

## **ORDER AMENDING AND CREATING A RULE**

### **Office of the Commissioner of Insurance**

**Rule No.** Agency 145 – Ins 40 and 53.

The Commissioner of Insurance proposes an order to amend Ins 40.01 and 40.05; and to create Ins 40.01 (5m) and (7m), 40.07 to 40.09, ch. 53 (title) and chapter, relating to holding company supervision amendments and corporate governance disclosure requirements for NAIC accreditation and affecting small business.

The statement of scope for this rule SS: 080-18, was approved by the Governor on July 9, 2018, published in Register No. 751A3, on July 16, 2018, and approved by the Commissioner on August 28, 2018.

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

#### **Statutes interpreted:**

ss. 610.80, 617.12, 617.215, Stats.

#### **Statutory authority:**

ss. 601.41 (3) (a), 601.42, 610.80, 617.12, 617.215, Stats.

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

The Commissioner has the general authority to promulgate rules necessary to administer and enforce chs. 600 to 655, Stats., and as provided under ss. 227.11 (2) (a) and 601.41, Stats. Additionally, s. 601.41 (3) (a), Stats., grants the Commissioner “rule-making authority under s. 227.11 (2).” Further, s. 601.42 (1g), Stats., gives the Commissioner the authority to require from those subject to regulation, among other things, “statements, reports, answers to questionnaires, and other information, and evidence thereof, in whatever reasonable form the commissioner designates, and at such reasonable intervals as the commissioner chooses, or from time to time.” Finally, s. 601.42 (2), Stats., states that [T]he commissioner may prescribe forms for the reports under subs. (1g) and (1r) and specify who shall execute or certify such reports.”

Section 610.80, Stats., was recently enacted as a result of 2017 Wis. Act 313, establishing the requirement for an annual corporate governance disclosure. Section 610.80 (7), Stats., states, “[T]he commissioner may promulgate any rules necessary to carry out the purposes of this section.” The proposed rule would create ch. Ins 53 to delineate the requirements for the annual disclosure for corporate governance and specify timing and the form as prescribed by the Commissioner in order for OCI to comply with the statutory requirements contained in 2017 Wis. Act 313.

Section 617.215 (2) (a) 3., Stats., authorizes the commissioner to “clarify the functions of a supervisory college and the role of other regulators, including the establishment of a group-wide supervisor.” Further, s. 617.12 (2), Stats., authorizes the commissioner “to promulgate rules requiring

insurers to report their enterprise risk, including the form of the report and the manner and process for filing the report”. The NAIC model regarding group-wide supervision of internationally active insurance groups falls within the regulation of insurance holding companies and intercorporate transactions and therefore is applicable.

The Office of the Commissioner of Insurance (OCI) is proposing rules that will address several financial regulations implementing newly required accreditation standards for the financial supervision of insurers. Specifically the proposed rules will create ch. Ins 53 to implement the corporate governance annual disclosures as established in 2017 Wis. Act 313 that created s. 610.80, Stats.; amend various sections of ch. Ins 40 to reflect changes to the holding company system for group-wide supervision of internationally active insurance groups. The proposed changes will bring the office into compliance with the National Association of Insurance Commissioners (NAIC) Financial Regulation Standards and Accreditation Program requirements that are a necessary component of the accreditation of the office.

Accreditation is a certification given to a state insurance department once it has demonstrated that it has met legal, financial and organizational standards. Accreditation is important to retain OCI’s ability to oversee its domestic insurers including those doing a multi-state business. At the same time the proposed rules reduce burdens on some insurers by creating consistency across states for those insurers doing business in multiple states.

**Related statutes or rules:**

ss. 610.80 and 617.215 (2) (a) 3., Stats.

**Plain language analysis:**

The objectives of the proposed rules are: to improve the regulation of internationally active insurance groups that include at least one Wisconsin insurer; and to specify filing procedures and the contents of the corporate governance annual report which insurers are required to file under s. 610.80, Stats.

