Government of Puerto Rico

OFFICE OF THE COMMISSIONER OF INSURANCE

San Juan, Puerto Rico

AMENDMENT TO RULE. 80 OF THE REGULATIONS OF THE PUERTO RICO INSURANCE CODE TITLED

"STANDARDS FOR THE REGULATION OF THE OPERATIONS OF INTERNATIONAL INSURERS AND REINSURERS"

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Auxiliary Secretary of Services
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Government of Puerto Rico

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AMENDMENT TO RULE. 80

"STANDARDS FOR THE REGULATION OF THE OPERATIONS OF INTERNATIONAL INSURERS AND REINSURERS"

SECTION 1.- AUTHORITY

The Commissioner of Insurance of Puerto Rico (hereinafter, the Commissioner) adopts this amendment to Rule Number 80 of the Regulations of the Puerto Rico Insurance Code, Regulation No. 8708 of the Department of State of Puerto Rico, titled "Standards for the Regulation of Operations of International Insurers and Reinsurers," under the powers conferred in Sections 2.030 and 61.260 of Act No. 77, June 19, 1957, as amended, the Puerto Rico Insurance Code, as well as Act No. 38, enacted on June 30, 2017, as amended, the Uniform Administrative Procedure Act of the Government of Puerto Rico.

Under the Section 61.260(6) of the Insurance Code, the Commissioner has the authority of establishing by rule categories or special designations to classify those international insurers that, in accordance with Section 61.050 of the Insurance Code, received a certified of authority to do insurance business through the International Insurance Center.

SECTION 2- PURPOSE AND SCOPE

This Rule is amended for the purpose of establishing a special category of multistate international reinsurers or surplus lines insurers of Class 3-M, Class 4-M and Class 5-M applicable to reinsurers or surplus line insurers that, in accordance to the provisions of Chapter 61 of Insurance Code, proposes to accept or assume risks residing in at least one state or territory other than its state or territory of domicile within United States jurisdiction. The herein propose amendments are adopted with the objective of aligning

the regulatory scheme applicable to multistate international reinsurers and surplus line insurers (Class 3-M, 4-M, or 5-M) according to the uniform regulation standards of the National Association of Insurance Commissioners (NAIC) accreditation program.

This amendment will not be applicable to an international insurer, surplus lines insurer or reinsurer that only does insurance business outside of United States jurisdiction (foreign countries) or is organized as a pure or association captive. International insurers, surplus line insurers and reinsurers, others than the special category of multistate international reinsurers or surplus line insurers of Class 3-M, Class 4-M and Class 5-M, would continue operating subject to the existing provisions adopted under the Chapter 61 and its regulations.

SECTION 3.- STATEMENT OF NEED AND OBJECTIVE

Chapter 61 of the Insurance Code created the legal framework for developing Puerto Rico as an International Insurance Center directed at exporting insurance and services related to insurance in international markets. This Chapter provided the legal authority for authorizing international insurers and international insurance holding companies to assume risk only outside of Puerto Rico, as well as for international reinsurers to be authorized to assume resident risk, located or to be executed in Puerto Rico or elsewhere. As part of the legal framework established in said Chapter 61, several incentives were provided, including a favorable tax structure that would apply to international insurers and organized holding companies that are authorized to transact insurance business under the International Insurance Center.

As an accredited jurisdiction of the NAIC, the platform of operations of the International Insurance Center in Puerto Rico represents an ideal destination for the export of products and services related to insurance and for fulfilling the expectations of international markets in a reliable and prestigious legal framework. In view of this objective, the amendments to this Rule are enacted to align the regulatory scheme applicable to multistate international reinsurers or surplus line insurers, in accordance with the uniform regulation standards of the NAIC accreditation program. For all applicable

regulatory purpose, the special category of multistate international reinsurers or surplus line insurers of Class 3-M, 4-M and 5-M hereby established will be considered as a multistate reinsurer or multistate surplus line insurer, respectively, and, therefore, would be subject to the compliance of the regulatory requirements in the accreditation program of the NAIC.

The uniform regulation parameters promulgated by the NAIC accreditation program allow for maintaining a continuing interstate cooperation among the Commissioners, for the purpose of improving uniformity and efficiency of the oversight and regulation of the insurance industry. We hereby foster the development and growth of the operations of the International Insurance Center, within reliable regulation parameters for the insurance business, for the protection of the policyholders and public interest.

