

**NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES**

**PROPOSED 11 NYCRR 82**

**(INSURANCE REGULATION 203)**

**ENTERPRISE RISK MANAGEMENT AND  
OWN RISK AND SOLVENCY ASSESSMENT**

I, Benjamin M. Lawskey, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 110, 301, 309, 1109, 1115, 1501, 1503, 1504(c), 1604, 1702, and 1717 and Articles 15, 16, and 17 of the Insurance Law, do hereby promulgate a new Part 82 of Title 11 of the Official Compilation of Codes, Rules, and Regulations (Insurance Regulation 203), to take effect upon publication in the State Register, to read as follows:

(ALL MATERIAL IS NEW)

**Section 82.1 Definitions.**

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

(a) *Article 16 system* means an authorized domestic insurer registered or required to register under Insurance Law article 16 and all of the insurer's subsidiaries.

(b) *Article 17 system* means a parent corporation registered or required to register under Insurance Law article 17 and all of the parent corporation's subsidiaries.

(c) *Enterprise risk* shall (1) with respect to a holding company system, article 16 system, or article 17 system, have the meaning, as the circumstances or context may require, set forth in Insurance Law sections 1501(a)(7), 1604(b)(2), or 1702(f); and (2) with respect to an insurer that is not a member of a holding company system, an article 16 system, or an article 17 system, mean any activity, circumstance, event, or series of events involving the insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer, including anything that would cause the insurer's risk-based capital to fall into company action level as set forth in Insurance Law sections 1322 or 1324, or that would cause further transaction of business to be hazardous to the insurer's policyholders or creditors or the public.

(d) *Entity* means a holding company that directly or indirectly controls an insurer or an insurer registered or required to register under Insurance Law article 16 or 17.

(e) *Holding company* shall have the meaning set forth in Insurance Law section 1501(a)(3).

(f) *Holding company system* shall have the meaning set forth in Insurance Law section 1501(a)(6).

(g) *Insurer* means an insurer authorized to do an insurance business in this State, including a domestic corporation organized pursuant to Insurance Law article 43, a health maintenance organization as defined in 10 NYCRR section 98-1.2(r), and a domestic retirement system subject to Insurance Law article 46.

(h) *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.

(i) *ORSA guidance manual* means the current version of the Own Risk and Solvency Assessment Guidance Manual<sup>1</sup> developed and adopted by the National Association of Insurance Commissioners.

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

(k) *Parent corporation* shall have the meaning set forth in Insurance Law section 1702(b).

## **Section 82.2 Enterprise risk management.**

(a) Pursuant to Insurance Law sections 1503(b), 1604(b), and 1717(b), an entity shall adopt a formal enterprise risk management function that identifies, assesses, monitors, and manages enterprise risk. An insurer that is not a member of a holding company system, an article 16 system, or an article 17 system also shall adopt such a formal enterprise risk management function. The enterprise risk management function shall, at a minimum:

(1) be headed by an appropriately experienced individual with the requisite authority and who has access to the board of directors and senior management;

(2) include a written risk policy adopted by the respective board that delineates the insurer's, holding company system's, article 16 system's, or article 17 system's risk/reward framework, risk tolerance levels, and risk limits;

(3) provide for the identification and measurement of risk under a sufficiently wide range of outcomes using techniques that are appropriate to the nature, scale, and complexity of the risks the insurer, holding company system, article 16 system, or article 17 system bears and are adequate for capital management and solvency purposes;

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<sup>1</sup> NAIC OWN RISK AND SOLVENCY ASSESSMENT (ORSA) GUIDANCE MANUAL as of March 2013. © Copyright 2013 by National Association of Insurance Commissioners in Kansas City, Missouri. [www.naic.org](http://www.naic.org).

(4) have a process of risk identification and measurement supported by documentation that provides appropriately detailed descriptions and explanations of risks identified, the measurement approaches used, key assumptions made, and outcomes of any plausible adverse scenarios that were run;

(5) utilize prospective solvency assessments, including scenario analysis and stress testing;

(6) incorporate risk tolerance levels and limits in the policies and procedures, business strategy, and day-to-day strategic decision-making processes;

(7) consider a risk and capital management process to monitor the level of financial resources relative to economic capital and regulatory capital requirements;

(8) incorporate investment policy, asset-liability management policy, effective controls on internal models, longer-term continuity analysis, and feedback loops to update and improve the enterprise risk management function continuously;

(9) address all reasonably foreseeable and relevant material risks including, as applicable, insurance, underwriting, asset-liability matching, credit, market, operational, reputational, liquidity, and any other significant risks;

(10) include an assessment that identifies the relationship between risk management and the level and quality of financial resources necessary as determined with quantitative and qualitative metrics; and

(11) identify, quantify, and manage any risks to which the insurer may be exposed by transactions or affiliations with any other member of the holding company system, article 16 system, or article 17 system of which the insurer is a member.

(b)(1) Pursuant to Insurance Law sections 1503(b), 1604(b), and 1717(b), an entity shall file electronically an enterprise risk report with the superintendent by April 30 of each year and shall, to the best of such entity's knowledge and belief, identify therein the material risks within the holding company system, article 16 system, or article 17 system that could pose enterprise risk to the insurer. The entity also shall file one hard copy of the enterprise risk report with the superintendent.

