

## Chapter SEC 3

## ADMINISTRATIVE PROCEDURE

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**SEC 3.01 Definitions.** (1) "HEARING" as used herein includes both hearings and rehearings, and these rules shall cover both so far as applicable, except where otherwise specifically provided by statute or in these rules.

(2) "DIRECTOR" as used herein includes the acting director whenever detailed by the Director or discharging the duties and exercising the powers of the director during his absence or a vacancy in the office of director.

**SEC 3.02 Place.** Unless otherwise specifically provided by law or ordered in the order for hearing, all hearings shall be held at the office of the Department of Securities in the State-Office-Building at Madison, Wisconsin.

**SEC 3.03 Conduct of hearings.** All hearings shall be conducted and presided over by the director or such subordinate as is designated by him to hear the matter.

**SEC 3.04 Continuances.** Continuances and adjournments of hearings may be granted for cause by the director or the subordinate designated to conduct such hearing.

**SEC 3.05 Hearings public.** All hearings shall be open to the public, except where otherwise specifically provided by statute or ordered by the director or the subordinate conducting the same.

**SEC 3.06 Subpoenas.** The director may sign and issue subpoenas for the attendance of a party or any witness at a hearing whether he is to conduct the hearing or not. The subordinate designated to conduct the hearing may sign and issue subpoenas for the attendance of witnesses or parties at such hearing.

**SEC 3.07 Service.** Unless otherwise provided by law all orders, notices and other papers may be served by first class or registered mail addressed to the party at his last known postoffice address or to his attorney of record, except that when the department deems it appropriate such orders, notices and other papers may be served by

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every sheriff or other officer empowered to execute civil processes. Papers requiring to be filed with the department may be mailed to the following address:

~~825 State Office Building~~  
~~1 West Wilson Street~~  
Madison 2, Wisconsin

*23 West  
State Capital*

**SEC 3.08 Appearances.** Parties may appear in person or by a regularly employed employee or agent, or by a duly authorized attorney at law, and if a corporation by any of its active officers. Upon an appearance at a hearing the name and mail address of a party appearing and the name and mail address of any agent, employee, officer or attorney appearing with or for such party shall be furnished and entered in the record of the proceedings, and the said appearances so made and the mail addresses so given shall be binding on the party unless and except as modified by written notice to the director or the subordinate conducting the hearing and to all other parties appearing therein served as provided by section SEC 3.07, which when so modified shall in turn have the same force and effect as in the first instance.

**SEC 3.09 Examination of witnesses.** Witnesses may be examined on behalf of the department by the director or the subordinate conducting the hearing, or by an employee of the department with the permission of the person presiding, or by a representative of the attorney general acting as counsel for the department or the state. Such witnesses may be cross examined by a party or anyone authorized and appearing therefor, but not more than one individual, whether the party or an agent, employee, officer or attorney appearing with or for such party, shall cross examine a witness except by special permission of the person conducting the hearing. The director, the subordinate conducting said hearing, any employee of the department or any representative of the attorney general who shall be acting at said hearing, may call adversely any party, officer, agent or employee of a party and any witness on behalf of any party and may cross examine any witness or party testifying at such hearing. All witnesses shall be sworn by the director or the subordinate conducting such hearing before testifying in the same manner as is provided by statute in respect to the swearing of witnesses testifying in proceedings before courts of record.

**SEC 3.10 Record.** All the proceedings at a hearing shall be taken down by a stenographic reporter and the transcript thereof, together with all exhibits, shall be a part of the official record of such proceedings. Any party desiring a copy of such transcript shall so indicate in advance, and shall pay therefor the same fees as those of the official reporter of the circuit court for Dane county, Wisconsin.

**SEC 3.11 Evidence.** All evidence, testimony and exhibits must be of reasonable probative value to the subject matter of the hearing and all immaterial, irrelevant or unduly repetitious evidence, testimony or exhibits may be excluded.

**SEC 3.12 Stipulations.** All stipulations or agreements in reference to a matter the subject of a hearing or entered into at a hearing shall be either dictated at length into the record, or reduced to writing, signed by the persons or parties stipulating, and filed as a part of the

record of the proceedings. Controversies or matters which may be the subject of or cause for a hearing may be disposed of by stipulation, agreed settlement or consent orders.

