

## Chapter Ins 51

### CAPITAL REQUIREMENTS FOR INSURERS

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#### Subchapter I — Risk Based Capital Requirement for Insurers

**Ins 51.01 Definitions.** In this subchapter:

(1) “Adjusted risk based capital report” means a risk based capital report which has been adjusted by the commissioner in accordance with s. Ins 51.05 (6).

(2) “Authorized control level event” means any of the following events:

(a) The filing of a risk based capital report by the insurer which indicates that the insurer’s total adjusted capital is greater than or equal to its mandatory control level risk based capital but less than its authorized control level risk based capital.

(b) The notification by the commissioner to the insurer of an adjusted risk based capital report that indicates the event in par. (a), if the insurer does not challenge the adjusted risk based capital report under s. Ins 51.50.

(c) If, under s. Ins 51.50, the insurer challenges an adjusted risk based capital report that indicates the event in par. (a), notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer’s challenge.

(d) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order, if the insurer has not challenged the corrective order under s. Ins 51.50.

(e) If the insurer has challenged a corrective order under s. Ins 51.50 and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

(3) “Authorized control level risk based capital” means the number determined under the risk-based capital formula in accordance with the risk based capital instructions.

(4) “Company action level event” means any of the following events:

(a) The filing of a risk based capital report by an insurer which indicates one of the following:

1. The insurer’s total adjusted capital is greater than or equal to its regulatory action level risk based capital but less than its company action level risk based capital.

2. If a life or health insurer, 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 2.5 and has a negative trend.

(b) The notification by the commissioner to the insurer of an adjusted risk based capital report that indicates an event in par. (a), if the insurer does not challenge the adjusted risk based capital report under s. Ins 51.50.

(c) If, under s. Ins 51.50, an insurer challenges an adjusted risk based capital report that indicates the event in par. (a), the notification

by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer’s challenge.

(5) “Company action level risk based capital” means, with respect to any insurer, the product of 2.0 and its authorized control level risk based capital.

(6) “Corrective order” means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

(7) “Domestic insurer” means an insurer organized under the laws of this state.

(8) “Foreign insurer” means any insurer which is licensed to do business in this state that is not a domestic insurer.

(8m) “Health maintenance organization insurer” has the meaning given in s. 600.03 (23c), Stats.

(9) “Insurer” means

(a) An insurer as defined under s. 600.03 (27), Stats., except, unless otherwise required by the commissioner under par. (b), it does not include any of the following:

1. A town mutual insurer organized under ch. 612, Stats.
2. An insurer governed by ch. 615 or 616, Stats.
3. A fraternal insurer.

4. A service insurance corporation as defined under s. 600.03 (41m), Stats., but only until the date on which the commissioner makes a determination that risk based capital reporting forms and instructions for service insurance corporations have been developed and adopted by the NAIC.

5. An insurance plan administered by the office or a board attached to the office or a plan established under ch. 619, Stats.

6. Monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(b) One or more persons otherwise excepted from the definition of insurer under par. (a) if the commissioner finds that compliance with this subchapter will improve the efficiency and effectiveness of the office’s solvency monitoring and the commissioner requires the person to comply as an insurer under this subchapter.

(10) “Life or health insurer” means any insurer licensed to write life, annuity or health insurance or 2 or more of those lines, or a licensed property and casualty insurer writing only accident and health insurance. A “life or health insurer” does not include a health maintenance organization insurer as defined in s. 600.03 (23c), Stats., or an insurer writing only limited service health organization business as defined in s. 609.01 (3), Stats.

(11) “Mandatory control level event” means any of the following events:

(a) The filing of a risk based capital report which indicates that the insurer’s total adjusted capital is less than its mandatory control level risk based capital.

(b) Notification by the commissioner to the insurer of an adjusted risk based capital report that indicates the event in par.

(a), if the insurer does not challenge the adjusted risk based capital report under s. Ins 51.50.

(c) If, pursuant to s. Ins 51.50, the insurer challenges an adjusted risk based capital report that indicates the event in par. (a), notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(12) "Mandatory control level risk based capital" means the product of .70 and the authorized control level risk based capital.

(13) "NAIC" means the national association of insurance commissioners.

(14) "Negative trend" means, with respect to a life or health insurer, trend over a period of time which is negative, as determined in accordance with the trend test calculation included in the risk based capital instructions.

(15) "Property and casualty insurer" means any insurer licensed to sell property or casualty insurance.

(16) "Regulatory action level event" means any of the following events:

(a) The filing of a risk based capital report by an insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level risk based capital but less than its regulatory action level risk based capital.

(b) The notification by the commissioner to an insurer of an adjusted risk based capital report that indicates the event in par. (a), if the insurer does not challenge the adjusted risk based capital report under s. Ins 51.50.

(c) If, pursuant to s. Ins 51.50, the insurer challenges an adjusted risk based capital report that indicates the event in par. (a), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(d) The failure of the insurer to file a risk based capital report by the March 1, unless the insurer has provided an explanation for such failure which is satisfactory to the commissioner and has cured the failure within ten days after March 1.

(e) The failure of the insurer to submit a risk based capital plan to the commissioner within the time period set forth in s. Ins 51.15 (2).

(f) Notification by the commissioner to the insurer of all of the following:

1. The risk based capital plan or revised risk based capital plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory.

2. Such notification constitutes a regulatory action level event with respect to the insurer, provided the insurer has not challenged the determination under s. Ins 51.50.

(g) If, under s. Ins 51.50, the insurer challenges a determination by the commissioner under par. (f), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected such challenge.

(h) Notification by the commissioner to the insurer that the insurer has failed to adhere to its risk based capital plan or revised risk based capital plan, but only if such failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its risk based capital plan or revised risk based capital plan and the commissioner has so stated in the notification, provided the insurer has not challenged the determination under s. Ins 51.50.

(i) If, under s. Ins 51.50, the insurer challenges a determination by the commissioner under par. (h), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge.

(17) "Regulatory action level risk based capital" means, with respect to any insurer, the product of 1.5 and its authorized control level risk based capital.

(18) "Revised risk based capital plan" means a risk based capital plan prepared by an insurer with or without the commissioner's recommendation after the original plan is rejected by the commissioner.

(19) "Risk based capital instructions" means the risk based capital report including risk based capital instructions adopted by the NAIC, as of September 1, 1996, and, if approved in writing by the commissioner, the risk based capital report and instructions as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(20) "Risk based capital level" means an insurer's company action level risk based capital, regulatory action level risk based capital, authorized control level risk based capital, or mandatory control level risk based capital.

(21) "Risk based capital plan" means a comprehensive financial plan containing the elements specified in s. Ins 50.15 (1).

(22) "Risk based capital report" means the report required under s. Ins 51.05.

(23) "Total adjusted capital" means the sum of all of the following:

(a) An insurer's statutory capital and surplus.

(b) Such other items, if any, as the risk based capital instructions may provide.

**History:** Cr. Register, December, 1996, No. 492, eff. 1-1-97; cr. (8m), r. (9) (a) 1., 2., renum. (9) (a) 3. to 8. to be (9) (a) 1. to 6., am. (10), Register, May, 1999, No. 521, eff. 6-1-99.

**Ins 51.05 Risk based capital reports.** (1) Every domestic insurer shall, on or prior to each March 1, prepare and submit a report of its risk based capital levels as of the end of the calendar year just ended, in a form and containing such information as is required by the risk based capital instructions. For the purpose of this section filing of a risk based capital report with the NAIC constitutes filing with the commissioner. A domestic insurer shall file its risk based capital report with all of the following:

(a) The NAIC in accordance with the risk based capital instructions.

(b) The insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its risk based capital report not later than the later of:

1. Fifteen days from the receipt of notice to file its risk based capital report with that state.

2. March 1.

(1g) The risk based capital of health maintenance organization insurers and of insurers writing only limited service health organization business shall be determined in accordance with the formula set forth in the risk based capital instructions. The formula shall take into account, and may adjust for the covariance between each of the following:

(a) Asset risk.

(b) Credit risk.

(c) Underwriting risk.

(d) All other business risks and such other relevant risks as are set forth in the risk based capital instructions.

(1r) The risks identified under sub. (1g) shall be provided for as determined in each case by applying the factors in the manner set forth in the risk based capital instructions.

(2) A life or health insurer's risk based capital shall be determined in accordance with the formula set forth in the risk based capital instructions. The formula shall take into account, and may adjust for the covariance between each of the following:

(a) The risk with respect to the insurer's assets.

(b) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations.

(c) The interest rate risk with respect to the insurer's business.

(d) All other business risks and such other relevant risks as are set forth in the risk based capital instructions.

(3) The risks identified under sub. (2) shall be provided for as determined in each case by applying the factors in the manner set forth in the risk based capital instructions.

(4) A property and casualty insurer's risk based capital shall be determined in accordance with the formula set forth in the risk based capital instructions. The formula shall take into account, and may adjust for the covariance between each of the following:

(a) Asset risk.

(b) Credit risk.

(c) Underwriting risk.

(d) All other business risks and such other relevant risks as are set forth in the risk based capital instructions.

(5) The risks identified under sub. (4) shall be provided for as determined in each case by applying the factors in the manner set forth in the risk based capital instructions.

**Note:** An excess of capital over the amount produced by the risk based capital requirements in this subchapter and the formulas, schedules and instructions referenced in this subchapter is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the risk based capital levels required by this subchapter. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this chapter.

(6) If a domestic insurer files a risk based capital report which in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the risk based capital report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment.

**History:** Cr. Register, December, 1996, No. 492, eff. 1-1-97; cr. (1g) and (1r), Register, May, 1999, No. 521, eff. 6-1-99.

**Ins 51.15 Company action event.** (1) If a company action level event occurs, the insurer shall prepare and submit to the commissioner a risk based capital plan which shall include all of the following:

(a) Identification of the conditions which contribute to the company action level event.

(b) Proposals of corrective actions which the insurer intends to take and would be expected to result in the elimination of the company action level event.

(c) Projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital or surplus or both. The projections for both new and renewal business shall include separate projections for each major line of business and separately identify each significant income, expense and benefit component, if appropriate.

(d) Identification of the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions.

(e) Discussion of the quality of, and problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(f) Such other information as is requested by the commissioner.

(2) The risk based capital plan required under this section shall be submitted:

(a) Within 45 days of the company action level event; or

(b) If the insurer challenges an adjusted risk based capital report under s. Ins 51.50, within 45 days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(3) Within 60 days after the submission by an insurer of a risk based capital plan to the commissioner, the commissioner shall notify the insurer whether the risk based capital plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the risk based capital plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which will render the risk based capital plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a revised risk based capital plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised risk based capital plan to the commissioner:

(a) Within 45 days after the notification from the commissioner; or

(b) If the insurer challenges the notification from the commissioner under s. Ins 51.50, within 45 days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) If the commissioner notifies an insurer that the insurer's risk based capital plan or revised risk based capital plan is unsatisfactory, the commissioner may at the commissioner's discretion, subject to the insurer's right to a hearing under s. Ins 51.50, specify in the notification that the notification constitutes a regulatory action level event.

(5) Every domestic insurer that files a risk based capital plan or revised risk based capital plan with the commissioner shall file a copy of the risk based capital plan or revised risk based capital plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) Such state has a risk based capital provision substantially similar to s. Ins 51.50 (1); and

(b) The insurance commissioner of that state has notified the insurer of its request for the filing in writing.

(6) If an insurer is required to file a risk based capital plan or revised risk based capital plan under sub. (5) in a state it shall file a copy of the risk based capital plan or revised risk based capital plan in that state no later than the later of the following:

(a) Fifteen days after the receipt of notice to file a copy of its risk based capital plan or revised risk based capital plan with the state.

(b) The date on which the risk based capital plan or revised risk based capital plan is filed under s. Ins 51.15 (2) or (3).

**History:** Cr. Register, December, 1996, No. 492, eff. 1-1-97.

**Ins 51.20 Regulatory action level event.** (1) If a regulatory action level event occurs with respect to an insurer the commissioner shall:

(a) Require the insurer to prepare and submit a risk based capital plan or, if applicable, a revised risk based capital plan;

(b) Perform such examination or analysis as the commissioner deems necessary of the assets, liabilities and operations of the insurer including a review of its risk based capital plan or revised risk based capital plan; and

(c) Subsequent to the examination or analysis, issue an order specifying such corrective actions as the commissioner shall determine are required.

(2) In determining corrective actions, the commissioner may take into account such factors as are deemed relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the risk based capital instructions. The insurer shall submit a risk based capital plan or revised risk based capital plan:

(a) Within 45 days after the occurrence of the regulatory action level event;

(b) If the insurer challenges an adjusted risk based capital report under s. Ins 50.50 and the challenge is not frivolous in the judgment of the commissioner, within 45 days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge; or

(c) If the insurer challenges a revised risk based capital plan pursuant to s. Ins 51.50 and the challenge is not frivolous in the judgment of the commissioner, within 45 days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(3) The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the insurer's risk based capital plan or revised risk based capital plan, examine or analyze the assets, liabilities and operations of the insurer and formulate a corrective order with respect to the insurer. The fees, costs and expenses relating to consultants shall be borne by the affected insurer or such other party as directed by the commissioner.

**History:** Cr. Register, December, 1996, No. 492, eff. 1-1-97.

**Ins 51.30 Authorized control level event.** If an authorized control level event occurs with respect to an insurer, the commissioner shall:

(1) Take such actions as are required under s. Ins 51.20 regarding an insurer with respect to which a regulatory action level event has occurred; or

(2) If the commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control under ch. 645, Stats. If the commissioner takes such actions, the authorized control level event shall be deemed sufficient grounds for the commissioner to take action under ch. 645, Stats., and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in ch. 645, Stats.

**History:** Cr. Register, December, 1996, No. 492, eff. 1-1-97.

**Ins 51.40 Mandatory control level.** If there is a mandatory control level event:

(1) With respect to a life or health insurer, the commissioner shall take such actions as are necessary to place the insurer under regulatory control under ch. 645, Stats. The mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under ch. 645, Stats., and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in ch. 645, Stats. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90 day period.

(2) With respect to a property and casualty insurer, the commissioner shall take such actions as are necessary to place the insurer under regulatory control under ch. 645, Stats., or, in the case of an insurer which is writing no business and which is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the commissioner. In either event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under ch. 645, Stats., and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in ch. 645, Stats. Notwithstanding any of the foregoing, the commissioner may forego action for up to 90 days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90 day period.

**History:** Cr. Register, December, 1996, No. 492, eff. 1-1-97.

**Ins 51.50 Hearings.** (1) An insurer shall have the right to a hearing, on a record, at which the insurer may challenge any

determination or action by the commissioner under this subchapter upon any of the following:

(a) Notification to an insurer by the commissioner of an adjusted risk based capital report.

(b) Notification to an insurer by the commissioner of all of the following:

1. The insurer's risk based capital plan or revised risk based capital plan is unsatisfactory.

2. Such notification constitutes a regulatory action level event with respect to such insurer.

(c) Notification to any insurer by the commissioner that the insurer has failed to adhere to its risk based capital plan or revised risk based capital plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its risk based capital plan or revised risk based capital plan.

(d) Notification to an insurer by the commissioner of a corrective order with respect to the insurer under this subchapter.

(2) The procedures established under ss. 601.62, 601.63, and 645.21, Stats., apply to an order, determination or hearing under this chapter.

(3) This section does not apply to an action by the commissioner based on ch. 645, Stats., subch. II or any other provision of the statutes or rules other than this subchapter. An insurer's right to a hearing, if any, is solely governed by those provisions and not this section.

**History:** Cr. Register, December, 1996, No. 492, eff. 1-1-97.

**Ins 51.55 Confidentiality; prohibition on announcements, prohibition on use in ratemaking.** (1) Except as permitted under sub. (2) the commissioner shall keep all of the following information confidential and it may not be subject to subpoena:

(a) Risk based capital reports, to the extent the information is not required to be set forth in a publicly available annual statement schedule.

(b) Risk based capital plans, including the results or report of any examination or analysis of an insurer performed under this chapter.

(c) Any corrective order issued by the commissioner pursuant to examination or analysis, with respect to any domestic insurer or foreign insurer, which is issued under s. 645.21, Stats.

(2) The information described under sub. (1) is information that is obtained by the commissioner under ss. 601.465 and 645.24, Stats., and shall be retained as confidential under those statutes. This information is not subject to subpoena. The commissioner may disclose the information only for the purpose of enforcement actions taken by the commissioner under chs. 600 to 655, Stats.

(3) (a) Except as otherwise required under the provisions of this chapter, no insurer, agent, broker or other person engaged in any manner in the insurance business may make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the risk based capital levels of any insurer, or of any component derived in the calculation of risk based capital levels. Any such representation is misleading.

(b) If any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its risk based capital levels or an inappropriate comparison of any other amount to an insurer's risk based capital levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement,

or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(4) The commissioner shall principally use risk based capital instructions, risk based capital reports, adjusted risk based capital reports, risk based capital plans and revised risk based capital plans as one method for monitoring the solvency of insurers and to assist in determining the need for corrective action with respect to insurers. The commissioner may not use these instructions, reports or plans for ratemaking nor as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write. The commissioner finds that the comparison of an insurer's total adjusted capital to any of its risk based capital levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally.

**History:** Cr. Register, December, 1996, No. 492, eff. 1-1-97.

#### **Ins 51.60 Supplemental provisions; exemptions.**

(1) The provisions of this subchapter are supplemental to any other provisions of the laws or rules of this state, and do not preclude or limit any other powers or duties of the commissioner under these laws or rules or procedures for applying those laws, including, but not limited to, chs. 620, 623, and 645, Stats. and subch. II. An insurer which is in violation of subch. II is in financially hazardous condition and may be subject to any of the proceedings provided under ch. 645, Stats., regardless of whether the insurer is in compliance with this subchapter and a proceeding is requested or pending under this subchapter and regardless of the insurer's risk based capital level. Nothing in this subchapter prevents the commissioner from taking, or limits the authority of the commissioner to take, action under any of those provisions when action is not permitted or required under this subchapter.

(2) The commissioner may exempt from the application of this subchapter any domestic property and casualty insurer which complies with all of the following:

- (a) The insurer writes direct business only in this state.
- (b) The insurer writes direct annual premiums of \$10,000,000 or less.
- (c) The insurer assumes no reinsurance in excess of five percent of direct premium written.

(3) The commissioner may exempt from the application of this subchapter:

- (a) Any domestic health maintenance organization insurer writing \$2,000,000 or less direct annual premium that writes only direct business in this state and assumes no reinsurance in excess of 5% of direct premium.
- (b) Any domestic insurer writing only limited service health organization business covering less than 2,000 lives that writes only direct business in this state and assumes no reinsurance in excess of 5% of direct premium written.

**History:** Cr. Register, December, 1996, No. 492, eff. 1-1-97; cr. (3), Register, May, 1999, No. 521, eff. 6-1-99.

**Ins 51.65 Foreign insurers.** (1) Any foreign insurer shall, upon the written request of the commissioner, submit to the commissioner a risk based capital report as of the end of the calendar year just ended by the later of the following:

- (a) The date a risk based capital report would be required to be filed by a domestic insurer under this chapter.
- (b) Fifteen days after the request is received by the foreign insurer.

(2) Any foreign insurer shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any

risk based capital plan that is filed with the insurance commissioner of any other state.

(3) If a company action level event, regulatory action level event or authorized control level event with respect to any foreign insurer as determined under the risk based capital statute or rule applicable in the state of domicile of the insurer or, if no risk based capital statute is in force in that state, under the provisions of this subchapter, if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk based capital plan in the manner specified under that state's risk based capital statute or, if no risk based capital statute is in force in that state, under s. Ins 51.15, the commissioner may require the foreign insurer to file a risk based capital plan with the commissioner. In such event, the failure of the foreign insurer to file a risk based capital plan with the commissioner shall be grounds to order the insurer to cease and desist from writing new insurance business in this state.

(4) If a mandatory control level event with respect to any foreign insurer occurs, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may make application to the circuit court permitted under the ch. 645, Stats. with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the mandatory control level event shall be considered adequate grounds for the application.

**History:** Cr. Register, December, 1996, No. 492, eff. 1-1-97.

**Ins 51.70 Applicability.** **History:** Cr. Register, December, 1996, No. 492, eff. 1-1-97, r. Register, May, 1999, No. 521, eff. 6-1-99.

### **Subchapter II — Permanent Capital, Compulsory Surplus and Security Surplus**

**Ins 51.75 Applicability.** This subchapter applies to insurers on, before and after January 1, 1997 except s. Ins 51.80 applies to service insurance corporations organized under ch. 613, Stats., only after December 31, 1996, and first requires filing of reports or plans by a service insurance corporation for year end calendar year 1996 or for after that date.

**History:** Cr. Register, December, 1996, No. 492, eff. 1-1-97.

#### **Ins 51.80 Capital, compulsory and security surplus.**

(1) **PURPOSE.** This section implements and interprets ss. 600.03 (45), 618.21 (1) (a), 623.11 and 623.12, Stats., for the purpose of establishing the amount of capital and compulsory surplus an insurer is required to maintain to provide reasonable security against contingencies affecting its financial position that are not fully covered by reserves or by reinsurance, and the amount of security surplus that an insurer should maintain in order to provide an ample margin of safety and clearly assure a sound operation.

(2) **SCOPE.** This section applies to all lines of insurance except title insurance and mortgage guarantee insurance as defined in s. Ins 6.75 (2) (h) and (i), and to each insurer subject to ss. 623.11 and 645.41, Stats., except insurers licensed under chs. 612, 615 or 616, Stats., insurers subject to s. Ins 9.04 and life insurers domiciled in foreign countries.

(3) **COMPULSORY SURPLUS.** Except for the adjustments to the circumstances of individual insurers provided in s. 623.11 (1) (b), Stats., and sub. (6), the amount of compulsory surplus of an insurer shall be the greater of:

- (a) The sum of:
  1. 15% of premiums for individual life and disability insurance;
  2. 10% of premiums for group life and disability insurance;
  3. The greater of 2% of reserves or 7½% of premiums for annuities and deposit administration funds;

4. 20% of premiums for all other covered lines of insurance; or

(b) \$2 million for an insurer first authorized to do business in Wisconsin on or after January 1, 1982, or the amount required by statute or administrative order before that date for other insurers.

(4) SECURITY SURPLUS. The security surplus of an insurer shall be the compulsory surplus plus:

(a) 40% of compulsory surplus for insurers restricted under s. 620.04, Stats.

(b) 40% of compulsory surplus for other insurers with premiums of \$10 million or less reduced by 1% of compulsory surplus for each \$33 million of additional premiums in excess of \$10 million, but not less than 10% of compulsory surplus.

(5) SEPARATE DETERMINATION. Compulsory surplus and security surplus are computed separately and are not added together for purposes of determining compliance with this rule.

(6) PREMIUMS. For purposes of subs. (3) and (4), premiums are gross premiums and other considerations received for insurance and annuities in the 12-month period ending on or not more than 60 days before the date as of which the calculation is made with the following deductions and exclusions:

(a) Exclude annual and initial reinsurance premiums for contracts of modified coinsurance and premium deposits.

(b) Deduct return premiums; premiums ceded to authorized reinsurers other than premiums of contracts of modified coinsurance; and retrospective premium refunds and dividends paid or credited to policyholders.

(7) INDIVIDUAL CIRCUMSTANCES. In the event of special circumstances of an individual insurer, the commissioner may by order:

(a) Adjust the factors in this section to calculate the compulsory or security surplus as a higher or lower amount than the amount determined under sub. (3) or (4);

(b) Establish additional factors in relation to any relevant variables in determining the amount of compulsory surplus required for such insurer; and

(c) Require minimum capital in an amount of less than \$2 million.

(8) COMBINING INSURERS. The commissioner may require the combination of 2 or more insurers for application of this section or may permit such combination upon request by such insurers.

(9) REPORTING. Every insurer to which this section applies shall compute its compulsory surplus and security surplus, as of the preceding December 31, and include a copy of such computation as a part of its annual statement filed with the commissioner under s. 601.42, Stats., and s. Ins 7.02.

(10) EXISTING ORDERS. This section shall not affect orders of the commissioner requiring a different level of surplus existing on August 1, 1982.

(11) DATE OF FIRST REPORT. The first report required by sub. (9) shall be computed as of December 31, 1982 and filed with the insurer's annual statement due March 1, 1983.

**Note:** Compulsory surplus is the amount of surplus that an insurer is required to have in order not to be financially hazardous under s. 645.41 (4), Stats. An insurer must comply with investment restrictions and permitted classes of investments in meeting required reserves and compulsory and security surplus. Security surplus is not required beyond its use as a standard in investment regulation.

The rule is not intended to determine the optimum level of surplus an insurer should have. That level should be decided by the officials of each insurer to reflect the individual circumstances and goals of the insurer. The rule is intended instead to establish a basic minimum level with which most insurers can easily comply.

The commissioner may see fit to require a higher level of surplus, or permit a lower level, based on special circumstances.

For example, a specific order might establish a higher surplus requirement for a small insurer writing primarily surety business or a lower requirement for certain kinds of annuity business or for contracts providing benefits payable in variable dollar amounts within the meaning of s. 611.25, Stats., and s. Ins 2.13. Other contingencies, factors and variables which may be considered are set forth in s. 623.11, Stats.

Since the rule does not apply to some lines of insurance and certain types of insurers, other requirements may be necessary for those companies. This might entail separate rules or specific orders. However, the proposed rule will apply to a high percentage of the insurance business written in Wisconsin.

The treatment of reinsurance premiums in the rule may not be clear. In the case of all reinsurance other than modified coinsurance, it is intended that premiums on direct business be initially included by the originating company under sub. (6) (intro.) and that reinsurance premiums ceded to a reinsurer be deducted under sub. (6) (b). The reinsurance premiums ceded would be included as premiums of the reinsurer under sub. (6) (intro.). In the case of modified coinsurance, the direct premiums are included by the originating company under sub. (6) (intro.) and the reinsurance premiums are excluded for purposes of the rule by both the originating company and the reinsurer.

**Note:** Copies of forms OCI 22-008 and OCI 22-009, for use under sub. (9), may be obtained from the Office of the Commissioner of Insurance, P.O. Box 7873, Madison, WI 53707-7873.

**History:** Cr. Register, July, 1982, No. 319, eff. 8-1-82; am (1) and (7), Register, January, 1989, No. 397, eff. 2-1-89; reprinted to correct error in (3) (a) 3., Register, March, 1989, No. 399; am. (9), Register, January, 1992, No. 433, eff. 2-1-92; renum. from Ins 14.02, Register, December, 1996, No. 492, eff. 1-1-97; **am. (2), Register, February, 2000, No. 530, eff. 3-1-00.**