

Assessment of Public Comments on the Proposed Second Amendment to 11 NYCRR 82 (Insurance Regulation 203)

The Department of Financial Services (“DFS”) received comments from a trade organization representing health plans (“health trade”) and a trade organization representing life insurance companies (“life trade”).

Comments: The health trade expressed its belief that the enterprise risk report and own risk and solvency assessment (“ORSA”) summary report are duplicative and asked that DFS add elements that are in the enterprise risk report requirement to the ORSA summary report requirement and eliminate the enterprise risk report requirement altogether.

The life trade questioned the need for the enterprise risk report, because Regulation 203 requires the submission of an ORSA summary report, and asked that DFS consider endorsing a possible amendment to the law to remove the enterprise risk reporting requirement.

Response: As explained in the regulatory impact statement, while there may be some overlap between the enterprise risk report and the ORSA summary report, the entities and domestic insurers that must submit an enterprise risk report to DFS are not exactly the same as the domestic insurers that must submit an ORSA summary report. The Insurance Law and Regulation 203 require an Article 15 ultimate holding company, authorized domestic insurer subject to Insurance Law Article 16, a parent corporation subject to Insurance Law Article 17, and certain domestic insurers that are not part of an Insurance Law Article 15, 16, or 17 system to submit an enterprise risk report to DFS. Regulation 203 requires a domestic insurer that meets a certain premium threshold (mainly a large insurer) to submit an ORSA summary report to DFS. While a domestic insurer may submit an ORSA summary report done at the holding company level, the domestic insurer is not required to do so. To the extent an entity or domestic insurer submits both an enterprise risk report and an ORSA summary report to DFS, the entity or domestic insurer may simply copy and paste any relevant language from the ORSA summary report into the enterprise risk report and vice versa.

In addition, the enterprise risk report requirement is set forth in the Insurance Law. The Legislature would need to pass a bill to repeal the enterprise risk report requirement – DFS cannot repeal the requirement on its own. Even so, the enterprise risk report requirement (in addition to the ORSA summary report requirement) is a National Association of Insurance Commissioners (“NAIC”) accreditation standard. DFS would jeopardize its NAIC accreditation status if it repealed the enterprise risk report requirement.

Therefore, DFS did not make any changes to the rule in response to the comments.