Both of the changes are to bring Wisconsin into alignment with NAIC Model Regulations. Wisconsin must adopt them in substantively the same form as the NAIC Model Regulations if the Wisconsin Office of the Commissioner of Insurance (OCI) is to remain a state insurance regulatory agency that is accredited by the NAIC. It is a goal of the OCI and a benefit to domestic insurers for OCI to maintain its accreditation because as an NAIC accredited state, domestic insurers are only subject to certain filing requirements with OCI and financial examination by OCI. Without accreditation, domestic insurers could be subject to financial examination and filing requirements for all jurisdictions in which they operate. This could include examination from all 56 U.S. jurisdictions for some insurers. Without accreditation, the cost of doing business for Wisconsin’s domestic insurance industry would increase because their regulation by other states would increase. In order to maintain accreditation, OCI must adopt certain standard regulations developed by the NAIC. In addition, the proposed changes are similar to those adopted or that will be adopted in other states and work to promote uniformity for insurance holding company systems operating across multiple states.

Wisconsin’s current ch. Ins 40, Wis. Adm. Code, generally follows the NAIC Insurance Holding Company System Regulatory Model Act (Model Act) and Insurance Holding Company System Model

Regulation (Model Regulation). The NAIC recently made changes to its Model Act to improve the coordination of regulatory efforts when internationally active insurance groups are involved. The proposed rule changes in ch. Ins 40, would authorize the commissioner to act as, or designate the regulatory official of another jurisdiction to act as, the group-wide supervisor of any internationally active insurance group that includes at least one Wisconsin insurer. A similar cooperative regulatory approach is already used on an interstate level. The rule change would expand this type of approach to include foreign jurisdictions that meet certain regulatory criteria. In addition, it would enable Wisconsin to maintain its NAIC accreditation.

Secondly, the NAIC recently created the NAIC Corporate Governance Annual Disclosure Model Act, the goal of which is to require an annual filing that would enable the commissioner to gain a better understanding of an insurer's corporate governance framework. In 2017, Wisconsin enacted s. 610.80, Stats, which generally follows the Model Act. The NAIC also created the Corporate Governance Annual Disclosure Model Regulation, which sets forth procedures for filing and the required contents of the corporate governance annual disclosure. The proposed rules creating ch. Ins 53, follow the provisions of the Model Regulation, and are necessary in order for s. 610.80, Stats, to take effect. The rules are also required for Wisconsin to maintain its NAIC accreditation.

### **Summary of and preliminary comparison with any existing or proposed federal statutes and regulations:**

Accredited insurance departments are required to undergo a comprehensive review by an independent review team every five years. To ensure OCI continues to meet financial solvency oversight standards and accreditation standards OCI is required to have adequate statutory and administrative authority to regulate an insurer's corporate and financial affairs and the necessary resources to carry out that authority.

OCI is proposing implementation of both the NAIC updated model holding company regulation and the NAIC corporate governance annual disclosure model regulation. Specifically, both changes will create new provisions that are not currently covered in existing rules. Following the enactment of s. 610.80, Stats., which established the requirements of an annual corporate governance disclosure, provided ch. Ins 53 would delineate the requirements for that annual disclosure and specify the timing and the form as prescribed by the commissioner in order for OCI to comply with the statutory requirements. The proposed changes to ch. Ins 40 would allow the commissioner to act as, or recognize another regulator to act as, a group-wide supervisor of an internationally active insurance group, resulting in more efficient regulation and better cooperation with other regulators.

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

**Illinois:** No pending laws or regulations regarding supervision of internationally active insurance groups or corporate governance annual disclosures.

**Iowa:** Iowa Admin Code R. 191-111.1-191-111.5 implementing Iowa Code § 521H for corporate governance annual disclosures. Iowa Code § 521A.6B addresses the supervision of internationally active insurance groups.