SECTION 4.- AMENDMENT TO SECTION 6 OF RULE 80

Section 6 of Rule 80 is amended to read as follows:

"SECTION 6.- REQUIREMENTS FOR THE AUTHORIZATION OF INTERNATIONAL INSURERS AND REINSURERS

1. International insurers and reinsurers that apply for authorization for transacting insurance policies under the provisions of the Chapter 61 of the Code must also comply with the authorization requirements provided in Section 61.050 of the Code.
2. Notwithstanding the provisions of the above paragraph, any international reinsurer or surplus line insurer, that as part of its business plan proposes to assume or accept risks residing in at least one state or territory other than its state or territory of domicile, must request and receive a special category authority of multistate international reinsurer or surplus line insurer of Class 3-M, 4-M or 5-M. For all applicable regulatory purpose, the special category of multistate international reinsurers or surplus line insurer of Class 3-M, 4-M and 5-M will be considered as a domestic multistate reinsurer or surplus line insurer and, therefore, be subject to the regulatory requirements of the Part A accreditation program of the NAIC as adopted in the Puerto Rico Insurance Code and its regulation. The term "multistate international

reinsurer or surplus lines insurer" means any international reinsurer or surplus lines insurer that meet any of the following conditions:

a. A property and casualty or life and health international reinsurer authorized to reinsure business covering risks residing in at least one state or territory other than its state or territory of domicile;

b. A property and casualty or life and health international reinsurer that is accredited or certified as a reinsurer in at least one state or territory other than its state or territory of domicile or

c. A property and casualty domestic insurer that is accepting business on an exported basis as an excess or surplus line insurer in at least one state or territory other than its state or territory of domicile.

3. In order to receive a special category authority of Class 3-M, 4-M or 5-M, the foregoing requirements would be applicable:

a. In the case of a multistate international reinsurer, it shall comply with the foregoing requirements:

i. To own and maintain a paid in capital or surplus, in the amount provided in Section 3.090 of the Code for the authorization class that is held or is being sought;

ii. To own and maintain, at the time of the original authorization, surplus funds in accordance with Section 3.120 of the Code;

iii. To deposit and maintain in deposits assets for the value provided in Section 3.151 of the Code;

iv. To maintain investments in securities in accordance to the provisions of Section 3.160 of the Code, and

v. To comply with all regulatory requirement applicable to domestic multistate reinsurers, as may from time to time be established under the Insurance Code and its regulation, in accordance to the Part A: Laws and Regulations accreditation program of the NAIC.

b. In the case of a multistate international surplus line insurer, it shall comply with the foregoing requirements:

i. To own and maintain a capital and surplus for policyholders of not less than the amount required for an authorized insurer of the same kind, according to Section 10.071 of the Code;

ii. To the tax payment provided under Section 10.130 of the Code; and

iii. To comply with all regulatory requirement applicable to domestic multistate surplus line insurers, as may from time to time be established under the Insurance Code and its regulation, in accordance to the Part A: Laws and Regulations accreditation program of the NAIC.

4. None person shall file, or cause to be filed, an application subject to Section 61.050 of the Code to authorize an international insurer of Class 3, 4 or 5 authority, or any combination thereof, to operate on a basis of multistate insurer in other state or territory of the United States."

SECTION 5.- AMENDMENT TO SECTION 11 OF RULE 80

Section 11 of Rule 80 is amended to read as follows:

"SECTION 11.- ANNUAL REPORT

All international insurers shall submit an annual report to the Commissioner on their financial condition, subject to the following requirements:

1. Submit an annual report before the last day of the fourth month, as provided in Section 61.100 of the Code. The report may be drafted using the Generally Accepted Accounting Principles in the United States (US-GAAP), provided the notes of the report include a reconciliation of the difference between the net earnings and capital, and surplus, as set for in the annual report that is drafted using the Statutory Accounting Principles (SAP) adopted by the NAIC. The notes of the annual report of an international insurer that contain the reconciliation required hereby shall be submitted in the manner established by the Commissioner.

(a) The assets set forth below are considered non-admitted assets for the purposes of determining the financial situation of an international insurer:

i. Accounts and premiums receivable over 180 days past due;

ii. Deferred cost of acquisition;

iii. Deferred Tax Assets;

iv. Goodwill;

v. Personal property and furnishings that are not used at the headquarters of the international insurer in Puerto Rico; and

vi. Computer software, other than operating systems, although it is further provided that the Commissioner may accept as admitted assets the investment in a computer program or part of such program, through an admitted practice at the request of the international insurer.

2. The annual report of an international insurer that operates insurance business only in a foreign country or foreign countries may be drafted using the International Financial Reporting Standards (IFRS), provided the notes of the report include a reconciliation of the difference between net earnings and capital and surplus, as set forth in the annual report that is drafted using the Statutory Account Principles(SAP) adopted by the NAIC. The notes of the annual report of the international insurer that contain the reconciliation required herein shall be submitted in the manner established by the Commissioner.

(a) The assets set forth below are considered non-admitted assets for the purposes of determining the financial situation of an international insurer:

i. Accounts and premiums receivable 180 days past due;

ii. Deferred costs of acquisition;

iii. Deferred Tax Assets

iv. Goodwill;

v. Intangibles developed internally;

vi. Personal property and furnishings that are not used at the headquarters of the international insurer in Puerto Rico;

vii. Computer software, other than operating systems, although it is further provided that the Commissioner may accept as admitted assets the investment

in a computer program or part of such program, through an admitted practice at the request of the international insurer.