**SEC 3.13 Motions.** Except during a hearing, motions shall be made in writing and signed by the party or a person authorized and appearing in the proceedings therefor, or if the party is a corporation by an active officer of the corporation. At least 3 days' notice thereof shall be given to the director or the subordinate designated to preside at the hearing, and to each and every other party to the proceedings, served as prescribed by section SEC 3.07. ✓

**SEC 3.14 Form and style of papers.** All papers filed at or in reference to any hearing shall be either printed or typewritten and all pleadings, notices, exhibits, papers and documents filed or presented at any hearing shall be on paper not more than 8½ inches wide and 13 inches long and shall weigh not less than 16 lbs. to the ream. They shall not be bound with stiff covers or backs and all copies thereof served, filed or used in said proceedings shall be legible. The proper caption shall be placed upon all papers filed, except as otherwise provided. An original and 2 copies thereof shall be filed with the director or the subordinate conducting the hearing, and a copy thereof also shall be served, or furnished as the case may be, to each other party or person interested who enters an appearance in said proceeding. The original of all such papers (except exhibits offered as evidence) shall be signed with the handwritten signature of the party, or of an officer, agent, employee, or attorney appearing for or with such party in the proceeding, and the name and mailing address of the party or of the representative appearing signing the same shall be printed or typed immediately following such written signature.

**SEC 3.15 How proceedings instituted.** (1) Proceedings to revoke a license shall be formally instituted by the issuance of a notice of hearing and an order for hearing. Such notice of hearing and order shall contain a clear and concise statement of the issues to be determined.

(2) Other hearings may be formally instituted by order which shall describe the purpose of such hearings with reasonable particularity, provided, however, that a clear and concise statement of the issues shall be duly made when any such matter becomes contested.

**SEC 3.16 Caption of pleadings and notices.** All pleadings, notices, orders and other papers filed in reference to any hearing shall be captioned "Before the Department of Securities, State of Wisconsin" and shall be entitled "In the Matter of the \_\_\_\_\_ (here to be inserted the license or other matter that is involved) of \_\_\_\_\_ (here insert name of the party), Respondent." The party whose license, practice, conduct, etc. is involved shall be known and designated as the "Respondent."

**SEC 3.17 Form of allegations.** If the alleged offense, conduct or action is a continuing one, its general nature and the approximate time covered shall be stated so far as possible in the notice of hearing where these rules prescribe the stating thereof in said notice. If a specific incident or act is relied upon it shall be alleged with such particularity as to time, place and circumstances as may be necessary to

enable the respondent to refute, admit or defend the same, and in any case may be alleged in the language of the statute or rule claimed to have been violated concluding "contrary to section \_\_\_\_\_ (here to be inserted the section, subsection and subdivision number) of the Statutes" or "contrary to section \_\_\_\_\_ (here to be inserted the number) of the rules and regulations of the Department of Securities of the State of Wisconsin" or both. Separate charges, acts, or matters shall be stated in separate paragraphs and numbered consecutively.

**SEC 3.18 Form of notices and orders for hearing.** The form of notices of and orders for hearing upon the revocation and suspension of license may be in substantially the form as set forth in the appropriate forms annexed hereto, which said forms, including amendments thereto, are made a part of these rules.

**SEC 3.19 Answer.** The respondent may be required to make answer to any notice within the time therein specified, and failure so to do shall constitute a default. Where answer is required the order for hearing shall so prescribe. The department may, however, upon proper showing, excuse any failure to answer upon such terms as it shall determine to be just and permit the party to make answer within such time as it shall prescribe, provided, however, that no party shall be relieved from such default after a hearing has been concluded and an order entered or other disposition made of the matter. The answer shall be verified by the respondent individually, or if a corporation by a proper officer of such corporation, unless an admission of the allegations might subject the person or party to prosecution for a felony, and shall be filed with the department in triplicate (original and 2 copies) within the time prescribed in the notice of hearing.

**SEC 3.20 Contents of answer.** An answer must contain:

(1) A specific denial of each material allegation of the charges, factual situations or matters which the respondent controverts.

(2) A statement of any new matter constituting a defense or mitigating the offense or matter charged, which the respondent wishes to have considered.

(3) Every material allegation not controverted as prescribed shall be taken as true, but any new matter set forth in the answer shall be deemed controverted without any reply being served or filed.

*1.10* **SEC 3.21** In all pleadings each paragraph shall be separately numbered consecutively.

**SEC 3.22 Variances.** The provisions of section 263.28, Wis. Stats., with reference to variances between allegations and proof shall apply to proceedings under these rules.