**Michigan:** No pending laws or regulations regarding supervision of internationally active insurance groups, Michigan enacted HB-6520 on December 6, 2018, M.C.L.A. 500.1755 creating ch 17A and s. 3032 regarding corporate governance annual disclosure effective January 1, 2020

**Minnesota:** No pending laws or regulations regarding supervision of internationally active insurance groups or corporate governance annual disclosures.

**A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule:**

The OCI has reviewed NAIC models and insurer's financial information to support the analysis that this rule change is beneficial to the state of Wisconsin and its insurance industry.

**Analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses or in preparation of an economic impact analysis:**

The proposed rules will implement provisions that all states will need to have in place for accreditation purposes. For insurers subject to the jurisdiction of the Commissioner that do the business of insurance in many states including Wisconsin the requirements proposed will be consistent with other states' requirements. For insurers that do the business of insurance solely within the state of Wisconsin, the requirements would be imposed only as applicable. The proposed rules are expected to have a negligible economic impact since no special expertise will be required to complete the reporting. Specifically, insurers will not be required to incur costs for retaining actuaries or certified public accountants as a result of the proposed rules. The information may be supplied by the insurers in a form convenient to them as the Commissioner will delineate the content and not the structure of the reports.

**Effect on small business:**

The rule is not likely to have a significant impact on small businesses that are insurers or that are insured by businesses subject to the proposed rule as little to no economic impact is anticipated and therefore will not be passed on to insureds. Under the proposed rule and NAIC models small businesses including town mutual and fraternal organizations will be required to file the annual corporate governance disclosures. This is a new requirement and one that initially will require time but not special expertise. The OCI considered alternatives to lessen the impact on small businesses; however as this is an accreditation requirement the OCI cannot exempt or lessen the requirements for any of the licensed insurers doing business in the state.

**A copy of any comments and opinion prepared by the Board of Veterans Affairs under s. 45.03 (2m), Stats., for rule proposed by the Department of Veterans Affairs.**

None.

**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 under Rule-Making Information at:  
**<https://oci.wi.gov/Pages/RegulationHome.aspx>**

or by contacting Karyn Culver, Paralegal, at:

Phone: (608) 267-9586

Email: karyn.culver@wisconsin.gov

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

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

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**The proposed rule changes are:**

**SECTION 1. Ins 40.01 (5m) and (7m) are created to read:**

**Ins 40.01 (5m)** “Group-wide supervisor” means the regulatory official who is authorized to conduct and coordinate group-wide supervision activities and who is determined or acknowledged by the commissioner to have sufficient significant contacts with the internationally active insurance group.

**(7m)** “Internationally active insurance group” means an insurance holding company system that includes an insurer registered consistent with s. 40.03, and all of the following:

(a) Premiums written in at least three countries.

(b) The percentage of gross premiums written outside the United States is at least 10 percent of the insurance holding company’s total gross written premiums.

(c) Based on a 3-year rolling average, either the total assets of the insurance holding company system are at least \$50 billion dollars or the total gross written premiums of the insurance holding company system are at least \$10 billion dollars.

**SECTION 2. Ins 40.05 is amended to read:**

**Ins 40.05 Privileged information.** The information required to be filed with the commissioner under to ss. 40.02-~~and, Ins 40.025, 40.07, and 40.08,~~ is required pursuant to s. 601.42, Stats., and is subject to s. 601.465, Stats.

**SECTION 3. Ins 40.07 to 40.09 are created to read:**

**Ins 40.07 Designation of the group-wide supervisor of internationally active insurance groups. (1) (a)** The commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group in accordance with this section. The commissioner may acknowledge that another regulatory official is a more appropriate group-wide supervisor when the internationally active insurance group meets any of the following requirements:

1. Does not have substantial insurance operations in the United States.

2. Has substantial insurance operations in the United States, but not in Wisconsin.

3. Has substantial insurance operations in the United States and Wisconsin, but the commissioner has determined pursuant to the factors set forth in sub. (2) and s. 40.08 (2), that another regulatory official is the appropriate group-wide supervisor.

