

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
SECOND AMENDMENT TO 11 NYCRR PART 89
(INSURANCE REGULATION 118)**

AUDITED FINANCIAL STATEMENTS

I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 307(b), 1109, and 1202(b) of the Insurance Law, do hereby promulgate the Second Amendment to Part 89 of Title 11 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (Insurance Regulation 118) to take effect 180 days after publication of the Notice of Adoption in the State Register, to read as follows:

(NEW MATERIAL IS UNDERLINED; MATERIAL IN BRACKETS IS DELETED)

Section 89.1(c) and (t) are amended and a new subdivision (x) is added as follows:

(c) *Audit committee* means a committee (or equivalent body) established by the board of directors of a company for the purpose of overseeing the accounting and financial reporting processes of a company or group of companies, the internal audit function of a company or group of companies, if applicable, and [auditing] external audits of financial statements of the company or group of affected companies, provided that:

(1) for a holding company that controls a group of companies, the audit committee of the holding company may be deemed to be the audit committee for one or more of those controlled companies solely for the purposes of this Part, even if all members of the holding company audit committee are not residents of this State;

(2) for a United States branch of an alien company, the audit committee may be comprised of the audit committee of the person that controls the United States branch; and

(3) for a company that does not otherwise designate an audit committee, the company's entire board of directors shall constitute the audit committee.

(t) *SOX compliant company* means [a company] an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002:

(1) the pre-approval requirements of section 201 of SOX (section 10A(i) of the Securities Exchange Act of 1934, 15 U.S.C. section 78j-1(i));

(2) the audit committee independence requirements of section 301 of SOX (section 10A(m)(3) of the Securities Exchange Act of 1934, 15 U.S.C. section 78j-1(m)(3)); and

(3) the internal control over financial reporting requirements of section 404 (item 308 of SEC Regulation S-K).

(x) Internal audit function means the role of applying a systematic, disciplined approach to evaluating and improving the effectiveness of risk management, control, and governance processes so as to add value, improve a company's operations, and accomplish its objectives.

Section 89.12(a) is amended as follows:

(a)(1) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any CPA (including resolution of disagreements between management and the CPA regarding financial reporting) for the purpose of preparing or issuing the audited financial report or related work pursuant to this Part. Every CPA shall report directly to the audit committee.

(2) The audit committee shall be responsible for overseeing the company's internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities if required by section 89.16 of this Part.

Section 89.12(i) is amended as follows:

(i) This section shall not apply to:

(1) a domestic life insurer [that is subject to Insurance Law, section 1202(b)(2)] if its holding company or parent corporation is a foreign or domestic insurer, a mutual insurance holding company established pursuant to the laws of the United States, or a publicly held corporation incorporated in the United States, having a board of directors and committees thereof that meet the same requirements as have been established for a domestic stock life insurer pursuant to Insurance Law section 1202(b)(1) and (2);

(2) a foreign insurer or an alien insurer not entered into this State through a United States branch; or

(3) a company that is a SOX compliant company or a directly or indirectly wholly-owned subsidiary of a SOX compliant company.

Section 89.16 is renumbered as section 89.17 and a new section 89.16 is added as follows:

§ 89.16 Internal audit function requirements.

(a) A company shall establish an internal audit function, which shall be provided by performing general and specific audits, reviews, and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

(b) In order to ensure that internal auditors remain objective, the internal audit function shall be organizationally independent. The internal auditors shall not defer ultimate judgment on audit matters to other persons, and shall appoint an individual to head the internal audit function who shall have direct and unrestricted access to the board of directors. Organizational independence shall not preclude dual-reporting relationships.

(c) The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic internal audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed internal audits, and the appropriateness of corrective actions implemented by management as a result of internal audit findings.

(d) If a company is a member of a group of companies, then the company may satisfy the internal audit function requirements set forth in this section at the ultimate group level, an intermediate group level, or the individual legal entity level; provided, however, that the company may only satisfy the internal audit function requirements at the ultimate group level or intermediate group level if the internal audit function addresses risk management, control, and governance processes of the company.

(e) A company shall be exempt from the requirements of this section if:

(1) the company has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$500 million; and

(2) the company is a member of a group of companies and the group has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1 billion.

(f) If a company that is exempt from the requirements of this section no longer qualifies for that exemption, then the company shall have one year after the year the threshold is exceeded to comply with the requirements of this section.



Department of Financial Services

ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

CERTIFICATION

I, Linda A. Lacewell, Superintendent of Financial Services, do hereby certify that the foregoing is the Second Amendment to Part 89 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 118), entitled Audited Financial Statements, signed by me on April 25, 2020, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 307(b), 1109, and 1202(b) of the Insurance Law, to take effect 180 days after publication of the Notice of Adoption in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed rule was published in the New York State Register on February 19, 2020. No other publication or prior notice is required by statute.

Linda A. Lacewell
Superintendent of Financial Services

Dated: April 25, 2020