

Chapter SEC 5

DECLARATORY RULINGS

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SEC 5.01 Who may petition. Any person in interest or his duly authorized agent or attorney may petition the department for a declaratory ruling with respect to the applicability to any persons, property or state of facts of any rule or statute enforced by the director. Two or more persons similarly situated may join in a single petition and additional parties may intervene by petition.

SEC 5.02 Form of petition; verification. (1) Every such petition shall be captioned "Before the Department of Securities, State of Wisconsin" and entitled "In the Matter of the Applicability of section _____, of the Rules and Regulations Relating to _____ (or, of section _____ of the Wisconsin Statutes) to _____, Petitioner."

(2) The petition shall contain a plain and concise statement of the ultimate facts showing the petitioner's interest (including any license held by petitioner) and the situation as to which a declaratory ruling is desired, without argument or unnecessary repetition.

(3) The petition shall conclude with a prayer for the declaratory ruling to which the petitioner supposes himself to be entitled.

(4) Every such petition shall be signed by or on behalf of each petitioner, stating his postoffice address, and shall be verified by at least one of them.

SEC 5.03 Filing. The petition shall be filed in triplicate (original and 2 copies) with the department of securities.

SEC 5.04 Duties of director. Upon the filing of such petition the director may cause an investigation to be made as to the facts alleged in the petition and may consult with the attorney general's department as to any legal questions involved. If he determines that any of the allegations of the petition may be untrue or should be qualified, or that material facts bearing on the matter may not have been alleged, he shall prepare and serve on the petitioner(s) (and any interveners) a notice of hearing and statement of issues, setting forth the questions upon which the petitioner(s) will be required to produce evidence. The said notice shall follow as nearly as possible the form prescribed in section SEC 3.18, but shall not require that an answer be made. If he determines that there is no issue of fact he shall state in the notice of hearing that issues of law only will be considered. Notice of hearing shall be given as soon as possible after filing of the petition.

SEC 5.05 Moot or hypothetical cases. The department will not consider moot or hypothetical cases, or cases in which the petitioner has no interest, financial or otherwise. Whenever a petitioner desires a declaratory ruling as to a prospective course of action, the petition shall allege and the proof must show that the petitioner in good faith intends to pursue such course of action in the event of a favorable ruling by the department. Whenever the petition shows on its face, or the proof establishes, that the question presented is moot or hypothetical or that petitioner has no legal interest therein, the director may make and serve an order dismissing the petition, stating the grounds of his action.

SEC 5.06 Hearings; appearances. Hearings shall be conducted as nearly as possible as prescribed by sections SEC 3.03, SEC 3.04, SEC 3.08 and SEC 3.09. Petitioner(s) (and interveners) may appear in person or by any officer, regular employee or attorney. Sections SEC 3.06, SEC 3.22, SEC 3.24 and SEC 3.25 shall apply to proceedings under this title.

SEC 5.07 Order; amendment of rules. (1) Except in cases referred to the department under section 227.05 (3), Wis. Stats., the department may decline to make a declaratory ruling in any case.

(2) The order of the department need not contain findings of fact but shall, except as otherwise provided in subsection (1), be so framed as to dispose of all questions raised in the proceeding. It may state that certain acts or fact situations are or will be contrary to the applicable statute or rule while others are not or will not be so. If during the pendency of the proceedings the department has adopted an amendment of its applicable rules, such amendment shall be given due effect. The order shall state that the ruling is not applicable to any fact situation not contemplated by the department and specifically mentioned in the order.