Chapter Ins 12

INSURANCE HOLDING COMPANIES AND INTERCORPORATE TRANSACTIONS RELATING TO INSURERS

Ins 12.01 Insurance holding companies and intercorporate transactions relating to insurers

Ins 12.01 Insurance holding companies and intercorporate transactions relating to insurers. (ss. 611.71, 611.72 and 611.73 and ch. 617, Stats.) (1) PURPOSE. This rule is promulgated to implement, interpret and set forth procedural requirements necessary to carry out the purpose and provisions of ss. 611.71, 611.72 and 611.73 and ch. 617, Stats.

(2) SCOPE. This rule shall apply to all insurers authorized to do business in this state.

(3) DEFINITIONS. Unless the context otherwise requires:

(a) *Corresponding period in the previous year* specified in s. 617.22 (3), Stats., should be determined by starting with the first day in the previous year and counting forward to the same date in the previous year as the date of the intended payment of dividend in the current year.

(b) *Domiciliary state* means the state of incorporation of a foreign insurer. The state of entry into the United States of an alien insurer shall be the domiciliary state of such insurer.

(c) *Executive officer* means any individual charged with active management and control in an executive capacity (including but not limited to a chairman of the board, president, vice president, treasurer, secretary, controller, and any other individual performaing functions corresponding to those performed by the foregoing officers) of a person, whether incorporated or unincorporated.

(d) *Insurance holding company system* consists of 2 or more affiliated persons, one or more of which is an insurer.

(e) *Registrant* is the insurer required to report under ss. 617.11, 617.21 or 617.22, Stats.

(f) *Surplus* as regards policyholders means the excess of total admitted assets of an insurer over total liabilities of the insurer.

(g) *Other terms found in these rules and in ch. 617, Stats.*, unless the context otherwise requires, are used as defined in said chapter. Other nomenclature or terminology is according to the insurance code, or industry usage if not defined by that code.

(4) RESPONSIBILITY OF AUTHORIZED INSURER. Each authorized insurer shall be responsible for statements and information which are required by ch. 617, Stats., and this rule from each of its affiliates.

(5) REPORTS ON AFFILIATES. Each insurer required to report under s. 617.11, Stats., and which is not exempt under sub. (2) thereof, shall furnish the required information on the Insurance Holding Company System Registration Statement, Exhibit 1. This registration statement shall be filed within 60 days after September 1, 1978, or within 15 days after the insurer acquires an affiliate, whichever is later, and shall include the following information:

(a) *Identity and control of registrant.* The name of each insurer registering or being registered, the address of the home office and the principal executive offices of each, the date on which each registrant acquired or became an affiliate or member of an insurance holding company system and the method (s) by which control of each registrant was acquired and is maintained.

(b) *Organizational chart.* A chart or listing clearly presenting the names and addresses of and interrelationships among all affiliates. No affiliate need be shown if its total assets are equal to less than 1/2 of 1%. of the total assets of the controlling affiliate within the insurance holding company system. The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by the insurer or another affiliate and the date of acquisition of control. If control of an affiliate is maintained other than by ownership or control of voting securities, the basis of such control must be shown. As to each person specified in such chart or listing show the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

(c) *Controlling affiliate.* The name and the address of the home office and the principal executive offices, the organizational structure and the principal business of each controlling affiliate. If court proceedings involving reorganization or liquidation of a controlling affiliate are pending, the title and location of the court, the nature of the proceedings and the date of commencement.

(d) *Biographical information.* Biographical information for any director or executive officer of any person who is a controlling affiliate.

The individual's name and address, his principal occupation and all offices and positions held during the past 5 years, and any convictions of crimes or misdemeanors other than minor traffic violations during the past 10 years.

(e) *Litigation or administrative proceedings.* A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which any controlling affiliate or any of its directors or executive officers, was a party or of which the property of any such affiliate is or was the subject, including the names of the parties and the court or agency in which such litigation or proceedings is or was pending:

1. Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and

2. Proceedings which may have a material effect upon the solvency or capital structure of any controlling affiliate including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganizations.

(f) *Financial statements, reports and proxy materials.* 1. Financial statement of any controlling affiliate including a balance sheet as of the end of latest fiscal year and an operating statement for such year and annually thereafter.

2. If at the time of the initial registration, the annual financial statement for the latest fiscal year is not available, an annual statement for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period. Such financial statements may be prepared on either an individual basis, or on a consolidated basis.

3. The annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of any controlling affiliate and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If any controlling affiliate is an insurer which is actively enaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the annual statement of such insurer filed with the insurance regulatory authority of the insurer's domicilary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such state.

