

Clearinghouse Rule 21-106

PROPOSED ORDER OF THE COMMISSIONER OF INSURANCE TO CREATE A RULE.

The Commissioner of Insurance proposes the following rule to create ch. Ins 40, relating to holding company system regulation amendments.

The statement of scope for this rule SS 039-21, was approved by the Governor on April 15, 2021, was published in the Wisconsin Administrative Register No. 784B on April 26, 2021. The preliminary public hearing was held on May 24, 2021 and the scope was approved by the Commissioner on June 14, 2021.

The proposed rule was approved by the Governor on ____ to submit to the legislature, and submitted to the legislature on _____

Analysis prepared by the Office of the Commissioner of Insurance (OCI).

Statutes interpreted:

Wisconsin Statutes ss. 601.42, 601.465 (3) (h), Ch. 617 including s. 617.11 (1), 617.13, and 617.21 (3r).

Statutory authority:

Wisconsin Statutes ss. 227.11 (2), 601.41, 617.11 (1), 617.13, 617.21 (3r), and 623.02 to 623.04.

Explanation of OCI's authority to promulgate the proposed rule:

The statutory authority for this rule is found in Wis. Stat. § 617.13 (1), that states specific authority as follows:

The commissioner shall promulgate rules requiring certain insurers, as determined under the rules, to report their group capital calculations and liquidity stress tests, including the form of the reports and the manner and process for filing the reports.

Further, Wis. Stat. § 623.02 that provides when promulgating accounting rules, the commissioner shall consider recommendations made by the National Association of Insurance Commissioners ("NAIC"). Wis. Stats. §§ 623.03 and 623.04, grant the commissioner authority to promulgate rules specifying how insurers should account for assets and liabilities which would include liquidity stress tests and group capital calculations. Wis. Stats. § 617.11 (1), grants the commissioner authority to promulgate rules specifying the timing of reports including periodic reporting, the form and procedure for filing reports. Wis. Stats. § 617.21 (3r) authorizes the commissioner to promulgate rules for determining the adequacy of surplus related to holding companies and their affiliates. Additionally, the commissioner has general rule-making authority under Wis. Stat. §§ 601.41 and 227.11 (2) (a).

Related statutes or rules:

Wis. Stats. ch. 617 and ch. Ins 40, Wis. Adm. Code, govern insurance holding companies. Wis. Stat. § 617.13 (2), governs the confidentiality of the group capital calculation and liquidity stress test filings and any related information provided by an insurer under promulgated rules.

Plain language analysis:

The NAIC is a standard setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. It develops model laws and regulations using a committee structure that includes both members of the committee and interested regulators. The NAIC also provides an accreditation process for state insurance departments. Accreditation of the Office of the Commissioner of Insurance (OCI) by the NAIC helps Wisconsin insurers by ensuring that the OCI has full regulatory authority over its domestic insurers. It accomplishes this by subjecting domestic insurers to financial regulation only by their domestic commissioner if the state is accredited. Because Wisconsin is accredited, Wisconsin insurers are not subject to separate financial regulation in every state in which they do business. Recent changes in the NAIC model laws 440 and 450 are the bases for the proposed rule and are anticipated to become accreditation standards in 2022, and therefore, it is important to implement these changes into the Wisconsin holding company system regulations as soon as practicable.

The rule change would modernize Wisconsin's holding company system provisions by adopting uniform standards for determining group-wide capital requirements in alignment with requirements of the agreement between the United States of America, the European Union, and the United Kingdom regarding insurance and reinsurance ("covered agreement"). The covered agreement was authorized by Title V of the Dodd-Frank Act that authorized the Secretary of the Treasury and the United States Trade Representative to jointly negotiate a covered agreement on behalf of the United States with one or more foreign governments, authorities, or regulatory entities. Failure to adopt these group capital standards before September of 2022 could result in Wisconsin law being preempted by the covered agreement.

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

There are not existing federal statutes or regulations but the framework for these changes can be found in the covered agreement.

Summary of any public comments and feedback on the statement of scope of the proposed rule that the agency received at any preliminary public hearing and comment period held under s. 227.136, Stat., and a description of how and to what extent the agency took those comments and that feedback into account in drafting the proposed rule.

A preliminary hearing was held on May 24, 2021, with the comment period ending June 7, 2021. The office received only one comment from the Reinsurance Association of America in support of the proposed rule.

Comparison with rules in adjacent states:

Illinois: Legislation instructed: IL Senate Bill 2411 Enrolled 6/25/2021

Iowa: NA

Michigan: NA

Minnesota: NA

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

The OCI participated in the NAIC committee process that led to the adoption of these group capital standards.

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

OCI identified some insurers that qualify as small businesses however, OCI does not believe that any of the insurance holding company systems that will be required to file a group capital calculation will meet the definition of a small business. No effect on small business is anticipated by this rule.

Description of the Effect on Small Business:

No effect on small business is anticipated by this rule. The rule is not expected to have any effect on insurers that qualify as small businesses. OCI does not believe that any of the insurance holding company systems that will be required to file a group capital calculation will meet the definition of a small business.

Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the website at:

<http://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx>

or by contacting Karyn Culver, Paralegal, at:

Phone: (608) 267-9586

Email: karyn.culver@wisconsin.gov

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

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

Place where comments are to be submitted and deadline for submission:

Persons wishing to testify or provide oral or written comments regarding the proposed administrative rule may appear during the hearing. A public hearing will be held compliance with s. 227.14 (4m), Stats., on January 13, 2022, via teleconference at the Office of the Commissioner of Insurance.

Deadline for submitting comments is **January 21, 2022 at 4:00 pm.**

Additionally, the rule may be reviewed and comments made a <https://docs.legis.wisconsin.gov/code> or sent to the following:

Julie Walsh

Legal Unit - OCI Rule Comment for Rule Ins 40
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703-3474

Email address:
Julie.walsh@wisconsin.gov

Website: <http://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx>

The proposed rule changes are:

SECTION 1. Ins 40.01 (5g) is created to read:

Ins 40.01 (5g) “Group capital calculation instructions” means the group capital calculation instructions as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

SECTION 2. Ins 40.01 (7n), (7r), and (7w) are created to read:

Ins 40.01 (7n) “NAIC” means the national association of insurance commissioners.

(7r) “NAIC liquidity stress test framework” or “framework” means a separate NAIC publication which includes a history of the NAIC’s development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year, such scope criteria, instructions and reporting template being as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(7w) “Person” means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert, but shall not include any

joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

SECTION 3. Ins 40.01 (8m) is created to read:

Ins 40.01 (8m) “Scope Criteria” means the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC liquidity stress test framework for that data year as detailed in the NAIC liquidity stress test framework.

SECTION 4. Ins 40.03 (5) is amended to read:

Ins 40.03 (5) MATERIALITY. No information need be disclosed on the registration statement required under this section if the information is not material for the purposes of this section. Any transaction related to a management, exclusive agency or similar agreement or which is a service contract or cost-sharing arrangement is a material transaction. Any other transaction subject to sub. (3) is a material transaction if it involves or exposes to risk in a single transaction or group or series of related transactions an amount which is more than .5% of the insurer's admitted assets as of the 31st day of December of the immediately preceding calendar year, unless the commissioner by order provides otherwise. The definition of materiality provided in this subsection shall not apply for purposes of the group capital calculation or the liquidity stress test framework.

SECTION 5. Ins 40.03 (9) (title) is amended to read:

Ins 40.03 (9) ENTERPRISE RISK ~~FILING~~ FILINGS.

SECTION 6. Ins 40.03 (9) (b) is amended to read:

Ins 40.03 (9) (b) Sections 19.31 to 19.37, Stats., do not apply to an insurer's annual enterprise risk report or to any information submitted to the commissioner in connection with an

insurer's annual enterprise risk report and the report shall not be subject to subpoena, discovery or be admissible in evidence in any private civil action. The commissioner shall only share an insurer's annual enterprise risk report, and any information requested by the commissioner in connection with an insurer's annual enterprise risk report, with commissioners of states having statutes or regulations substantially similar to this subsection and who have agreed in writing not to disclose such information. For purposes of the information reported and provided to the commissioner pursuant to this paragraph and s. 617.13 (1), Stats., the information is confidential under s. 617.13 (2), Stats. The commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any U.S. group wide supervisor pursuant to s. 617.13 (2), Stats.

SECTION 7. Ins 40.03 (9) (d) and (e) are created to read:

Ins 40.03 (9) (d) *Group capital calculation filing.* Except as otherwise provided in this paragraph, the ultimate controlling person of every insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The report shall be completed in accordance with the NAIC group capital calculation instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the procedures within the Financial Analysis Handbook adopted by the NAIC. Insurance holding company systems described below are exempt from filing the group capital calculation:

1. An insurance holding company system that has only one insurer within its holding company structure, that only writes business and is only licensed in its domestic state, and assumes no business from any other insurer.

2. An insurance holding company system that is required to perform a group capital calculation specified by the United States Federal Reserve Board. The lead state commissioner shall request the calculation from the Federal Reserve Board under the terms of information sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing;

3. An insurance holding company system whose non-U.S. group-wide supervisor is located within a reciprocal jurisdiction as described in s. Ins 52.01 (4), that recognizes the U.S. state regulatory approach to group supervision and group capital;

4. An insurance holding company system:

a. That provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook, and

b. Whose non-U.S. group-wide supervisor that is not in a reciprocal jurisdiction recognizes and accepts, as specified in s. Ins 40.21, the group capital calculation as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction.

5. Notwithstanding the provisions of subd. 3. and 4., a lead state commissioner shall require the group capital calculation for U.S. operations of any non-U.S. based insurance holding

company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

6. Notwithstanding the exemptions from filing the group capital calculation stated in subd. 1. through 4., the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified in s. Ins 40.21.

7. If the lead state commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this paragraph, the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the lead state commissioner based on reasonable grounds shown.