**(b)** An insurance holding company system that does not qualify as an internationally active insurance group may request that the commissioner act as the group-wide supervisor or acknowledge another regulatory official as the group-wide supervisor.

**(2)** When determining the appropriate group-wide supervisor, the commissioner shall consider the following factors, in cooperation with other state, federal and international regulatory officials involved with supervision of the internationally active insurance group and its members, and in consultation with the internationally active insurance group:

(a) The place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group's written premiums, assets or liabilities.

(b) The place of domicile of the top-tiered insurer in the insurance holding company system of the internationally active insurance group.

(c) The location of the executive offices or largest operational offices of the internationally active insurance group.

(d) Whether the regulatory system of a regulatory official who is acting, or is interested in acting, as the group-wide supervisor is substantially similar to the laws of Wisconsin or is sufficient for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials.

(e) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

(3) In the event of a material change in the internationally active insurance group the commissioner shall make a determination to act as the group-wide supervisor or acknowledge another regulatory official as the appropriate group-wide supervisor for the internationally active insurance group pursuant to subs. (1) and (2).

(4) The commissioner is authorized to collect from any insurer registered under s. 40.03, all information necessary to determine whether the commissioner may act as the group-wide supervisor of an internationally active insurance group or acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify the insurer registered as required by s. 40.03, and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than 30 days to provide the commissioner with additional information pertinent to the pending determination. The commissioner shall publish on its Internet website the identity of internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.

**40.08 Duties of the group-wide supervisor.** (1) If the commissioner is the group-wide supervisor for an internationally active insurance group, the commissioner is authorized to engage in any of the following group-wide supervision activities:

(a) Assess the enterprise risks within the internationally active insurance group to ensure the following:

1. The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management.

2. Reasonable and effective risk mitigation measures are in place.

(b) Request information necessary and appropriate to assess enterprise risk, from any member of an internationally active insurance group subject to the commissioner's supervision, including information about the members of the internationally active insurance group regarding the following:

1. Governance, risk assessment and management.

2. Capital adequacy.

3. Material intercompany transactions.

(c) Coordinate and compel, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, the development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance.

(d) Communicate with other state, federal and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions in s. 40.05, and through supervisory colleges under s. 617.215, Stats.

(e) Enter into agreements with, or obtain documentation from, any insurer registered under s. 40.03, any member of the internationally active insurance group, and any other state, federal and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in Wisconsin is doing business in Wisconsin or is otherwise subject to the jurisdiction of Wisconsin.

(f) Other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the commissioner.

(2) If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the NAIC is the group-wide supervisor, the commissioner is authorized to reasonably cooperate, including through supervisory colleges, with group-wide supervision undertaken by the group-wide supervisor, when the following provisions are met:

(a) The commissioner's cooperation is in compliance with the laws of Wisconsin.

(b) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the commissioner is authorized to refuse recognition and cooperation.

(3) The commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered as required by s. 40.03, any affiliate of the insurer, and other state, federal and international regulatory agencies for members of the internationally active insurance group that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

**40.09 Insurer's duty to pay reasonable expenses.** (1) An insurer registered under s. 40.03 that is also subject to ss. 40.07 to 40.08, shall pay, pursuant to s. Ins 16.01 (6) (d), the reasonable expenses of the commissioner's participation in the administration of the internationally active group, including any of the following:

(a) The commissioner's expenses from the engagement of attorneys, actuaries and any other professionals.

(b) The commissioner's reasonable travel expenses.

**SECTION 4. Ins Ch. 53 (title) and chapter are created to read:**  
Ins 53 (title)

#### CHAPTER INS 53

#### CORPORATE GOVERNANCE ANNUAL DISCLOSURES

**53.01 Purpose.** The purpose of these regulations is to set forth the procedures for filing and the required contents of the Corporate Governance Annual Disclosure (CGAD), deemed necessary by the commissioner to carry out the provisions of s. 610.80, Stats.