4. The latest annual report to shareholders and proxy material of any controlling affiliate with the initial registration and annually thereafter.

(g) *Transactions, relationships and agreements.* A brief description of any of the following transactions between a domestic insurer and any affiliate, including but not limited to the nature and purpose of the transactions, the nature and amounts of any proposed payments and transfers of assets between the parties, the identity of all parties to the transactions and the relationship of the affiliated parties to the insurer:

1. Sales, purchases, exchanges, loans, extensions of credit, or investments;

2. Reinsurance treaties or agreements covering all or substantially all of one or more lines of insurance of the ceding company;

3. Service contracts or cost-sharing arrangements except for cost allocation arrangements based on generally accepted accounting principles or sections Ins 6.30 and Ins 6.31 Wis. Adm. Code;

4. Guarantees or undertakings for the benefit of an affiliate which result in actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

5. Other transactions significantly affecting the insurer with or between affiliates and not in the ordinary course of business;

6. Management contracts, or other contracts having substantially the characteristics of management contracts and exclusive agency contracts.

(h) *Amendments.* In the event of any material change in the information filed in a registration under this rule, the insurer shall file an amended statement or an appropriate amendment to the original statement within 15 days after the end of the month in which such change

became effective. For the purposes of this paragraph any transaction related to a management, exclusive agency or similar contract shall be deemed to be a material transaction, and any transaction of the kind described in par. (g) 1 through 5 shall be deemed material if it involves or exposes to risk, in any single transaction or group of related transactions, more than ½ of 1% of the insurer's admitted assets as of December 31 next preceding. All other changes shall be reported within 120 days after the end of the reporting insurer's fiscal year.

(6) REPORT FOR AFFILIATES. One insurer may report on behalf of all affiliated insurers.

(7) ADVANCE REPORT AND DISAPPROVAL OF SUBSTANTIAL TRANSACTIONS REQUIRED BY DOMESTIC INSURERS. (a) A report of any transaction specified in sub. (5) (g) which will have a substantial impact on the domestic insurer must be provided to the commissioner at least 30 days prior to its effective date. For purposes of this subsection any transaction related to a management, exclusive agency or similar contract shall be deemed to have a substantial impact, and any single transaction or group of related transactions specified in sub. (5) (g) 1 through 5 involving the lesser of 2% of admitted assets or 10% of surplus as regards policyholders as of December 31 next preceding, or ½ of 1% of the insurer's admitted assets as of December 31 next preceding if a compulsory order under s. 623.11, Stats., has been issued and is effective with respect to the insurer shall be deemed to have a substantial impact. Any transaction reported under this subsection need not also be reported as an amendment under sub. (5) (h).

(b) Any transaction reported under this subsection may be disapproved pursuant to s. 617.21 (3), Stats.

(8) TRANSACTIONS REQUIRED TO BE REPORTED BY NONDOMESTIC INSURERS. Every foreign or alien insurer required to report under s. 617.11, Stats., and which is not exempt under sub. (2) thereof, shall report the transactions specified in sub. (5) (g) within 15 days after the end of the month in which the transaction became effective if not earlier reported in a registration statement and any amendment thereof.

(9) CONSENT TO JURISDICTION. Every authorized insurer shall promptly submit on the Consent to Jurisdiction Statement, Exhibit 2, the consent to jurisdiction from each of its affiliates in accordance with s. 617.11 (5), Stats.

(10) DIVIDENDS AND OTHER DISTRIBUTIONS. (a) No insurer subject to registration under ch. 617, Stats., shall pay any extraordinary dividend or make any other extraordinary distribution to its stockholders until 30 days after the commissioner has received notice of the declaration thereof, unless the commissioner shall have approved such dividend within such 30 day period.

(b) An extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of 1. 10% of such insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, or 2. the net gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the 12 month period ending the thirty-first day of December

next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(c) Notwithstanding any other provision of the law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until 1. the commissioner has approved the payment of such dividend or such distribution, or 2. the commissioner has not disapproved such payment within the 30 day period referred to above.

(d) The report of any distribution to shareholders other than a stock dividend required under s. 617.22, Stats., shall be accompanied by a statement of the amount of such distribution made for the corresponding period in the previous year and shall include the insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, and the net gain from operations of the insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the 12 month period ending the thirty-first day of December next preceding.

(11) REPORTS AND REPLIES BY PERSONS SEEKING CONTROL OF DOMESTIC INSURERS. (a) *Registration statement.* Any person attempting to acquire control over a domestic insurer shall prior to the acquisition of control furnish the registration statement required by sub. (5).

