Regulatory Impact Statement for the Proposed First Amendment to 11 NYCRR 77 (Insurance Regulation 220)

1. Statutory authority: Financial Services Law ("FSL") Sections 202 and 302 and Insurance Law ("IL") Sections 301, 1322, and 1324.

FSL Section 202 establishes the office of the Superintendent of Financial Services ("Superintendent").

FSL Section 302 and IL Section 301, in pertinent part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the IL, FSL, or any other law, and to prescribe regulations interpreting the IL.

IL Sections 1322 and 1324 set forth the risk-based capital ("RBC") reporting requirements and standards applicable to life insurers, accident and health insurers, corporations organized pursuant to IL Article 43, and certain health maintenance organizations and to property/casualty insurers, respectively.

2. Legislative objectives: To ensure that an insurer's portfolio of invested assets is sufficient to meet its expected liabilities.

3. Needs and benefits: Following extensive research and engagement with industry and other stakeholders, the Department added a new 11 NYCRR 77 in December 2021 to require, until January 1, 2027, that shares of an exchange traded fund ("ETF"), the portfolio of which consists of investments in fixed income securities, cash, and cash equivalents, be treated as bonds for the purpose of a domestic insurer's RBC report if the ETF meets certain criteria. This amendment eliminates the January 1, 2027 sunset date in order to make permanent the current treatment of ETFs for RBC reporting purposes. Department staff can continue monitoring market developments and ETF performance through multiple interest rate and credit cycles, and, if changes are required, can make any necessary amendments in the future.

4. Costs: The rule will not impose any additional costs upon insurers or on the Department of Financial Services ("Department").

5. Local government mandates: The rule does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: No additional paperwork should result from the rule.

7. Duplication: The rule does not duplicate, overlap, or conflict with any existing New York or federal laws, rules, or other legal requirements.

8. Alternatives: The Department considered allowing the sunset to take effect, which would effectively repeal the rule and eliminate the current favorable RBC treatment for ETFs. However, doing so would set New York further apart from most other jurisdictions and would be viewed unfavorably by insurers as it would limit their investment options. In the absence of any data indicating that the more favorable RBC treatment for ETFs has negatively affected insurers, this approach was rejected.

Another alternative the Department considered was to amend 11 NYCRR 77 to liberalize some of the standards that an ETF must meet in order to qualify for favorable RBC treatment. For example, the Department considered lowering the required level of assets under management ("AUM") from $1 billion to $100 million and allowing for actively managed ETFs in addition to indexed ETFs. However, the Department decided not to make this change. A reduction of the AUM threshold would expose insurers to smaller funds, which are inherently more volatile, and would constrain an insurer's ability to diversify its portfolio. In addition, actively managed ETFs have higher expense ratios, which can reduce an insurer's total investment return. The Department rejected this alternative because these additional costs adversely affect the financial condition of insurers.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The rule will take effect immediately upon publication of the Notice of Adoption in the State Register.

Statement Setting Forth the Basis for Finding that the Proposed First Amendment to 11 NYCRR 77 (Insurance Regulation 220) Will Not Have an Adverse Economic Impact or Impose Compliance Requirements on Small Businesses or Local Governments

The Department of Financial Services finds that this amendment will not have any adverse economic impact or impose compliance requirements on small businesses or local governments. The amendment simply eliminates the January 1, 2027 sunset date, thereby making permanent the regulation's treatment of the shares of an exchange traded fund ("ETF"), the portfolio of which consists of fixed income securities, cash, and cash equivalents, as bonds for the purpose of an authorized insurer's risk-based capital report if the ETF meets certain criteria. This amendment does not apply to local governments. The amendment applies uniformly to all insurers affected by the rule, including any insurer that is a small business.

Statement Setting Forth the Basis for Finding that the Proposed First Amendment to 11 NYCRR 77 (Insurance Regulation 220) Will Not Have an Adverse Impact or Impose Compliance Requirements on Rural Areas

The Department of Financial Services finds that the amendment will not have any adverse impact or impose compliance requirements on rural areas. The amendment simply eliminates the January 1, 2027 sunset date, thereby making permanent the regulation's treatment of the shares of an exchange traded fund ("ETF"), the portfolio of which consists of fixed income securities, cash, and cash equivalents, as bonds for the purpose of an authorized insurer's risk-based capital report if the ETF meets certain criteria. The amendment applies uniformly to insurers that are located in both rural and non-rural areas of New York State and should not have any adverse impact on rural areas.

Statement Setting Forth the Basis for Finding that the Proposed First Amendment to 11 NYCRR 77 (Insurance Regulation 220) Will Not Have a Substantial Adverse Impact on Jobs and Employment Opportunities

The Department of Financial Services finds that this amendment will not have a substantial adverse impact on jobs and employment opportunities. The amendment simply eliminates the January 1, 2027 sunset date, thereby making permanent the regulation's treatment of the shares of an exchange traded fund ("ETF"), the portfolio of which consists of fixed income securities, cash, and cash equivalents, as bonds for the purpose of an authorized insurer's risk-based capital report if the ETF meets certain criteria. Therefore, the amendment should not have a substantial adverse impact on jobs or employment opportunities in New York State.