

**CR 13-059**

**ORDER AMENDING A RULE**

**Agency** 145 INS 51.01 (4) (a) 2., Risk Based Capital

**To amend** Ins 51.01 (4) (a) 2.,

**Relating to** risk based capital requirements.

The Statement of Scope for this rule SS 069-12 was approved by the Governor on September 13, 2012, published in Register No. 681. On September 30, 2012, and approved by the Commissioner on October 15, 2012. Notice for public hearing was published in Register No. 692, on August 15, 2013 and a hearing was held on September 5, 2013. The rule was approved by the Governor on October 24, 2013 to submit to the legislature. No comments were received from any Legislative committee and all periods for review have passed.

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

**1. Statutes interpreted:**

ss. 623.11 (1) and (2), Stats.

**2. Statutory authority:**

ss. 227.11 (2) (a), 623.11 (1) and (2), Stats.

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

Pursuant to s. 623.11 (1), Stats., the commissioner is obligated to determine the amount of compulsory surplus that an insurer is required to have in order not to be financially hazardous. Pursuant to s. 623.11 (2), Stats., the commissioner may establish by rule minimum ratios for the compulsory surplus.

**4. Related statutes or rules:**

Section 623.11, Stats., and s. Ins 51.01, Wis. Admin. Code, both address risk based capital requirements.

**5. The plain language analysis and summary of the proposed rule:**

OCI, by rule, establishes risk based capital requirements for insurers. The company action level provision under the rule provides an early warning that an insurer might be approaching a financially hazardous condition. The proposed rule modifies a variable in the definition of "company action level event" that is applicable to life or health insurers that complete the life annual statement from "2.5" to "3.0", as authorized by s. 623.11 (2) , Stats., potentially resulting in an earlier warning that a company is approaching financially hazardous condition.

The proposed rule is consistent with the National Association of Insurance Commissioner's model regulation and will also bring Wisconsin's requirements for life insurers into alignment with the requirements for health insurers.

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

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

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

**Illinois:** 215 ILCS 5/35A-15 (a) (1) (B) (2013) contains provisions comparable to Wisconsin's existing rule.

**Iowa:** IAC s. 521E.3 1. A. (2) (2013) contains provisions comparable to Wisconsin's existing rule.

**Michigan:** MCLS s. 50.1204a (2013) adopts the National Association of Insurance Commissioners' Model Law by reference.

**Minnesota:** Minn. Stat. s. 60A.60 Subd. 11 (1) (2013) contains provisions less stringent than Wisconsin's existing rule.

**8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:**

The proposed rule is consistent with the National Association of Insurance Commissioners' model regulation which will aid in maintaining the agency's accreditation. The proposed rule will also bring Wisconsin's risk based capital requirements for life insurers into alignment with the requirements for health insurers and property and casualty insurers.

**9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:**

Based upon revenue and ownership structure, there may be an effect on small businesses but any effect would be minimal as very few, if any, insurers meet the definition of a small business and non-insurance small businesses are protected by this proposed rule as the amendment provides an earlier warning that a life insurer might be approaching a financially hazardous condition.

**10. See the attached Private Sector Fiscal Analysis.**

**11. A description of the Effect on Small Business:**

This rule will have little or no effect on small businesses.

**12. Agency contact person:**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110

Email: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov)

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

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

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

The deadline for submitting comments is 4:00 p.m. on the 14<sup>th</sup> day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

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Julie E. Walsh  
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Web site: <http://oci.wi.gov/ocirules.htm>

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**The proposed rule changes are:**

**SECTION 1. Ins 51.01 (4) (a) 2., is amended to read:**

Ins 51.01 (4) (a) 2. If a life or health insurer that completes the life annual statement for the reporting year, 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~~3.0 and has a negative trend.

**SECTION 2.** This rule first applies to risk based capital reports filed on or after January 1, 2014 or the effective date, whichever is later.

**SECTION 3.** These changes will take effect on the first day of the month after publication, as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, this 13th day of May, 2014.

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Theodore K. Nickel  
Commissioner of Insurance

**Office of the Commissioner of Insurance  
Private Sector Fiscal Analysis**

for Section Ins 51.01 (4) (a) 2. relating to risk based capital requirements

This rule change will have no significant effect on the private sector regulated by OCI.