

**★★★ NOTICE OF RULEMAKING HEARING ★★★**

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41(3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting Section Ins 51.01, Wis. Adm. Code, relating to risk based capital requirements and affecting small business.

**HEARING INFORMATION**

**Date: September 5, 2013**

**Time: 10:30 a.m., or as soon thereafter as the matter may be reached**

**Place: OCI, Room 227, 125 South Webster St 2<sup>nd</sup> Floor, Madison, WI**

Written comments can be mailed to:

Sarah E. Norberg  
Legal Unit - OCI Rule Comment for Rule Ins 51.01  
Office of the Commissioner of Insurance  
PO Box 7873  
Madison WI 53707-7873

Written comments can be hand delivered to:

Sarah E. Norberg  
Legal Unit - OCI Rule Comment for Rule Ins 51.01  
Office of the Commissioner of Insurance  
125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53703-3474

Comments can be emailed to:

Sarah E. Norberg  
sarah.norberg@wisconsin.gov

Comments submitted through the Wisconsin Administrative Rule Web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on September 19, 2013.

**SUMMARY OF PROPOSED RULE & FISCAL ESTIMATE**

For a summary of the rule see the analysis contained in the attached proposed rulemaking order. There will be no state or local government fiscal effect. The full text of the proposed changes, a summary of the changes and the fiscal estimate are attached to this Notice of Hearing.

**INITIAL REGULATORY FLEXIBILITY ANALYSIS**

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an effect on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected:  
Domestic life and health insurers that complete a life annual statement and domestic fraternal insurers.
- b. Description of reporting and bookkeeping procedures required:  
None beyond those currently required.
- c. Description of professional skills required:  
None beyond those currently required.

### **OCI SMALL BUSINESS REGULATORY COORDINATOR**

The OCI small business coordinator is Louie Corneillus and may be reached at phone number (608) 264-8113 or at email address [louie.corneillus@wisconsin.gov](mailto:louie.corneillus@wisconsin.gov)

### **CONTACT PERSON**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, OCI, at: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov), (608) 264-8110, 125 South Webster Street – 2<sup>nd</sup> Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

## Clearinghouse Rule 13-059

### PROPOSED ORDER AMENDING A RULE

#### Office of the Commissioner of Insurance

**Rule No. 145-** : To amend s. Ins 51.01 (4) (a) 2., Wis. Admin. Code .

**Relating to:** risk based capital requirements and affecting small business.

The statement of scope of this rule SS 069-12, was approved by the Governor on September 13, 2012, published in Register No. 681, on September 30, 2012, and approved by the Commissioner on October 15, 2012.

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### ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

**1. Statutes interpreted:**

ss. 623.11 (1) and (2), Wis. Stats.

**2. Statutory authority:**

ss. 227.11 (2) (a), 623.11 (1) and (2), Wis. Stats.

**3. Explanation of OCI's authority to promulgate the proposed rule under these statutes:**

Pursuant to s. 623.11 (1), Wis. Stats., "The commissioner shall, when necessary, determine the amount of compulsory surplus that an insurer is required to have in order not to be financially hazardous under s. 645.41 (4), Wis. Stats., as an amount that will provide reasonable security against contingencies affecting the insurer's financial position that are not fully covered by reserves or reinsurance."

Pursuant to s. 623.11 (2), Wis. Stats., "The commissioner may . . . establish by rule minimum ratios for the compulsory surplus in relation to any relevant variables, including the following: (a) amounts at risk; (b) premiums written or premiums earned; (c) liabilities; (d) equity investments of all or certain kinds in combination with any of the variables under pars. (a) to (c)."

The company action level provision under the regulation provides an early warning that an insurer might be approaching a financially hazardous condition. The proposed change to the regulation would modify a single variable, as authorized by s. 623.11 (2), Wis. Stats., potentially resulting in an earlier warning that a company is approaching financially hazardous condition.

**4. Related statutes or rules:**

s. 623.11, Wis. Stats. and s. Ins 51.01, Wis. Admin. Code, both address risk based capital requirements. The proposed rule merely updates the minimum ratio for insurers.

**5. The plain language analysis and summary of the proposed rule:**

The existing regulation establishes risk based capital requirements for an insurer based on the risks inherent in the insurer's operations by requiring it to perform a calculation of its authorized control level risk based capital. Under the current regulation, a company action level event, which requires the company to take certain remedial steps, is triggered if:

(a) An insurer's capital is between 1.5 and 2.0 times the authorized control level risk based capital, or

(b) The insurer's capital is at or below 2.5 times the authorized control level risk based capital and the insurer has a negative trend test result, calculated pursuant to the risk based capital instructions.

The proposed rule would change the "2.5" to "3.0"; i.e., a company action level event would occur if the insurer's capital is at or below 3.0 times the authorized control level risk based capital and the insurer has a negative trend test result.

The proposed rule will update this regulation to be consistent with the NAIC model regulation and will also bring Wisconsin's requirements for life insurers into alignment with the requirements for health insurers and property and casualty insurers.

The proposed rule will apply to domestic life and health insurers that complete a life annual statement, and domestic fraternal insurers. The impact is expected to be minimal.

**6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

The Office is unaware of any existing or proposed federal regulations that are intended to address the activities to be regulated by the proposed rule change.

