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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 05-023

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]**

#### 1. Statutory Authority

There are three provisions in the proposed order that attempt to provide authority to the Commissioner of Insurance (commissioner) to make exceptions to other provisions in s. Ins 3.09 (19). These are:

- a. Section Ins 3.09 (19) (c) 1., which states that the percent of mortgages originated by the holding company system or affiliate or of mortgages originated by any mortgage lender to which credit is extended by the holding company system or affiliate must be limited to 50% of the insurer’s direct premium “or such higher percentage as the commissioner approves in writing.”
- b. Section Ins 3.09 (19) (c) 2., which requires certain insurers to annually file a certification by March 1 “unless the commissioner specifies a different date.”
- c. Section Ins 3.09 (19) (c) 2., which requires this certification but also indicates that the “commissioner may require additional or more frequent reports.”

These blanket exceptions threaten to negate the concept of an administrative rule—a legal statement that provides notice to a regulated community of a standard or policy that will be applied equitably and uniformly to all. If the commissioner intends in the future generally to authorize a higher percentage of an insurer’s direct premium, an alternative certification date, or more frequent reporting, then these general propositions specifically should be adopted as administrative rules in accordance with rule-making processes of ch. 227, Stats. If, on the other

hand, these exceptions are to be applied on a case-by-case basis, then the rule should set forth the standards under which the exceptions will be granted.

## **2. Form, Style and Placement in Administrative Code**

a. Section Ins 3.09 (19) (c) 3. indicates that “This section” may be enforced under certain statutes. If the intent is to refer only to s. Ins 3.09 (19) (c), “This section” should be changed to “This paragraph.”

However, if the intent is to refer to all of s. Ins 3.09, the placement of the provision in s. Ins 3.09 (19) (c) 3. seems inappropriate, and creation of a separate subsection (for example, s. Ins 3.09 (21)) should be considered to clearly apply the provision to all of s. Ins 3.09.

b. In s. Ins 3.09 (19) (c) 2., the two references to “subd. 1” should have a period inserted after the numeral 1.

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

In s. 3.09 (19) (c) 1., the phrase “directly or indirectly by the holding company system or affiliate” (which is used twice) should be set off with commas. Currently, the phrase is preceded, but not followed by, a comma.