(b) *Tender offers.* The registration statement shall be accompanied by copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto; any proposed employment, consultation, advisory or management contracts concerning the insurer; annual reports to the stockholders of the insurer and the person seeking control for the last 2 fiscal years.

(c) *Annual reports and proxy materials.* Upon request of the commissioner, copies of the latest annual reports to shareholders and proxy materials of the person seeking control or any of its affiliates must be furnished.

(12) ACQUISITION OF CONTROL OF OR MERGER WITH DOMESTIC INSURER. (a) *Approval by commissioner.* Any merger or other acquisition of control referred to in this subsection shall be subject to prior approval by the commissioner. Persons seeking to acquire control by any method shall satisfy the commissioner that the transaction at the time it is entered into is reasonable and fair to the interests of the insurer and that:

1. After the change of control, the domestic insurer referred to in this paragraph would be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

2. The effect of the merger or other acquisition of control would not be to substantially lessen competition in insurance in this state or tend to create a monopoly therein;

3. The financial condition of any acquiring party is not such as might jeopardize the financial stability of the insurer, or prejudice the interests of its policyholders or the interests of any remaining shareholders who are unaffiliated with any acquiring parties;

4. The terms of the offer, requests, invitations, agreement or acquisition referred to in this subsection are fair and reasonable to the shareholders of the insurer;

5. The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or make any other material change in its business or corporate structure or management are fair and reasonable to policyholders of the insurer or in the public interest; or

6. The competence and integrity of those persons who would control the operation of the insurer are such that it would be in the interest of the policyholders of the insurer and of the public to permit the merger or acquisition of control.

(b) *Mailings to shareholders: payment of expenses.* All statements, amendments, or other material filed pursuant to the provisions of this subsection shall be mailed by the insurer to its shareholders within 5 business days after the insurer has received such statements, amendments, or other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, the commissioner may require such person to file, with the commissioner, an acceptable bond or other deposit in an amount to be determined by the commissioner.

(c) *Exemptions.* The provisions of this subsection shall not apply to:

1. Any offers, requests, invitations, agreements or acquisitions by any person referred to in this subsection of any voting security which, immediately prior to the consummation of such offer, request, invitation, agreement or acquisition, was not issued or outstanding;

2. Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or as otherwise not comprehended within the purpose of this subsection.

(13) EXEMPTIONS. In addition to the statutory exemptions granted by s. 617.11 (2), Stats., the commissioner may from time to time exempt any person from the application of ch. 617, Stats., and this rule, when he deems the granting of such exemption consistent with the purposes of ch. 617 and this rule and in the public interest.

(14) INSTRUCTIONS FOR COMPLETION OF INSURANCE HOLDING COMPANY SYSTEM REGISTRATION STATEMENT. (a) The registration statment form is intended to be a guide in the preparation of the statements required by ss. 617.11 and 617.12, Stats. It is not intended to be a blank form furnished by the office of the commisioner of insurance. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are so prepared as to indicate to the reader the coverage of the items without the necessity of his referring to the text of the items or the instructions thereto. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to this effect shall be made.

(b) Registration statements shall include exhibits and all other papers and documents filed as a part thereof. Registration statements shall be manually signed in a manner prescribed on the form. If signature of

any person is affixed pursuant to power of attorney or similar authority a copy of such power of attorney or other authority shall be also filed with the registration statement.

(c) Registration statements shall be prepared on paper 8 1/2 x 11 inches in size. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statements, financial statements, or exhibits should be clear, easily readable and suitable for photocopying.

(d) Information required by any item of the registration statement may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed by the government authority, or any other document may be incorporated by reference in answer to any item of the registration statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents already on file with the comissioner need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

(e) Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the most important provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular parts of any exhibit or document on file with the commissioner and may be qualified in its entirety by such reference. In any case where 2 or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the date of execution, or other details, a copy of only one of such documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which such documents differ from the documents a copy of which is filed.

(f) Information required need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because the obtainment thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions:

1. The person filing shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof; and

2. The person filing shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge this information rests and stating the result of a request made to such person for the information.

(g) If it is impractical to furnish any required information, document or report at the time it is required to be filed, there may be filed with the commissioner as a separate document an application 1) identifying the

information, document or report in question, 2) stating why the filing thereof at the time required is impractical, and 3) requesting an extension of time for filing the information, document or report to a specified date. The application shall be deemed granted unless the commissioner within 15 days after receipt thereof, shall deny the request.

(h) In addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

(i) Any amendment for the registration statement shall include on the top of the cover page the phrase: "Amendment No. _____to" and shall indicate the date of the amendment and not the date of the original filing.

