

## SPECIAL PURPOSE REINSURANCE VEHICLE MODEL ACT

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### **Section 1. Purpose**

This Act provides for the creation of Special Purpose Reinsurance Vehicles (“SPRVs”) exclusively to facilitate the securitization of one or more ceding insurers’ risk as a means of accessing alternative sources of capital and achieving the benefits of securitization. Investors in fully funded insurance securitization transactions provide funds that are available to the SPRV to secure the aggregate limit under an SPRV contract that provides coverage against the occurrence of a triggering event. The creation of SPRVs is intended to achieve greater efficiencies in conducting insurance securitizations, to diversify and broaden insurers’ access to sources of risk bearing capital and to make insurance securitization generally available on reasonable terms to as many U.S. insurers as possible.

#### **Drafting Note:**

## Section 2. Exemption from Insurance Laws within Limitations

- A. An SPRV is subject to the following sections of [insert state's insurance code]: [insert sections of code providing commissioner's general powers, including power to investigate insurance law violations, subpoena and examine documents and witnesses, conduct hearings, institute other legal action to enforce laws or orders, issue cease and desist orders, impose fines, handle documents and records, suspend or revoke licenses or certificates of authority, impose fees and other charges; and reference state's examination law for enforcement of the act].

**Drafting Note:** Insert the title of the chief insurance regulatory official wherever the term "commissioner" appears.

- B. No other provisions of this [insert state's insurance code] shall be applicable to a SPRV organized under this Act, except as provided in this Act.

## Section 3. Definitions

For purposes of this Act, the following terms have the indicated meanings:

- A. "Aggregate limit" means the maximum sum payable to the ceding insurer under an SPRV contract.
- B. "Ceding insurer" means one or more insurers or reinsurers under common control that enters into an SPRV contract with an SPRV.
- C. "Control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not, in fact, exist. Notwithstanding the foregoing, for purposes of this Act, the fact that an SPRV exclusively provides reinsurance to a ceding insurer under an SPRV contract shall not by itself be sufficient grounds for a finding that the SPRV or the SPRV Organizer or owner is controlled by or under common control with the ceding insurer.
- D. "Fair value" means:
- (1) As to cash, the amount thereof; and
  - (2) As to an asset other than cash:
    - (a) The amount at which that asset could be bought or sold in a current transaction between arms-length, willing parties;
    - (b) The quoted market price for the asset in active markets should be used if available; and

- (c) If quoted market prices are not available, a value determined using the best information available considering values of like assets and other valuation methods, such as present value of future cash flows, historical value of the same or similar assets or comparison to values of other asset classes the value of which have been historically related to the subject asset.

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- M. "SPRV insurance securitization" means a package of related risk transfer instruments and facilitating administrative agreements by which proceeds are obtained by an SPRV through the issuance of securities, which proceeds are held in trust pursuant to the requirements of this Act to secure the obligations of the SPRV under an SPRV contract with one or more ceding insurers, wherein the SPRV's obligation to return the full initial investment to the holders of such securities, pursuant to the transactionss, is coningent uponse funds not being useds pay the obligations of the SPRV to the ceding insurers under the SPRV contract.
- N. "SPRV organizer" means one or more persons that have organized or intend to organize an SPRV, under authority obtained as specifiedin this Act.
- O. "SPRV securities" means the securities issued by an SPV.
- P. "Triggeg event" means an event or condition that, if and when it occurs or eists, obligates the SPV to make a payment to the ceding insurer under the provisions of an SPV contract.

**Section 4. Limited Certificate of Authority Required**

- A. In order to securitize one or more ceding insurers' risks, an SPRVshall obtain a limited certificate of authority from the commissioner according to the provisions of thissetion.

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- (8) A plan of operation, consisting of a description of the contemplated insurance securitization, the SPRV contract and related transactions, which shall include:
- (a) Draft documentation or, at the discretion of the commissioner, a written summary, of all material agreements that will be entered into to effectuate the insurance securitization and the related SPRV contract, to include 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;
  - (b) The investment strategy of the SPRV and a representation that the investment strategy complies with the investment requirements set forth in this Act and that the strategy will include investment practices or other provisions to preserve asset values, which will facilitate attainment of full funding during the term of the securitization with assets that can be monetized in response to a triggering event without a substantial loss in value; and
  - (c) A description of the method by which losses covered by the SPRV contract that may develop after the termination of the contract period are to be addressed under the provisions of the SPRV contract; and
  - (d) A representation that the trust agreement and the trusts holding assets that secure the obligations of the SPRV under the SPRV contract and the SPRV contract with the ceding insurers in connection with the contemplated insurance securitization will be structured in accordance with the requirements set forth in this act.
- C. The commissioner shall approve the application and issue a limited certificate of authority upon a finding that (1) the proposed plan of operation provides a reasonable expectation of a successful operation, (2) the terms of the SPRV contract and related transactions comply with this Act, (3) the proposed plan of operation is not hazardous to any ceding insurer or to policyholders and (4) the commissioner of the state of domicile of each ceding insurer has notified the commissioner in writing that it has not disapproved the transaction. In evaluating the expectation of a successful operation, the commissioner shall consider, among other factors, whether the proposed SPRV organizer, directors and officers are of known good character and not reasonably believed to be affiliated, directly or indirectly, through ownership, control,