(2) A domestic insurer that is not a member of a holding company system, an article 16 system, or an article 17 system, and has annual direct written premium and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, equal to or greater than \$500 million, also shall file electronically such an enterprise risk report with the superintendent by April 30 of each year. The domestic insurer also shall file one hard copy of the enterprise risk report with the superintendent.

(3) The report required to be filed by paragraphs (1) and (2) of this subdivision shall discuss the following, provided that the information has not already been disclosed in a registration statement filed pursuant to Insurance Law sections 1503(a), 1604(a), or 1717(a) or in documents submitted to comply with 10 NYCRR section 98-1.16(e) during the prior 12 months:

(i) any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurer, holding company system, article 16 system, or article 17 system;

(ii) any acquisition or disposal of insurance entities and reallocation of existing financial or insurance entities with regard to the insurer, holding company system, article 16 system, or article 17 system;

(iii) any changes in the shareholders of the insurer, holding company system, article 16 system, or article 17 system exceeding ten percent or more of voting securities;

(iv) developments in any investigations, regulatory activities, or litigation that could have a significant bearing or impact on the insurer, holding company system, article 16 system, or article 17 system;

(v) the business plan of the insurer, holding company system, article 16 system, or article 17 system, and a summary of the insurer's or system's strategies for the next 12 months;

(vi) the identification of any material concerns regarding the insurer, holding company system, article 16 system, or article 17 system by a supervisory college, if any, held during the last year;

(vii) the identification of capital resources and material distribution patterns with regard to the insurer, holding company system, article 16 system, or article 17 system;

(viii) the identification of any negative movement, or any discussions with nationally recognized statistical rating organizations, that may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurer, holding company system, article 16 system, or article 17 system (including both the rating and outlook);

(ix) information on any corporate or parental guarantees throughout the holding company system, article 16 system, or article 17 system, and the expected source of liquidity should the guarantees be called upon; and

(x) the identification of any material activity or development of the insurer, holding company system, article 16 system, or article 17 system that, in the opinion of senior management, could adversely affect the insurer, holding company system, article 16 system, or article 17 system.

(4)(i) The report required to be filed pursuant to paragraph (1) of this subdivision shall include a signature of the entity's chief risk officer or other executive having responsibility for the oversight of the enterprise risk management function attesting to the best of his or her knowledge and belief that the report identifies any material risks within the holding company system, article 16 system, or article 17 system that could pose enterprise risk to any insurer within the system, and that a copy of the report has been provided to the entity's board of directors or the appropriate committee thereof.

(ii) The report required to be filed pursuant to paragraph (2) of this subdivision shall include a signature of the domestic insurer's chief risk officer or other executive having responsibility for the oversight of the enterprise risk management function attesting to the best of his or her knowledge and belief that the report identifies any material risks within the domestic insurer that could pose enterprise risk to the domestic insurer, and that a copy of the report has been provided to the domestic insurer's board of directors or the appropriate committee thereof.

(5) The entity or domestic insurer required to file a report pursuant to paragraphs (1) or (2) of this subdivision may attach the appropriate form most recently filed with the United States Securities and Exchange Commission, provided that such entity or domestic insurer includes specific references to those areas listed in paragraph (3) of this subdivision for which the form provides responsive information. If the entity is not domiciled in the United States, then it may attach its most recent public audited financial statement filed in its country of domicile, provided that the entity includes specific references to those areas listed in paragraph (3) of this subdivision for which the financial statement provides responsive information.

(6) If the entity or domestic insurer required to file a report pursuant to paragraphs (1) or (2) of this subdivision has not disclosed any information pursuant to paragraph (3) of this subdivision, then such entity or domestic insurer shall include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure pursuant to paragraph (3) of this subdivision.

### **Section 82.3 Own risk and solvency assessment.**

(a) Except as provided in subdivision (d) of this section, a domestic insurer shall conduct regularly an own risk and solvency assessment consistent with the process set forth in the ORSA guidance manual. A domestic insurer also shall conduct an ORSA any time there are significant changes to the domestic insurer's risk profile, but no less than annually. A domestic insurer may satisfy this subdivision if the holding company system, article 16 system, or article 17 system of which it is a member conducts an ORSA consistent with this subdivision.

(b)(1) Except as provided in subdivision (d) of this section, a domestic insurer shall submit electronically to the superintendent by December 1 of each year, starting in 2015, an ORSA summary report or any combination of ORSA summary reports that together contain the information described in the ORSA guidance manual<sup>2</sup>, applicable to the domestic insurer and/or the holding company system, article 16 system, or article 17 system of which it is a member. The domestic insurer also shall submit one hard copy of the ORSA summary report to the

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<sup>2</sup> A copy of the ORSA guidance manual may be found on the Department's website at [www.dfs.ny.gov](http://www.dfs.ny.gov).

superintendent. The ORSA summary report shall be prepared consistent with the ORSA guidance manual. A domestic insurer shall maintain and make available documentation and supporting information upon examination or upon the superintendent's request.

