

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
THIRD AMENDMENT TO 11 NYCRR 82
(INSURANCE REGULATION 203)**

**ENTERPRISE RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENT; GROUP-
WIDE SUPERVISION**

I, Adrienne A. Harris, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 316, 1501(a), 1503(c), 1604, 1702, and 1717(c) of the Insurance Law, do hereby promulgate the following Third Amendment to 11 NYCRR 82 (Insurance Regulation 203), to take effect upon publication of the Notice of Adoption in the State Register, to read as follows:

(Matter in brackets is deleted; new matter is underlined.)

Subdivisions (f) through (n) of section 82.1 are amended as follows:

(f) Group capital calculation instructions shall have the meanings set forth in Insurance Law sections 1501(a)(8), 1604(f)(1), and 1702(g).

(g) Group-wide supervisor means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities.

[(g)] (h) Holding company shall have the meaning set forth in Insurance Law section 1501(a)(3).

[(h)] (i) Holding company system shall have the meaning set forth in Insurance Law section 1501(a)(6).

[(i)] (j) Insurer means an insurer authorized to do an insurance business in this State, including a domestic corporation organized pursuant to Insurance Law article 43 and a domestic retirement system subject to Insurance Law article 46 that has registered or is required to register under Insurance Law article 17.

[(j)] (k) Internationally active insurance group or IAIG means a holding company system, article 16 system, or article 17 system that includes an insurer registered under Insurance Law sections 1503, 1604, or 1717 and meets the following criteria:

(1) has premiums written in at least three countries;

(2) the percentage of gross premiums written outside the United States is at least 10 percent of the holding company system's, article 16 system's, or article 17 system's total gross written premiums; and

(3) based on a three-year rolling average, the total assets of the holding company system, article 16 system, or article 17 system are at least \$50 billion or the total gross written premiums of the holding company system, article 16 system, or article 17 system are at least \$10 billion.

(l) NAIC shall have the meanings set forth in Insurance Law sections 1501(a)(9), 1604(f)(2), and 1702(h).

[(k)] (m) *Own risk and solvency assessment* or *ORSA* means an internal assessment, appropriate to the nature, scale, and complexity of an insurer, a holding company system, an article 16 system, or an article 17 system, conducted by that insurer, holding company system, article 16 system, or article 17 system, of the material and relevant risks associated with the insurer's, holding company system's, article 16 system's, or article 17 system's current business plan, and of the sufficiency of capital resources to support those risks.

[(l)] (n) *ORSA guidance manual* means the current version of the own risk and solvency assessment guidance manual developed and adopted by the National Association of Insurance Commissioners.

[(m)] (o) *ORSA summary report* means a confidential, high-level summary of an insurer's, holding company system's, article 16 system's, or article 17 system's ORSA.

[(n)] (p) *Parent corporation* shall have the meaning set forth in Insurance Law section 1702(b).

Sections 82.5 and 82.6 are renumbered as sections 82.6 and 82.7 and a new section 82.5 is added as follows:

§ 82.5 Group capital calculation.

(a) An entity required to file a group capital calculation pursuant to Insurance Law sections 1503(c), 1604(c), and 1717(c) shall submit such calculation electronically.

(b) Pursuant to Insurance Law sections 1503(c)(5), 1604(c)(6), and 1717(c)(6), where an entity has previously filed the annual group capital calculation at least once, the superintendent, when this State is the lead state, may exempt the entity from filing the annual group capital calculation if the superintendent determines, based upon that filing, that the holding company system, article 16 system, or article 17 system meets all of the following criteria:

(1) 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 \$1,000,000,000;

(2) has no insurers within its holding company system, article 16 system, or article 17 system that are domiciled outside of the United States or one of its territories;

(3) has no banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company system, article 16 system, or article 17 system;

(4) the holding company system, article 16 system, or article 17 system attests that there are no material changes in the transactions between insurers and non-insurers in the system that have occurred since the last filing of the annual group capital calculation; and

(5) the non-insurers within the holding company system, article 16 system, or article 17 system do not pose a material financial risk to an insurer's ability to honor policyholder obligations.

(c) Pursuant to Insurance Law sections 1503(c)(5), 1604(c)(6), and 1717(c)(6), where an entity has previously filed the annual group capital calculation at least once, the superintendent, when this State is the lead state, may accept in lieu of the group capital calculation a limited group capital filing if:

(1) the holding company system, article 16 system, or article 17 system 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 \$1,000,000,000; and

(2) all of the following additional criteria are met:

(i) the entity has no insurers within its holding company system, article 16 system, or article 17 system that are domiciled outside of the United States or one of its territories;

(ii) the entity does not include a banking, depository, or other financial entity that is subject to an identified regulatory capital framework; and

(iii) the entity attests that there are no material changes in transactions between insurers and non-insurers in the system that have occurred since the last filing of the report to the superintendent and the non-insurers within the system do not pose a material financial risk to an insurer's ability to honor policyholder obligations.

(d) For an entity that has previously met an exemption with respect to the group capital calculation pursuant to subdivision (b) or (c) of this section, the superintendent may require the entity at any time to file an annual group capital calculation, completed in accordance with the group capital calculation instructions, if any insurer within the holding company system, article 16 system, or article 17 system:

(1) is in a risk-based capital level event as set forth in Insurance Law section 1322 or 1324 or a similar standard for a non-United States insurer;

(2) has surplus to policyholders that the superintendent determines is not adequate in relation to the insurer's outstanding liabilities or its financial needs, pursuant to Insurance Law section 1104(c); or

(3) otherwise exhibits qualities of a troubled insurer as determined by the superintendent based on unique circumstances, including the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

(e) A non-United States jurisdiction is considered to "recognize and accept" the group capital calculation if it satisfies the following criteria:

(1) For the purpose of Insurance Law sections 1503(c)(3)(D), 1604(c)(4)(D), and 1717(c)(4)(D), the non-United States jurisdiction:

(i) recognizes the United States state regulatory approach to group supervision and group capital by providing confirmation, from a competent regulatory authority in such jurisdiction, that insurers and systems, whose lead state is accredited by the NAIC under the NAIC accreditation program, shall be

subject only to worldwide prudential insurance group supervision, including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and shall not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-United States jurisdiction; or

(ii) where no United States insurance system operates in the non-United States jurisdiction, that non-United States jurisdiction indicates formally in writing to the superintendent, when this State is the lead state, with a copy to the International Association of Insurance Supervisors, that the group capital calculation is an acceptable international capital standard, which shall serve as the documentation otherwise required in subparagraph (i) of paragraph (1) of this subdivision; and

(2) the non-United States jurisdiction provides confirmation from a competent regulatory authority in such jurisdiction that information regarding an insurer and its parent, subsidiaries, or affiliates, if applicable, shall be provided to the superintendent, when this State is the lead state, in accordance with a memorandum of understanding or similar document between the superintendent and such jurisdiction, including the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. When this State is the lead state, the superintendent shall determine, in consultation with the NAIC committee process, if the requirements of the information sharing agreements are in force.

(f)(1) If the superintendent, when this State is the lead state, makes a determination pursuant to Insurance Law section 1503(c)(3)(D), 1604(c)(4)(D), or 1717(c)(4)(D) that differs from the NAIC list of non-United States jurisdictions that “recognize and accept” the group capital calculation, the superintendent will provide thoroughly documented justification to the NAIC and other states.

(2) Upon determination by the superintendent that a non-United States jurisdiction no longer meets one or more of the requirements to “recognize and accept” the group capital calculation, the superintendent may recommend to the NAIC that the non-United States jurisdiction be removed from the list of jurisdictions that “recognize and accept” the group capital calculation.