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- E. The limited certificate of authority shall state that the SPRV's authorization to be involved in the business of reinsurance shall be limited only to the reinsurance activities that the SPRV is allowed to conduct pursuant to this Act.
- F. The SPRV organizer shall provide a complete set of the documentation of the insurance

- (1) An SPRV shall have a distinct name, which shall include the designation "SPRV." The name of the SPRV shall not be deceptively similar to, or likely to be confused with or

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- (e) Stipulate that the SPRV and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the SPRV contract, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the SPRV contract, and shall be utilized and applied by the ceding insurer or any successor by operation of law of the ceding insurer, including (subject to the provisions of Section 16), but without further limitation, any liquidator, rehabilitator, receiver or conservator of the ceding insurer, without diminution because of insolvency on the part of the ceding insurer or the SPRV, only for the following purposes:
  - (i) To transfer all such assets into one or more trust accounts for the benefit of the ceding insurer pursuant to the terms of the SPRV contract and in compliance with this Act; and
  - (ii) To pay any other amounts that the ceding insurer claims are due under the SPRV contract.
  
- (14) The SPRV contract entered into by the SPRV may contain provisions that give the SPRV the right to seek approval from the ceding insurer to withdraw from the trust all or part of the assets contained in the trust and to transfer the assets to the SPRV, provided:
  - (a) The SPRV shall, at the time of the withdrawal, replace the withdrawn assets with other qualified assets having a fair value equal to the fair value of the assets withdrawn and that meet the requirements of Section 17; and
  - (b) After the withdrawals and transfer, the fair value of the assets in trust securing the obligations of the SPRV under the SPRV contract is no less than an amount needed to satisfy the fully funded requirement of the SPRV contract. The ceding insurer shall be the sole judge as to the application of these provisions, but shall not unreasonably nor arbitrarily withhold its approval.
  
- (15) The contract shall provide that investors in the SPRV agree that any obligation to repay principal, interest or dividends on the securities issued by the SPRV shall be reduced upon the occurrence of a triggering event, to the extent that the assets of the SPRV held in trust for the -01 Tw -36-3 ( -n.3 (e)-3 (16.5un)5.3 (gi)10.7 ((ran)2.2)10.8 (o)-9.a (al.))TJ0 Tc

- (18) An SPRV organized under this Act shall engage only in fully funded indemnity triggered SPRV contracts to support in full the ceding insurers' exposures assumed by the SPRV. However, an SPRV may engage in an SPRV contract that is non-indemnity triggered only after the commissioner, in accordance with the authority granted under Section 20 of this Act, adopts regulations addressing the treatment of the portion of the risk that is not indemnity based, to include accounting, disclosure, risk based capital treatment, and the manner in which risks associated with a non-indemnity based SPRV contract may be evaluated and managed. At no time may an SPRV enter into an SPRV contract that is not fully funded, whether indemnity triggered or non-indemnity triggered. Assets

**Section 7. Powers**

- A. An SPRV authorized under this Act shall have the necessary powers to enter into contracts and to conduct other commercial activities necessary to fulfill the purposes of this Act. These activities may include, but are not limited to, entering into SPRV contracts, issuing securities of the SPRV and complying with the terms thereof, entering into trust, swap and other agreements necessary to effectuate an insurance securitization in compliance with the limitations and pursuant to the authorities granted to the SPRV under this Act or the plan of operation approved or deemed approved by the commissioner.
- B. An SPRV organized or doing business under this Act shall be capable of suing or being sued, and may make or enforce contracts in relation to the business of the SPRV; may have and use a common seal, and in the name of the SPRV or by a trustee chosen by the board of directors, shall be capable of taking, purchasing, holding and disposing of real and personal property for carrying into effect the purposes of its organization; and may by its board of directors, trustees, officers or managers, make bylaws and amendments thereto not inconsistent with the laws or the constitution of this state or of the United States. The bylaws shall define the manner of electing directors, trustees or managers and officers of the SPRV, together with their qualifications and duties and fixing the term of office.

