

CLIENT ALERT

NYDFS Amends Insurance Regulation Related to the Group Capital Calculation Filing Requirement

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The National Association of Insurance Commissioners' ("NAIC") group capital calculation ("GCC") was enacted into law in New York pursuant to amendments to New York's insurance holding company laws, effective as of August 23, 2023 (as amended, "NY's Holding Company Laws"). These laws require an ultimate holding company to submit an annual GCC to the New York State Department of Financial Services ("NYDFS") when New York is the group's lead state regulator. Under NY's Holding Company Laws, the GCC filing obligation is subject to general exemptions that are consistent with those set forth in the NAIC's Insurance Holding Company System Regulatory Act (the "Holding Company Act"), as amended in 2020.

NY's Holding Company Laws also provide that the Superintendent of Financial Services (the "Superintendent") has the discretion, when New York is the lead state, to exempt a holding company from filing an annual GCC or accept a limited group capital filing in accordance with criteria as specified by the Superintendent in a regulation. The NYDFS recently adopted the [Third Amendment to Insurance Regulation 203](#) (Enterprise Risk Management and Own Risk and Solvency Assessment; Group-wide Supervision) (the "Third Amendment to Regulation 203") to establish the criteria for the additional GCC filing exemptions. Similar to above, the changes to Regulation 203 are consistent with the provisions set forth in the NAIC's holding company amendments from 2020. The NYDFS did not receive any comments on the proposed draft of the Third Amendment to Regulation 203, and it became effective immediately upon publication on June 18, 2024.

NYDFS Amends Insurance Regulation Related to the Group Capital Calculation Filing Requirement

Background

The GCC, as adopted by the NAIC and enacted into law by many states, uses a risk-based capital aggregation methodology for all entities within an insurance holding company system. The NAIC's amendments to the Holding Company Act, which implement the annual GCC filing requirement, are expected to be widely adopted by the states because they are subject to an NAIC accreditation standard, effective on January 1, 2026. Notably, the GCC allowed the states to comply with the covered agreements between the U.S./European Union and the U.S./United Kingdom, both of which contain prudential measures regarding insurance and reinsurance, as the agreements required the states to have a worldwide group capital calculation in place by November 7, 2022.

For more information regarding the NAIC's 2020 amendments to the Holding Company Act and Regulation, see our prior reporting (available [here](#)).

GCC Reporting Requirement Under NY's Holding Company Laws

An ultimate holding company must file an annual GCC with the NYDFS by June 30th of each year when New York is the lead state regulator of the holding company system,¹ as determined in accordance with the NAIC's Financial Analysis Handbook. NY's Holding Company Laws provide general GCC filing exemptions for an ultimate holding company, consistent with those set forth in the NAIC's Holding Company Act, if it is part of a holding company system that:

- i. has only one insurer in the group that only writes business in its domestic state and assumes no business from any other insurer;
- ii. is required to perform a GCC by the U.S. Federal Reserve Board;
- iii. has a non-U.S. group-wide supervisor that is located in a reciprocal jurisdiction, which recognizes the U.S. state regulatory approach to group supervision and group capital; or
- iv. (a) provides information to the Superintendent who has determined that such information will allow the Superintendent to comply with the NAIC group supervision approach, as set forth in the NAIC's Financial Analysis Handbook; and (b) has a non-U.S. group-wide supervisor that is not a reciprocal jurisdiction which recognizes and accepts the GCC as the worldwide group capital assessment for U.S. insurance groups that operate in such jurisdiction.

Pursuant to the Third Amendment to Regulation 203, the Superintendent may exercise her discretion in accordance with NY's Holding Company Laws to exempt an ultimate holding company from filing an annual GCC or accept a limited group

¹ This term refers to a holding company, which is an individual or entity that directly or indirectly controls an authorized insurer in New York, together with the authorized insurer(s) in the group and any other entities controlled by such holding company.

NYDFS Amends Insurance Regulation Related to the Group Capital Calculation Filing Requirement

capital filing, if New York is the lead state, based upon the new criteria set forth in the amended regulation. Set forth below is a summary of the recent changes to Regulation 203, which are consistent with the provisions contained in the NAIC's Insurance Holding Company System Model Regulation.

A. Filing Exemption for Certain Holding Companies that Previously Filed the GCC

If an ultimate holding company has previously filed the annual GCC at least once, the Superintendent may, if New York is the lead state regulator, exempt the ultimate holding company from the GCC filing requirement if she determines, based upon such filing, that the holding company system meets all of the following criteria:

- i. has annual direct written and unaffiliated assumed premium (including international direct and assumed premium) of less than \$1 billion;
- ii. has no authorized insurers in the group which are domiciled outside the U.S.;
- iii. has no banking, depository or other financial entity in the group that is subject to an identified regulatory capital framework;
- iv. attests that there are no material changes in the transactions between authorized insurers in New York and non-insurers in the group which have occurred since the last GCC filing; and
- v. the non-insurers within the group do not pose a material financial risk to an authorized insurer's ability to honor policyholder obligations.

B. Allowing Certain Holding Companies that Previously Filed the GCC to Submit a Limited Group Capital Filing

Alternatively, if an ultimate holding company has previously filed the annual GCC at least once and New York is the lead state, the Superintendent may accept a limited group capital filing in lieu of the GCC if the holding company system meets all of the criteria described in Section A(i)–(v) above.

C. When Certain Holding Companies that Once Satisfied a Filing Exemption are Required to Submit a GCC Filing

If an ultimate holding company previously satisfied the filing exemption described in Section A or B above, the Superintendent may require it at any time to file an annual GCC if any authorized insurer in New York within the holding company system:

NYDFS Amends Insurance Regulation Related to the Group Capital Calculation Filing Requirement

- i. is in a risk-based capital level event as set forth in Section 1322 or 1324 of the New York Insurance Law for life insurance, accident and health, and property/casualty insurance companies, or a similar standard for a non-U.S. insurer;
- ii. 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 Section 1104(c) of the New York Insurance Law, which permits the Superintendent to suspend the insurer's license, restrict the license authority or limit the amount of premiums written in New York State based on this determination; or
- iii. 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.

With respect to information submitted to the NYDFS under Regulation 203, if an ultimate holding company deems certain information to be a trade secret that if disclosed would cause substantial injury to its competitive position pursuant to Public Officers Law Section 87(2)(d), the holding company may request in the filing that the Superintendent except such information from disclosure under Public Officers Law Section 89(5)(a)(1).

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