

# STATEMENT OF SCOPE OF A PROPOSED RULE

## **Agency #145 Office of the Commissioner of Insurance Section Ins 6.20, Wis. Adm. Code, relating to the definitions of investment terms and permissible scope of foreign investments by insurers**

**Rule Type:** \_\_\_\_\_ **Emergency**  
                  \_\_\_\_\_ **X** \_\_\_\_\_ **Permanent**  
                  \_\_\_\_\_ **Both Emergency and Permanent**

### **1. Detailed description of the objective of the rule:**

The proposed changes to s. Ins 6.20, Wis. Adm. Code were requested by the insurance industry and are intended to modernize the Office of the Commissioner of Insurance's ("OCI") rules and requirements regarding the permissible investments that may be counted toward compulsory and security surplus. The proposed changes would include adding a general definition for derivative instruments and aligning Wisconsin's requirements with the National Association of Insurance Commissioner's ("NAIC") Derivative Instrument Model Regulation. Section Ins 6.20, Wis. Adm. Code currently defines certain types of derivative instruments but does not include a general definition of derivatives. OCI would like to add a general definition that would capture all current derivative products and that would also encompass derivative products developed in the future. A general definition would allow s. Ins 6.20, Wis. Adm. Code to remain current with modern investment practices while eliminating the need to revise the code every few years keep pace with financial product innovations. In addition, better aligning OCI's requirements with the NAIC model act would promote uniform regulation across the states. The proposed changes would also revise the amount or percentage of assets which an insurer may invest in foreign assets for purposes of compulsory and security surplus. The current restrictions have not changed since 1996 and the proposed changes would allow a greater amount of investment in foreign investments. This change will better align the investment restrictions with current investment practices and modern investment risk considerations.

### **2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background, and justification for the proposed rule:**

In the existing rule, foreign investments are restricted to 1% of assets in direct obligations of foreign governments and 2% of assets in other types of foreign investments (e.g. foreign securities). Section 620.22, Wis. Stat. also contains a "basket clause" which allows 5% of insurer's first \$500 million in assets and 10% of an insurer's assets exceeding \$500 million to be invested in any investment not specifically prohibited by law. An insurer could also invest all or some of the basket clause limits in foreign investments. The existing rule has no general definition of derivatives but does contain definitions of specific types of derivative

instruments (e.g. “financial futures contracts” and “financial options contracts”). Current practice by OCI is to allow insurers to invest in derivative instruments that arguably do not fall within one of the specifically defined categories if an insurer agrees to comply with the rules applicable to the current categories of derivative instruments in the code.

The new policy would be to increase the amount of permissible foreign investments that may be counted toward compulsory and security surplus, broaden the definition of derivatives to include modern financial instruments and financial instruments created in the future that may not meet the current definitions, and to better align Wisconsin’s derivative regulation with the NAIC’s Derivative Instrument Model Regulation. The background of the change is to modernize our investment rule to better reflect current investment practices.

The policy alternative is to not increase the limits on foreign investments and to leave the current, outdated scope of allowable derivative instruments in place.

**3. Detailed statutory authority for the rule (including the statutory citation and language):**

*The agency shall reference each statute that authorizes the promulgation of the proposed rule and each statute or rule that will affect the proposed rule or be affected by it. The agency shall also explain in detail the agency’s authority to promulgate the proposed rule under those statutes. An agency shall rely on an explicit grant of authority from the Legislature to promulgate a rule, if one exists. An agency shall not rely upon general statements of legislative purpose or legislative findings or agency general powers and duties clauses to confer authority to promulgate rules.*

The statutory authority for these rules are generally found in ss. 227.11, 601.41(3), Wis. Stats., which provide for the commissioner’s rule making authority in general, and sec. 601.42, Wis. Stat. which authorizes the commissioner to require certain reports and other disclosure of information. Wisconsin’s investment regulations are found in Ch. 620, Wis. Stats. The commissioner has specific authority to regulate investments by rule in ss. 620.01, 620.03, 620.21, 620.22, and 620.23, Wis. Stats.

**4. Estimates of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:**

200 hours and no other resources are necessary to develop the rule.

**5. List with description of all entities that may be impacted by the rule:**

The proposed rules will apply to all domestic insurers except for some insurers that are restricted in their investments under s. 620.03, Wis. Stat. Non-domestic insurers authorized to do business in this state would be subject to the investment rules of their state of domicile.

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

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

**7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The rule is unlikely to have a significant economic impact on small businesses because it is not anticipated that this rule change will have any effect on insurers that would meet the definition of small business.

In addition, the proposed rule change is expected to have no economic impact with regard to regulatory costs as the proposed rule change only changes the type of investments that may be counted toward compulsory and security surplus requirements. It does not affect the required amount of that surplus or add additional regulatory requirements. The proposed changes regarding derivative investments should have little or no economic impact and cause little or no increase in regulatory costs.

The rule will allow insurers to invest a larger percentage of their investments internationally which could possibly lessen the amount of investments in the United States and Wisconsin. This could have a possible indirect economic impact on the state but it is difficult to predict whether a significant shift toward foreign investments would occur or to what degree. In any event, a significant or even moderate economic impact is not anticipated. Also, allowing a larger percentage of assets to be held in foreign investments, which arguably carry more risk than other permitted investments, could increase the likelihood of insurer insolvency.

yes  
 no

local/statewide economic impact (choose one)

minimal or none (< or = \$50,000)  
 moderate (\$50,000--\$20,000,000)  
 significant (>\$20,000,000)

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