(9) (e) *Liquidity stress test.* The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC liquidity stress test framework shall file the results of a specific year's liquidity stress test. The filing shall be made to the lead state insurance commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC:

1. The NAIC liquidity stress test framework includes scope criteria applicable to a specific data year. These scope criteria are reviewed at least annually by the financial stability task force or its successor. Any change to the NAIC liquidity stress test framework or to the data year for which the scope criteria are to be measured shall be effective on January 1 of the year following the calendar year when such changes are adopted.

a. Insurers meeting at least one threshold of the scope criteria are considered scoped into the NAIC liquidity stress test framework for the specified data year unless the lead state insurance commissioner, in consultation with the NAIC financial stability task force or its successor, determines the insurer should not be scoped into the framework for that data year. Similarly, insurers that do not trigger at least one threshold of the scope criteria are considered scoped out of the NAIC liquidity stress test framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC financial stability task force or its successor, determines the insurer should be scoped into the framework for that data year.

b. Regulators wish to avoid having insurers scoped in and out of the NAIC liquidity stress test framework on a frequent basis. The lead state insurance commissioner, in consultation with the NAIC financial stability task force or its successor, will assess this concern as part of the determination for an insurer.

2. The performance of, and filing of the results from, a specific year's liquidity stress test shall comply with the NAIC liquidity stress test framework's instructions and reporting templates for that year and any lead state insurance commissioner determinations, in conjunction with the NAIC financial stability task force or its successor, provided within the framework.

3. For purposes of the information reported and provided to the commissioner pursuant to this paragraph, the information is confidential under s. 617.13 (2), Stats. The commissioner shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-U.S. group wide supervisors in accordance with s. 617.13 (2), Stats.

4. The group capital calculation and resulting group capital ratio required under par. (d) and the liquidity stress test along with its results and supporting disclosures required under this paragraph are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise permitted by law, the making, publishing, disseminating, circulating or placing before the public, or causing 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 any electronic means of communication available to the public, or in any other way as an advertisement, announcement or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures 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

announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

SECTION 8. Ins 40.21 is created to read:

Ins 40.21 Group Capital Calculation. (1) Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

(a) Has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000;

(b) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

(c) Has no banking, depository or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;

(d) The insurance holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and

(e) The non-insurers within the insurance holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

(2) Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to accept in lieu of the group capital calculation a limited group capital filing if the insurance holding company

system has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000; and all of the following additional criteria are met:

(a) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

(b) Does not include a banking, depository or other financial entity that is subject to an identified regulatory capital framework; and

(c) The holding company system attests that there are no material changes in transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the lead state commissioner and the non-insurers within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations.

(3) For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant subs. (1) or (2), the lead state commissioner may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC group capital calculation instructions, if any of the following criteria are met:

(a) Any insurer within the insurance holding company system is in a risk-based capital action level event as set forth in ch. Ins 51, or a similar standard for a non-U.S. insurer; or

(b) Any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as described in ss. 623.11, 645.31, or 645.41 Stats.; or

(c) Any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the lead state commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

(4) A non-U.S. jurisdiction is considered to “recognize and accept” the group capital calculation if it satisfies the following criteria:

(a) With respect to s. Ins 40.03 (9) (d) 4.:

1. The non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC accreditation program shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or

2. Where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state with a copy to the international association of insurance supervisors that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in subd. 1.

(b) The non-U.S. jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such

jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commissioner shall determine, in consultation with the NAIC committee process, if the requirements of the information sharing agreements are in force.

(5) A list of non-U.S. jurisdictions that “recognize and accept” the group capital calculation will be published through the NAIC committee process:

(a) A list of jurisdictions that “recognize and accept” the group capital calculation pursuant to s. Ins 40.03 (9) (d) 4., is published through the NAIC committee process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempted from filing under s. Ins 40.03(9) (d) 4. To assist with a determination under s. Ins 40.03 (9) (d) 5., the list will also identify whether a jurisdiction that is exempted under either s. Ins 40.03 (9) (d) 3., or s. Ins 40.03 (9) (d) 4., requires a group capital filing for any U.S. based insurance group’s operations in that non-U.S. jurisdiction.

(b) For a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of subd. (4) (a) 2., will serve as support for recommendation to be published as a jurisdiction that “recognizes and accepts” the group capital calculation through the NAIC committee process.

(c) If the lead state commissioner makes a determination pursuant to s. Ins 40.03 (9) (d) 4., that differs from the NAIC list, the lead state commissioner shall provide thoroughly documented justification to the NAIC and other states.

(d) Upon determination by the lead state commissioner that a non-U.S. jurisdiction no longer meets one or more of the requirements to “recognize and accept” the group capital

calculation, the lead state commissioner may provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed from the list of jurisdictions that “recognize and accept” the group capital calculation.

SECTION 9. EFFECTIVE DATE. These proposed rule changes will take effect on the date of publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

Dated at Madison, Wisconsin, this ____ day of _____, 2021.

Mark V. Afable
Commissioner of Insurance