**7. Comparison of similar rules in adjacent states as found by OCI:**

**Illinois:** 215 ILCS 5/35A-15 (a) (1) (B) (2013) contains provisions comparable to Wisconsin's existing rule.

**Iowa:** IAC s. 521E.3 1. a. (2) (2013) contains provisions comparable to Wisconsin's existing rule.

**Michigan:** MCLS s. 50.1204a (2013) adopts the NAIC Model Law by reference.

**Minnesota:** Minn. Stat. s. 60A.60 Subd. 11 (1) (2013) contains provisions less stringent than Wisconsin's existing rule.

**8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:**

The Office is proposing this rule change to make the regulation consistent with the NAIC model regulation for the purposes of maintaining accreditation. The amendment will also bring Wisconsin's requirements for

life insurers into alignment with the requirements for health insurers and property and casualty insurers. Little, if any, Wisconsin insurers will be affected by this rule change.

**9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:**

Based upon revenue and ownership structure, there may be an effect on small businesses but any effect would be minimal as very few, if any, insurers meet the definition of a small business and non-insurance small businesses are protected by this proposed rule change as the amendment provides an earlier warning that a life insurer might be approaching a financially hazardous condition.

**10. See the attached Private Sector Fiscal Analysis.**

**11. A description of the Effect on Small Business:**

There may be an effect on small businesses but any effect would be minimal as very few, if any, insurers meet the definition of a small business and non-insurance small businesses are protected by this proposed rule change as the amendment provides a an earlier warning that a life insurer might be approaching a financially hazardous condition.

**12. Agency contact person:**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at:

**<http://oci.wi.gov/ocirules.htm>**

or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110

Email: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov)

Address: 125 South Webster St – 2<sup>nd</sup> Floor, Madison WI 53703-3474

Mail: PO Box 7873, Madison, WI 53707-7873

**13. Place where comments are to be submitted and deadline for submission:**

The deadline for submitting comments is 4:00 p.m. on the 14<sup>th</sup> day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

Sarah E. Norberg  
Legal Unit - OCI Rule Comment for Rule Ins 51.01  
Office of the Commissioner of Insurance  
PO Box 7873  
Madison WI 53707-7873

Street address:

Sarah E. Norberg  
Legal Unit - OCI Rule Comment for Rule Ins 51.01  
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125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53703-3474

Email address:

Sarah E. Norberg  
[sarah.norberg@wisconsin.gov](mailto:sarah.norberg@wisconsin.gov)

Web site: <http://oci.wi.gov/ocirules.htm>

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**The proposed rule changes are:**

**SECTION 1. Ins 51.01 (4) (a) 2., is amended to read:**

Ins 51.01 (4) (a) 2. If a life or health insurer that completes the life annual statement for the reporting year, the insurer has total adjusted capital which is greater than or equal to its company action level risk based capital but less than the product of its authorized control level risk based capital and 2.53.0 and has a negative trend.

**SECTION 2.** These changes first apply January 1, 2014.

**SECTION 3.** These changes will take effect on the first day of the month after publication, as provided in s. 227.22 (2) (intro.), Wis. Stats.

**SECTION 4.** This section may be enforced under ss. 601.41, 601.64, 623.11, Wis. Stats., or any other enforcement provision of chs. 600 to 646, Wis. Stats.

Dated at Madison, Wisconsin, this \_\_\_\_ day of \_\_\_\_\_, 2013.

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Theodore K. Nickel  
Commissioner of Insurance

**Office of the Commissioner of Insurance**  
**Private Sector Fiscal Analysis**

for Section Ins 51.01 relating to risk based capital requirements and  
affecting small business

This rule change will have no significant effect on the private sector regulated by OCI.

## ADMINISTRATIVE RULES – FISCAL ESTIMATE

**1. Fiscal Estimate Version**

Original    Updated    Corrected

**2. Administrative Rule Chapter Title and Number**

**INS 51.01 (4) (a) 2.**

**3. Subject**

risk based capital requirements and affecting small business

**4. State Fiscal Effect:**

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   May be possible to absorb within agency's budget.
		<input type="checkbox"/> Decrease Costs

**5. Fund Sources Affected:**

GPR    FED    PRO    PRS    SEG    SEG-S

**6. Affected Ch. 20, Stats. Appropriations:**

None

**7. Local Government Fiscal Effect:**

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Decrease Costs

**8. Local Government Units Affected:**

Towns    Villages    Cities    Counties    School Districts    WTCS Districts    Others: None

**9. Private Sector Fiscal Effect (small businesses only):**

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   May have significant economic impact on a substantial number of small businesses
	<input type="checkbox"/> Yes <input type="checkbox"/> No   May have significant economic impact on a substantial number of small businesses	<input type="checkbox"/> Decrease Costs

**10. Types of Small Businesses Affected:**

Domestic health or life insurers or domestic fraternal insurers that meet the definition of a small business.

**11. Fiscal Analysis Summary**

**12. Long-Range Fiscal Implications**

None

<b>13. Name - Prepared by</b> Sarah E. Norberg	<b>Telephone Number</b> (608) 266-0082	<b>Date</b> 07/02/2013
<b>14. Name – Analyst Reviewer</b>	<b>Telephone Number</b>	<b>Date</b>
<b>Signature—Secretary or Designee</b>	<b>Telephone Number</b>	<b>Date</b>