(15) INSTRUCTIONS FOR COMPLETION OF CONSENT TO JURISDICTION STATEMENT. (a) The Consent to Jurisdiction Statement form is intended to be a guide in the preparation of the statement required by s. 617.11 (5), Stats. It is not intended to be a blank form furnished by the office of the commissioner of insurance.

(b) The statement shall be manually signed in the manner prescribed on the form. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.

(c) Statements shall be prepared on paper 8 1/2 X 11 inches in size.

(16) PENALTY. Violations of this rule or any order issued thereunder shall subject the person violating the same to s. 601.64, Stats.

(17) SEVERABILITY. If any part of this rule or its application to any person or circumstance is held invalid, the invalidity does not affect other parts or applications of the rule which can be given effect without the invalid part or application, and to this end the parts of the rule are declared to be severable.

EXHIBIT 1

INSURANCE HOLDING COMPANY SYSTEM REGISTRATION STATEMENT

Filed with the Office of the Commissioner of Insurance of the State of Wisconsin

BY

_____

Name of Registrant

On Behalf of the Following Insurance Companies

Name Address

_____

_____

_____

_____

_____

_____

Date: _____, 19____

Name, Title, Address and Telephone Number of Individual to Whom Notices and Correspondence Concerning this Statement Should be Addressed:

_____

_____

_____

_____

(1) *Identity and Control of Registrant*

_____

_____

_____

_____

(2) *Organizational Chart*

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_____

_____

_____

(3) *Controlling Affiliate*

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_____

_____

(4) *Biographical Information*

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_____

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(5) *Litigation or Administrative Proceedings*

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_____

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_____

(6) *Financial Statements, Reports and Proxy Materials*

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_____

_____

_____

(7) *Transactions, Relationships and Agreements*

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_____

_____

_____

(8) *Amendments*

_____

_____

_____

_____

SIGNATURE

Pursuant to the requirements of ch. 617, Stats., and section Ins 12.01 Wis. Adm. Code the Registrant has caused this registration statement to be duly signed on its behalf in the city of _____ and state of _____ on the _____ day of _____, 19 ____

_____
(Name of Registrant)

(SEAL) BY _____
(Name) (Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

The undersigned deposes and says that he has duly executed the attached registration statement dated _____, 19 ____, for and on behalf of _____: that he is the
(Name of Company)
_____ of such company, and that he has authority
(Title of Officer)
to execute and file such instrument. Deponent further says that he is familiar with such instrument and that the facts therein set forth are true to the best of his knowledge, information and belief.

(Signature) _____

(Type or print name beneath) _____

EXHIBIT 2
CONSENT TO JURISDICTION STATEMENT

Filed with the Office of the Commissioner of Insurance, of the state of Wisconsin

BY

_____

Name of Affiliate

On Behalf of the Following Insurance Companies

Name Address

_____

_____

_____

_____

_____

_____

Date: _____, 19____

Name, Title, Address and Telephone Number of Individual to Whom Notices and Correspondence Concerning this Statement Should be Addressed:

_____

_____

_____

_____

_____

_____

CONSENT TO JURISDICTION

The, (I), _____ (Affiliate), an affiliate of _____ (Insurer), an insurer authorized to do business in the state of Wisconsin, pursuant to the requirements of ch. 617, Stats., and section Ins 12.01 Wis. Adm. Code do hereby consent to the jurisdiction of the Commissioner of Insurance and the courts of the state of Wisconsin.

SIGNATURE

_____ (Name of Registrant) has caused this statement to be duly signed on its behalf in the city of _____ and state of _____ on the _____ day of _____, 19 ____

_____

(Name of Registrant)

(SEAL) BY_____

(Name) (Title)

Attest:

_____

(Signature of Official)

_____

(Title)

CERTIFICATION

The undersigned deposes and says that he has duly executed the attached statement dated _____, 19 ____, for and on behalf of _____, that he is the _____
(Name of Registrant) (Title of Official)
of such company, and that he is authorized to execute and file such instrument. Deponent further says that he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his knowledge and belief.

(Signature) _____

(Type or print name beneath) _____

History: Cr. Register, July, 1972, No. 199, eff. 8-1-72; am. (1), (3), (4), (5), (intro.) and (g), (7) through (10), (11) (a), renum. (12) to be (13) and am., (13) to be (14) and am. (a), (14) to be (15) and am. (a), (15) to be (16), (16) to be (17) and am. cr. (5) (h), (12) and (18), Register, July, 1978, No. 271, eff. 8-1-78; am. (9), Register, March, 1979, No. 279, eff. 4-1-79; r. (16), renum. (17) and (18) to be (16) and (17), Register, May, 1979, No. 281, eff. 6-1-79.