**53.02 Definitions.** In addition to definitions contained in s. 610.80 (1), Stats., the following

definitions shall apply in this chapter:

(1) “Commissioner” means the Wisconsin insurance commissioner.

(2) “Insurance group” means those insurers and affiliates included within an insurance holding company system as defined at s. 622.03 (2).

(3) “Senior management” means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and shall include, for example, the Chief Executive Officer (CEO), Chief Financial Officer, Chief Operating Officer, or any other “C” level executives.

**53.03 Filing procedures.** Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state.

**53.04 Contents of the corporate governance annual disclosure .** (1) The insurer or insurance group shall be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, since these may provide a means to demonstrate the strengths of their governance framework and practices.

(2) The CGAD shall describe the insurer’s or insurance group’s corporate governance framework and structure including consideration of all of the following:

(a) The board and its various committees that are ultimately responsible for overseeing the insurer or insurance group and the level at which oversight occurs, for example, the ultimate control level, intermediate holding company level, or legal entity level. The insurer or insurance group shall describe and discuss the rationale for the current board size and structure.

(b) The duties of the board and each of its significant committees and how they are governed including bylaws, charters, informal mandates, as well as how the board’s leadership is structured, including a discussion of the roles of CEO and chairman of the board within the organization.

(c) The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees including a discussion of the following factors:

1. How the qualifications, expertise and experience of each board member meet the needs of the insurer or insurance group.

2. How an appropriate amount of independence is maintained on the board and its significant committees.

3. The number of meetings held by the board and its significant committees over the past year as well as information on director attendance.

4. How the insurer or insurance group identifies, nominates and elects members to the board and its committees. The discussion should include, for example:

a. Whether a nomination committee is in place to identify and select individuals for consideration.

b. Whether term limits are placed on directors.

c. How the election and re-election processes function.

d. Whether a board diversity policy is in place and if so, how it functions.

5. The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance including any board or committee training programs that have been put in place.

(d) The insurer or insurance group shall describe the policies and practices for directing senior management, including a description of the following factors:



1. Any processes or practices including as an example the suitability standards, to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:

a. Identification of the specific positions for which suitability standards have been developed and a description of the standards employed.

b. Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.

2. The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example, the following:

a. Compliance with laws, rules, and regulations.

b. Proactive reporting of any illegal or unethical behavior.

3. The insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the commissioner to understand how the organization ensures that compensation programs do not encourage and/or reward excessive risk taking. Elements to be discussed may include, for example, all of the following:

a. The board's role in overseeing management compensation programs and practices.

b. The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid.

c. How compensation programs are related to both company and individual performance over time.

d. Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels.

e. Any claw back provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted.

f. Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

4. The insurer's or insurance group's plans for CEO and senior management succession.

(e) The insurer or insurance group shall describe the processes by which the board, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of the following:

1. How oversight and management responsibilities are delegated between the board, its committees and senior management.

2. How the board is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks.

3. How reporting responsibilities are organized for each critical risk area. The description should allow the commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description shall include the following critical risk areas of the insurer:

a. Risk management processes. An own risk and solvency assessment (ORSA) summary report filer, may refer to its ORSA summary report under s. 622.09, Stats.

- b. Actuarial function.
- c. Investment decision-making processes.
- d. Reinsurance decision-making processes.
- e. Business strategy and finance decision-making processes.
- f. Compliance function.
- g. Financial reporting and internal auditing.
- h. Market conduct decision-making processes.

**SECTION 5. INITIAL APPLICABILITY.** These changes first apply to insurers or insurance groups on January 1, 2020.

**SECTION 6. EFFECTIVE DATE.** A rule is effective on the first day of the month commencing after the date of publication in accordance with s. 227.22 (2), Stats.