

STATE OF NEW YORK
DEPARTMENT OF FINANCIAL SERVICES
CONSOLIDATED

NEW 11 NYCRR 77
(INSURANCE REGULATION 220)
RISK-BASED CAPITAL
AND
SIXTEENTH AMENDMENT TO 11 NYCRR 83
(INSURANCE REGULATION 172)
FINANCIAL STATEMENT FILINGS AND ACCOUNTING PRACTICES AND PROCEDURES

I, Adrienne A. Harris, Acting Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law; Sections 301, 307, 308, 1109, 1301, 1302, 1308, 1322, 1324, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327, and 6404 of the Insurance Law; and Article 44 of the Public Health Law, do hereby promulgate the following new Part 77 to, and the Sixteenth Amendment to Part 83 of, Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon publication of the Notice of Adoption in the State Register, to read as follows:

(NEW MATTER UNDERSCORED, DELETED MATTER IN BRACKETS)

A new Part 77 is added as follows:

Section 77.1 Definitions.

As used in this Part, the following terms shall have the meanings ascribed to them:

(a) *Domestic insurer* shall have the meanings set forth in Insurance Law sections 1322(a)(3) and 1324(a)(3).

(b) *NAIC* means the National Association of Insurance Commissioners.

(c) *RBC* shall have the meanings set forth in Insurance Law sections 1322(a)(6) and 1324(a)(6).

(d) *RBC instructions* shall have the meanings set forth in Insurance Law sections 1322(a)(7) and 1324(a)(7).

(e) *RBC report* shall have the meanings set forth in Insurance Law sections 1322(a)(10) and 1324(a)(10).

Section 77.2 Exchange traded fund RBC charge.

(a) Until January 1, 2027, the shares of an exchange traded fund shall be treated as bonds for the purpose of a domestic insurer's RBC report if the exchange traded fund meets the following criteria:

(1) the portfolio of the exchange traded fund consists of investments in fixed income securities, cash, and cash equivalents;

(2) the exchange traded fund tracks a bond index (i.e., is not actively managed) and makes publicly available no less frequently than monthly a detailed list of its holdings;

(3) the exchange traded fund has a minimum of US \$ 1 billion in assets under management;

(4) the exchange traded fund allows in-kind redemptions;

(5) the exchange traded fund is registered pursuant to the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 – 80a-64;

(6) the exchange traded fund is rated by a nationally recognized statistical rating organization; and

(7) the exchange traded fund is identified as qualifying for bond treatment by the Purposes and Procedures Manual of the NAIC Investment Analysis Office and has a preliminary or final NAIC Standard Valuation Office designation.

(b) A domestic insurer shall apply the applicable RBC charge as set forth in the RBC instructions to any shares of an exchange traded fund that meets the criteria set forth in subdivision (a) of this section.

(c) Nothing in this section shall affect the classification of shares of exchange traded funds as equity for legal purposes, including for the purposes of Insurance Law article 14.

Section 83.2(c) is amended as follows:

(c) To assist in the completion of the financial statements, the NAIC also adopts and publishes from time to time certain policy, procedure, and instruction manuals. The latest of these manuals, the *Accounting Practices and Procedures Manual as of March [2020] 2021* * (accounting manual), includes a body of accounting guidelines referred to as statements of statutory accounting principles (SSAPs). The accounting manual shall be used in the preparation of quarterly statements and the annual statement for [2020] 2021, which will be filed in [2021] 2022.

* *ACCOUNTING PRACTICES AND PROCEDURES MANUAL AS OF MARCH [2020] 2021*. © Copyright 1999 – [2020] 2021 by National Association of Insurance Commissioners, Kansas City, Missouri.

A new section 83.3(d) is added as follows:

(d) A foreign insurer shall calculate its risk-based capital consistent with Part 77 of this Title and shall report that risk-based capital in the New York supplement to the annual financial statement.

Section 83.4(t) is amended as follows:

(t) The guidance prescribed in [subparagraphs] subparagraph 4.a. [and 4.b.] of SSAP No. 26R, “Bonds”, and the third sentence of Footnote 1 of SSAP No. 97, are not adopted. However, shares of an exchange traded fund that meets the criteria set forth in section 77.2(a) of Part 77 of this Title shall be accounted for in accordance with the accounting manual, including with respect to the asset valuation reserve and interest maintenance reserve,

with the exception that the book adjusted carrying value of such shares shall be set equal to fair value (and not systematic value).



Department of Financial Services

KATHY HOCHUL
Governor

ADRIENNE A. HARRIS
Acting Superintendent

CERTIFICATION

I, Adrienne A. Harris, Acting Superintendent of Financial Services, do hereby certify that the foregoing is the Sixteenth Amendment to Part 83 of Title 11 (Insurance Regulation 172) and new Part 77 of Title 11 (Insurance Regulation 220) of the Official Compilation of Codes, Rules and Regulations of the State of New York, signed by me on November 30, 2021, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law; Sections 301, 307, 308, 1109, 1301, 1302, 1308, 1322, 1324, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327, and 6404 of the Insurance Law; and Article 44 of the Public Health Law, to take effect upon 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 amendment was published in the New York State Register on September 22, 2021. No other publication or prior notice is required by statute.

Signed copy filed with Department of State

Adrienne A. Harris
Acting Superintendent of Financial Services

Dated: November 30, 2021