**SEC 3.23 Default.** In case the respondent fails to submit an answer as required by section SEC 3.19, if the order for hearing requires answer, or fails to appear at a hearing at the time and place fixed therefor, the charges or matters specified shall be taken as true and the director may make findings and enter an order on the basis thereof. The default of a party in answering or in appearing shall not preclude the director from hearing said matter and taking evidence as he shall deem necessary and proper in disposing of the matter.

SEC 3.24 Arguments. The director or subordinate conducting the hearing may hear oral arguments and limit the time thereof. Except as provided in section 227.12, Wis. Stats., all arguments shall be submitted in writing unless otherwise ordered. Where permitted, such written arguments shall conform in size of paper and other requirements to the provisions of section SEC 3.14 hereof. At least 3 copies of all briefs or written arguments shall be furnished to the director or the subordinate conducting such hearing. The time for filing such arguments shall be fixed by the director or the subordinate presiding at the hearing.

SEC 3.25 Prehearing conferences. Prehearing conferences may be held at the convenience of the parties and shall be conducted by the director or a subordinate, or any employee of the department designated by him, who shall keep and preserve a record of any agreement as to the issues or stipulation or admission of fact which may be made at such conference. Such record shall be attached to the file and constitute a part of the official record of the case.

SEC 3.26 Other contested matters. In any other contested matters which may come before the department for its decision, proceedings shall be as nearly as possible governed by the foregoing rules, or amendments or supplements thereto, with such changes as may be appropriate in the form and style of pleadings, orders, etc.

SEC 3.27 Orders without hearing. Where the provisions of chapter 189, Wis. Stats., authorize or provide for the promulgation or entry of an order without a hearing, nothing in these rules shall be deemed to alter or affect in any manner such statutory provisions.

SEC 3.28 Interpretation. In any case where chapter 189, Wis. Stats., provides procedure inconsistent with these rules the statute shall govern to the extent of such inconsistencies. If in any case the forms set out in these rules be found not appropriate, the department or any party may devise forms substantially similar to those herein prescribed to meet such situation.

Form A (section SEC 3.18 (1))

BEFORE THE DEPARTMENT OF SECURITIES  
STATE OF WISCONSIN

In the Matter of the \_\_\_\_\_  
(here to be inserted the license that is in-  
volved) of \_\_\_\_\_ (here  
insert name of the party), Respondent. } File No. \_\_\_\_\_

NOTICE OF AND ORDER FOR HEARING

I

The official files of the State of Wisconsin Department of Securities disclose that:

(Here state the license now held by the party, together with the date when such license was issued.)

II

The Director of the Department of Securities has caused to be made an investigation of the books and records of \_\_\_\_\_ (party), a true copy of which is attached hereto and made a part hereof as though set forth in particular, by representatives of the Department, and as a consequence thereof has reasonable grounds to believe:

A

(Here to be inserted a summation of the charges or matters involved, stated with particularity but as briefly as possible, each separate matter being given a separate paragraph, number or letter, and numbered or lettered consecutively. In any case where a statute or rule is believed to have been violated, the section, subsection and subdivision number of the said statute or rule is to be inserted.)

III

NOW, THEREFORE, IT IS ORDERED:

1. That a hearing be held to determine whether grounds exist for the revocation of the license to sell securities heretofore issued to \_\_\_\_\_, Respondent, pursuant to the provisions of section 189.04 (2) and (3), Wis. Stats.;

2. That the said hearing be held at the offices of the Department of Securities, Room 325, State-Office Building, 1 West Wilson Street, in the city of Madison, Wisconsin, at \_\_\_\_\_ o'clock on the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_;

3. That a true copy of this order and of the notice of hearing made a part hereof be served on the said \_\_\_\_\_, Respondent, by registered mail, not less than five days prior to the time of the hearing.

Dated at Madison, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_.

By the DEPARTMENT OF SECURITIES  
 Director  
 (or authorized subordinate)

NOTE:

1. (a) The form of order suspending a license pursuant to sec. 189.04 (4), shall be substantially similar to the foregoing order and may be incorporated therein, except that the following shall be added:

"That pending final determination as to whether the license of the said \_\_\_\_\_ (party) shall be revoked the said license be, and the same is hereby, suspended."

(b) The form of notice of hearing where the order suspends pursuant to sec. 189.04 (4), the license pending final determination, shall contain a statement that the Director, or authorized subordinate, has reason to believe that such suspension may be necessary or appropriate in the public interest or for the protection of investors.

2. When the orders prescribed above require the respondent to answer pursuant to s. SEC 3.19 the following provision shall be made a part of the order:

"That \_\_\_\_\_, Respondent, be required to answer in writing at least \_\_\_\_\_ days before the time set for hearing."