursuant to subsection 2, including, but not limited to, the initiation of a new insurance securitization to continue the activities of the special purpose reinsurance vehicle pursuant to this subchapter after expiration and full satisfaction of the initial securitization transactions, requires prior approval of the superintendent. A change in the counterparty to swap transactions for an existing insurance securitization as allowed under this subchapter is not considered a material change unless the special purpose reinsurance vehicle's managers know or should know that the new counterparty presents a substantial risk of default.

[PL 2007, c. 386, §9 (NEW).]

SECTION HISTORY

PL 2003, c. 249, §2 (NEW). PL 2007, c. 386, §§7-9 (AMD).

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