(2) A domestic insurer may comply with paragraph (1) of this subdivision by submitting to the superintendent the most recent and substantially similar ORSA summary report or reports provided by the domestic insurer or another member of the domestic insurer's holding company system, article 16 system, or article 17 system to the head insurance regulator of another state or to a supervisor or regulator of a foreign jurisdiction, if the ORSA summary report or reports provide information that is comparable to the information described in the ORSA guidance manual. Any report in a language other than English shall be accompanied by a translation of the report into the English language.

(3) An ORSA summary report shall include the signature of the chief risk officer or other executive having responsibility for the oversight of the enterprise risk management function, attesting to the best of his or her knowledge and belief that the domestic insurer or another member of the domestic insurer's holding company system, article 16 system, or article 17 system applies the enterprise risk management function described in the ORSA summary report and that a copy of the report has been provided to the domestic insurer's or member's board of directors or the appropriate committee thereof.

(c)(1) A domestic insurer shall be exempt from this section if:

(i) the domestic insurer 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 Insurance Program, of less than \$500 million; and

(ii) where the domestic insurer is a member of a holding company system, article 16 system, or article 17 system, the 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 Insurance Program, of less than \$1 billion.

(2) If a domestic insurer qualifies for an exemption pursuant to subparagraph (i) of paragraph (1) of this subdivision, but the holding company system, article 16 system, or article 17 system of which the domestic insurer is a member does not qualify for the exemption pursuant to subparagraph (ii) of paragraph (1) of this subdivision, then the ORSA summary report shall include every insurer within the holding company system, article 16 system, or article 17 system. A domestic insurer may satisfy this requirement by submitting more than one ORSA summary report for any combination of insurers, provided that any combination of reports includes every insurer within the holding company system, article 16 system, or article 17 system.

(3) If a domestic insurer does not qualify for an exemption pursuant to subparagraph (i) of paragraph (1) of this subdivision, but the holding company system, article 16 system, or article

17 system of which it is a member qualifies for an exemption pursuant to subparagraph (ii) of paragraph (1) of this subdivision, then the ORSA summary report only shall include that domestic insurer.

(4) A domestic insurer that does not qualify for an exemption pursuant to paragraph (1) of this subdivision may apply to the superintendent for a waiver from the requirements of this section based upon unique circumstances. In deciding whether to grant the domestic insurer's request for a waiver, the superintendent may consider the type and volume of business written, ownership and organizational structure, and any other factor the superintendent considers relevant to the domestic insurer or holding company system, article 16 system, or article 17 system of which the domestic insurer is a member. If the domestic insurer is part of a holding company system, article 16 system, or article 17 system with insurers domiciled in more than one state, then the superintendent may consult with the head insurance regulators of the other states when considering whether to grant the domestic insurer's request for a waiver.

(5) Notwithstanding the exemptions stated in this subdivision the superintendent may require that a domestic insurer conduct an ORSA and file an ORSA summary report:

(i) based upon unique circumstances, including the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests;

(ii) if a domestic insurer subject to Insurance Law section 1322 or 1324 has a risk-based capital level triggering a company action level event as set forth in Insurance Law section 1322 or 1324;

(iii) if the further transaction of business would be hazardous to the domestic insurer's policyholders or creditors or to the public; or

(iv) if requiring such measures would be in the best interests of the people of this State.

(6) If a domestic insurer that qualifies for an exemption pursuant to paragraph (1) of this subdivision subsequently no longer qualifies for that exemption due to changes in premium as reflected in the domestic insurer's most recent annual statement or in the most recent annual statements of the insurers within the holding company system, article 16 system, or article 17 system of which the domestic insurer is a member, then the domestic insurer shall have one year following the year the threshold is exceeded to comply with the requirements of this section.

#### **Section 82.4 Exemptions from electronic filing and submission requirements.**

(a) An insurer or entity required to make an electronic filing or submission pursuant to this Part may apply to the superintendent for an exemption from the requirement that the filing or submission be electronic by submitting a written request to the superintendent for approval at least 30 days before the insurer or entity shall submit to the superintendent the particular filing or submission that is the subject of the request.

(b) The request for an exemption shall:

(1) with regard to an insurer, set forth the insurer's NAIC number;

(2) identify the specific filing or submission as to which the insurer or entity is applying for the exemption;

(3) specify whether the insurer or entity is making the request for an exemption based upon undue hardship, impracticability, or good cause, and set forth a detailed explanation as to the reason that the superintendent should approve the request; and

(4) specify whether the request for an exemption extends to future filings or submissions, in addition to the specific filing or submission identified in paragraph (2) of this subdivision.

(c) The insurer or entity requesting an exemption shall submit, upon the superintendent's request, any additional information necessary for the superintendent to evaluate the insurer or entity's request for an exemption.

(d) The insurer or entity shall be exempt from the electronic filing or submission requirement upon the superintendent's written determination so exempting the insurer or entity, where the determination specifies the basis upon which the superintendent is granting or denying the request and to which filings or submissions the exemption applies.