**Section 8. Affiliation**

Notwithstanding the provisions of the [insert citation to insurance holding company system act] the SPRV, the SPRV organizer, or subsequent debt or equity investors in SPRV securities shall not be deemed affiliates of the ceding insurer by virtue of the SPRV contract between the ceding insurer and the SPRV, the securities of the SPRV or related agreements necessary to implement the SPRV insurance securitization. The SPRV may not be controlled by, may not control, or may not be under common control with, any ceding insurer that is a party to an SPRV contract.

**Section 9. Capitalization**

An SPRV shall have minimum initial capital of not less than \$5,000. All of the initial capital shall be received by the SPRV in cash. The minimum initial capital required and all other funds of the SPRV in excess of its minimum initial capital, including funds held in trust to secure the obligations of the SPRV pursuant to its obligations under the SPRV contracts, shall be invested as provided in Section 17.

**Section 10. Dividends**

The SPRV may not declare or pay dividends in any form to its owners unless the dividends do not decrease the capital of the SPRV below \$5,000 and, after giving effect to the dividends, the assets of the SPRV, including assets held in trust pursuant to the terms of the insurance securitization, shall be sufficient to meet its obligations.



**Section 13. Fees and Taxes**

The commissioner may charge fees to reimburse the commissioner for expenses and costs incurred by the department of insurance incident to the examination of financial statements, review of the plan of operation and to reimburse other such activities of the commissioner related to the formation and ongoing operation of the SPRV. The SPRV shall not be subject to state premium or other taxes incidental to the operation of its business as long as the business remains within the limitations of this Act.

**Section 14. Dissolution**

An SPRV operating under this Act may be dissolved at any time by a vote of its board of directors, and after the action has been approved by the commissioner. No voluntary dissolution shall be affected or allowed until and unless all of the obligations of the SPRV pursuant to the insurance securitization have been fully and finally satisfied pursuant to their terms. In the case of voluntary dissolution, the disposition of the affairs of the SPRV (including the settlement of all outstanding obligations), shall be made by the officers or directors of the SPRV and when the liquidation has been completed and a final statement, in acceptable form, filed with and approved, or deemed approved, by the commissioner, the provisions for voluntary dissolution under the [insert reference to section of the state's insurance code or general business law that provides for and governs

- D. With respect to amounts recoverable under an SPRV contract, the amount recoverable by the receiver shall not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation or liquidation with respect to the ceding insurer, notwithstanding any provisions to the contrary in the contracts or other documentation governing the SPRV insurance securitization.
- (1) Notwithstanding the provisions of [insert reference to the conservation, rehabilitation and liquidation act consistent with Section 5 of the NAIC Rehabilitation and Liquidation Model Act] or any other Section of the [insert reference to the conservation, rehabilitation and liquidation act], an application or petition under Section [insert conservation, rehabilitation and liquidation act provisions consistent with Sections 10, 11, 17, 20, 55, 58 or 59 of the NAIC Insurers Rehabilitation and Liquidation Model Act],

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- (2) No ancillary proceeding may be commenced or prosecuted in this state against an SPRV domiciled in another state.

**Drafting Note:** The state should amend its conservation, rehabilitation and liquidation law to include an SPRV as a "person covered" as defined in the Section 2 of the N[...]



**Section 18. Credit for Reinsurance for the SPRV Contract**

An SPRV contract meeting the requirements under this Act shall be granted credit for reinsurance treatment or shall otherwise qualify as an asset or a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer under the (insert reference to the state's equivalent of Section 3 of the NAIC Credit for Reinsurance Model Act) for the benefit of the ceding insurer, provided and only to the extent that:

- A. The fair value of the assets held in trust for the benefit of the ceding insurer equal or exceed the obligations due and payable to the ceding insurer by the SPRV under the SPRV contract;
- B. The assets are held in trust in accordance with the requirements set forth in this Act;
- C. The assets are administered in the manner and pursuant to arrangements as set forth in this Act; and
- D. The assets are held or invested in one or more of the forms allowed in Section 17.

**Section 19. No Transaction of an Insurance Business by Investors in Securities**

The securities issued by the SPRV pursuant to an SPRV insurance securitization shall not be deemed to be insurance or reinsurance contracts. An investor in such securities issued pursuant to an SPRV insurance securitization or any holder of such securities shall not, by sole means of this investment or holding, be deemed to be transacting an insurance business in this state. The underwriters or selling agents (and their partners,