3. The certificates of surplus or any other similar instrument issued to the owner of an international insurer, that comply with the applicable requirements of Sections 29.300 and 29.310 of the Code will not be considered to be liabilities of the international insurer for the purposes of determining the financial situation of the insurer.
4. In the case of a multistate international reinsurer or surplus line insurer that holds a special category authority of Class 3-M, 4-M or 5-M, the annual report must be presented to the Commissioner, on or before March 31 of each year. Said report shall be prepared using the Statutory Accounting Principles (SAP) as defined by the Accounting Practices and Procedures, adopted by the NAIC, in accordance to Section 3.310 of the Code and Rule 14-A of the Regulations of the Code. In such case, the annual report shall be submitted in the form that is appropriate for the nature of the operation, according to the instructions for the annual report published by the NAIC for the accounting year, with inclusion of the risk based capital (RBC) calculated in the manner indicated in Chapter 45 of the Code and following the guidelines established by the NAIC."

SECTION 6.- AMENDMENT TO SECTION 12 OF RULE 80

Section 12 of Rule 80 is amended to read as follows:

"SECTION 12.- INVESTMENTS

I. International insurers that operate insurance business only in a foreign country or foreign countries shall submit their Investment Plan along with the application for of authorization and maintain the submission up to date with regard to any change in such plan, which shall comply with the provisions of Section 61.110 of the Code, as well as with the following:

   a. The minimum capital and surplus of an international insurer as provided in Section 61.080 of the Code shall be maintained in cash, cash equivalents, investments, or irrevocable letters of credit issued by a bank authorized in

Puerto Rico or by a bank belonging to the Federal Reserve System and that has been approved by the Commissioner.

b. An International Insurer shall submit with its application for authorization, the Investment Plan it proposes to implement or in lieu of such, shall comply with the investment requirements of Chapter 6 of the Code, except Sections 6.050(6) and (7), 6.070, and 6.110(4) of that Chapter. Notwithstanding the provisions of Chapter 61 of the Code, the Commissioner may approve the use of reliable alternative methods of evaluation and appraisal.

c. The Commissioner may prohibit, limit or require the divestment of any investment that threatens the solvency or liquidity of an international insurer.

d. The letters of credit may be retained by an international insurer and may be included as an admitted investment, subject to approval by the Commissioner, provided the letter of credit complies with the requirements established in Section 9 of this Rule.

e. The Commissioner may allow an international insurer to include as an admitted investment any other non-admitted asset as established herein.

II. In the case of a multistate international reinsurer or surplus line insurer that holds a special category authority of Class 3-M, 4-M, or 5-M, it shall comply with the investment practices in accordance with the norms adopted in Chapter 6 of the Code and, if applicable, Chapter 44 of the Code, or in the alternative, shall comply with the investment practices provided in the "Investments of Insurers Model Act" (Defined Standards Version) (MDL-283) promulgated by the NAIC."

SECTION 7.- AMENDMENT TO SECTION 16 OF RULE 80

Section 16 of Rule 80 is amended to read as follows:

"SECTION 16. - POWERS OF THE COMMISSIONER

The Commissioner shall have the authority as provided in Section 2.030 and Section 61.260 of the Code to examine and investigate any person to whom this Rule is applicable for the purpose of verifying compliance with the provisions thereof and the provisions of

the Code that are applicable thereto. In the case of a multistate international reinsurer or surplus lines insurer that holds a Class 3-M, 4-M, or 5-M certificate of authority, the financial examination of its operations will be carried out subject to compliance with all the provisions of the Insurance Code and the Regulations of the Insurance Code applicable to domestic multistate reinsurers and according to the guidelines established in the "Financial Condition Examiners Handbook" promulgated by the NAIC."

SECTION 8. - AMENDMENT TO SECTION 18 OF RULE 80

Section 18 of Rule 80 is amended to read as follows:

"SECTION 18.- APPLICABILITY OF OTHER RULES AND LAWS

In addition to the provisions of this Rule and Rules 81, 82, and 100 of the Regulations of the Code, international insurers will be subject to the provisions of Rules 1-A, 2, 12, 19, and 20, without prejudice to any other Rule that from time to time may be approved by the Commissioner and may be determined as applicable to an international insurer.

It is hereby clarified that any international reinsurer or surplus line insurer that holds a Class 3-M, 4-M, or 5-M certificate of authority will be considered as a domestic multistate reinsurer or a domestic multistate surplus line insurer, respectively, and, therefore would be subject to the compliance with all of the provisions of the Insurance Code and of the Regulations of the Code applicable to a domestic multistate reinsurers or a domestic multistate surplus line insurer, as from time to time may be required under the Part A: Laws and Regulations accreditation program of the NAIC."

SECTION 9.- SEVERABILITY

If any word, sentence, paragraph, clause, section, or part of this Rule were found to be null and void by a Court of competent jurisdiction, the order of the Court will not affect or invalidate the remaining provisions of this Rule and the effect of the order will be limited to the word, sentence, paragraph, clause, section, or part that has been found to be null and void.

SECTION 10. - EFFECT

The provisions of this Rule enter into effect thirty (30) days from the filing at the Department of State of Puerto Rico, as provided in Act No. 38-2017, supra.



JAVIER RIVERA-RÍOS
COMMISSIONER OF INSURANCE

Date of Approval: 1-17-20

Date of Filing
At the Department of State:

Date of Filing
At the Library of the Legislature: