

Clearinghouse Rule 96-094



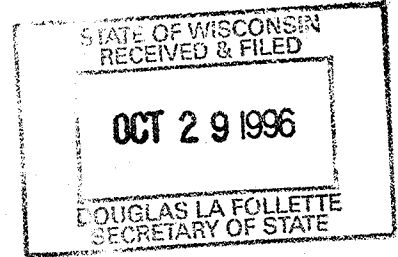
State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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STATE OF WISCONSIN

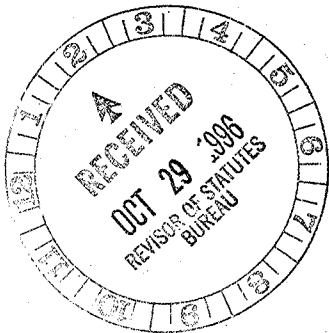
OFFICE OF THE COMMISSIONER OF INSURANCE

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I, Randy Blumer, Deputy Commissioner of Insurance and custodian of the official records, certify that the annexed rule affecting Section Ins 14.02 and ch. 51, Wis. Adm. Code, relating to financial standards for insurers, is duly approved and adopted by this Office on October 29, 1996.

I further certify that I have compared this copy with the original on file in this Office and that it is a true copy of the original, and the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 121 East Wilson Street, Madison, Wisconsin, on 10/29/96.



Randy Blumer
Randy Blumer
Deputy Commissioner of Insurance

96-094
1-1-97

ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE
AMENDING, RENUMBERING, REPEALING AND CREATING A RULE

RECEIVED & FILED
OCT 29 1996
DOUGLAS LA FOLLETTE
SECRETARY OF STATE

To amend s. 51.80 (2), as renumbered; renumber s. Ins 14.02, to repeal ch. Ins 14 (title); and to create ch. 51, Wis. Adm. Code, relating to financial standards for insurers.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss. 601.41 (3) and 601.42, Stats.

Statutes interpreted: ss. 601.465, 611.19, 613.19. 628.34 and chs. 623 and 645, Stats.

This proposed rule adopts supplemental risk based capital and surplus requirements for most insurers doing business in this state. The rule also requires insurers which are insurance service corporations to comply with the same capital, compulsory surplus and security surplus requirements that apply to other insurers engaged in the same type of insurance business in this state.

RISK BASED CAPITAL REQUIREMENTS

The proposed rule requires a property and casualty, life or health domestic insurer to calculate and report its "risk based capital." The insurer is required by the rule to maintain capital and surplus that reflects the risk associated with the insurer's operations relating to certain specified categories such as liabilities and assets. An insurer is required to calculate its "risk based capital" using forms and instructions developed by the National Association of Insurance Commissioners and approved by the commissioner.

The proposed rule establishes four levels of capital and surplus standards. These are the "company action", "regulatory action", "authorized control" and "mandatory control" levels. At each level the proposed rule requires the insurer or OCI to take appropriate action to remedy any financial deficiency.

If capital decreases to company action level the insurer must file and follow a plan to correct its condition; at regulatory action level OCI must require the insurer to take corrective action; at the authorized control level OCI must make a determination of whether a formal proceeding should be commenced; and at the mandatory control level OCI must take control of the insurer through legal proceedings. The rule includes only limited exceptions from these requirements.

A domestic insurer is required to annually by March 1 file a risk based capital calculation and report with OCI. OCI may also require non-domestic insurers to file such a report.

An insurer may request a hearing to contest an OCI determination of its level of risk based capital or with respect to a plan submitted by the insurer. The commissioner must keep risk based capital reports confidential. However financial statements from which risk based capital is calculated are public. The use of risk based capital levels of competitors for marketing purposes is prohibited as misleading.

The risk based capital requirements do not apply to a health maintenance organization insurer, insurers that engage primarily in HMO business and which file the HMO blank, limited service health organizations, town mutual insurers, school benefit plans, motor vehicle clubs, fraternal insurers, insurance plans administered under the direct supervision of OCI, monoline mortgage guarantee insurers, financial guarantee insurers and title insurers. The risk based capital requirements will apply to insurance service corporations only after the commissioner makes a determination that appropriate risk based capital reporting forms and instructions have been developed through the NAIC. The commissioner may require an exempt insurer to comply with the risk based capital requirement. Also, the commissioner may exempt a domestic property and casualty insurer from risk based capital requirements if it does business only in this state and no

more than \$10,000,000 in annual direct premium.

PERMANENT CAPITAL, COMPULSORY SURPLUS AND SECURITY SURPLUS REQUIREMENTS

This rule supplements, is in addition to, and does not replace the existing capital, compulsory surplus and security surplus requirements which apply to domestic and non-domestic insurers. Also, the procedural rights and process prescribed in the rule for risk based capital apply solely to risk based capital requirements and not to proceedings or determinations made under the existing capital, compulsory surplus or security surplus requirements or in existing delinquency proceedings.

The rule does apply the existing capital, compulsory surplus and security surplus requirements to insurance service corporations effective at of the end of calendar year 1996.

The rule is effective on January 1, 1997, and applies to reports required for year end 1996.

SECTION 1. Ins Chapter 14 (title) is repealed.

SECTION 2. Ins 14.02 is renumbered to Ins 51.80, and s. Ins 51.80 (2), as renumbered, is amended to read:

Ins 51.80 (2) SCOPE. This section ~~shall apply~~ 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, ~~613~~ 615 or 616, Stats., insurers subject to s. Ins 3.50 or 3.52 and life insurers domiciled in foreign countries.

SECTION 3. Chapter Ins 51 is created to read:

CHAPTER 51

CAPITAL REQUIREMENTS FOR INSURERS

SUBCHAPTER I

RISK BASED CAPITAL REQUIREMENT FOR INSURERS

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

(7).

(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.

(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 health maintenance organization insurer as defined under s. 600.03 (23c), Stats. or an insurer writing primarily health maintenance organization business as defined under s. 609.01 (2), Stats., which the commissioner permits to file the NAIC health maintenance organization annual statement blank under s. Ins 50.20.

2. An insurer which is solely engaged in the business of offering limited service health organization plans as defined under s. 609.01 (3), Stats.

3. A town mutual insurer organized under ch. 612, Stats.

4. An insurer governed by ch. 615 or 616, Stats.

5. A fraternal insurer.

6. 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.

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

8. 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 two or more of those lines, or a licensed property and casualty insurer writing only accident and health insurance.

(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 a. 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.

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.

(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.

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 forty-five 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 forty-five days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(3) Within sixty 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 forty-five days after the notification from the commissioner;

or

(b) If the insurer challenges the notification from the commissioner under s. Ins. 51.50, within forty-five 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).

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 forty-five 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 forty-five 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 forty-five 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.

51.30 AUTHORIZED CONTROL LEVEL EVENT. (1) If an authorized control level event occurs with respect to an insurer, the commissioner shall:

(a) 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

(b) 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.

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 ninety 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 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 ninety day period.

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 s. 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.

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. and

(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 ch. 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.

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 ch. 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 or 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.

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.

51.70 APPLICABILITY. This subchapter applies to insurers after December 31, 1996, and first applies to reports or plans required to be filed for year end calendar year 1996 or for after that date.


SUBCHAPTER II

PERMANENT CAPITAL, COMPULSORY SURPLUS AND SECURITY SURPLUS

51.75 APPLICABILITY. This subchapter applies to insurers on, before and after the effective date of this rule (1996) 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.

SECTION 4. This rule will take effect on the first day of the month commencing after the date of its publication, as provided in s. 227.22 (2), Stats., or on January 1, 1997, whichever is later.

Dated at Madison, Wisconsin, on October 29 , 1996.


Randy Blumer
Deputy Commissioner of Insurance

