

§9.2

disciplinary or access denial action, or other adverse action by an exchange.

(b) *Matters excluded.* This part does not apply to and the Commission will not accept notices of appeal, or petitions for stay pending review, of:

(1) Any arbitration proceeding, regardless of whether the proceeding was conducted pursuant to the provisions of section 5a(a)(11) of the Act or involved a controversy between members of an exchange;

(2) Except as provided in §§9.11(a), 9.11(b)(1)–(5), 9.11(c), 9.12(a) and 9.13 (concerning the notice, effective date and publication of a disciplinary or access denial action), any summary action authorized under the provisions of §8.27 of this chapter imposing a minor penalty for the violation of exchange rules relating to decorum or attire, or relating to the timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities; and

(3) Any exchange action arising from a claim, grievance, or dispute involving cash market transactions which are not a part of, or directly connected with, any transaction for the purchase, sale, delivery or exercise of a commodity for future delivery or a commodity option.

The Commission will, upon its own motion or upon motion filed pursuant to §9.21(b), promptly notify the appellant and the exchange that it will not accept the notice of appeal or petition for stay of matters specified in this paragraph. The determination to decline to accept a notice of appeal will be without prejudice to the appellant's right to seek alternate forms of relief that may be available in any other forum.

(c) *Applicability of these part 9 rules.* Unless otherwise ordered, these rules will apply in their entirety to all appeals, and matters relating thereto filed on or after August 6, 1987. Any part 9 proceeding pending before the Commission on August 6, 1987, will continue to be governed by the Commission's former part 9 rules, 17 CFR part 9 (1987), except that the parties to any part 9 proceeding pending on August 6, 1987, may, within 30 days after August 6, 1987, by written stipulation executed by all parties, and filed with the Proceedings Clerk before the Commission's

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final decision is rendered, elect to have the matter governed by the provisions of this part 9, as amended.

[52 FR 25366, July 7, 1987, as amended at 59 FR 5701, Feb. 8, 1994]

§9.2 Definitions.

For purposes of this part:

(a) *Access denial action* means any proceeding other than a disciplinary action by an exchange that denies or limits the privileges of membership, but excludes any exchange action that solely limits the ability of a member of an exchange to participate in the internal corporate affairs of the exchange.

(b) *Disciplinary action* means any suspension, expulsion or other penalty (as defined in §8.03(i) of this chapter) imposed on a member of an exchange by that exchange for violations of rules of the exchange, including summary actions.

(c) *Exchange* means any board of trade which has been designated as a contract market.

(d) *Exchange proceeding* means any formal or informal proceeding by an exchange which results in a disciplinary action, access denial action or other adverse action.

(e) *Mail* means properly addressed and postpaid first class mail, and includes overnight delivery service.

(f) *Member of an exchange* means any person who is admitted to membership or has been granted membership privileges on an exchange, any employee, officer, partner, director or affiliate of such member or person with membership privileges including any associated person, and any other person under the supervision or control of such member or person with membership privileges.

(g) *Other adverse action* and *adverse action* include any exchange action, other than an access denial action or disciplinary action, that adversely affects any person, whether or not a member of the exchange, but exclude any exchange action that solely involves the internal corporate affairs of the exchange.

(h) *Party* includes the person filing a notice of appeal or petition for stay who has been the subject of a disciplinary, access denial or other adverse action by an exchange; that exchange;

any person participating in a proceeding under this part pursuant to § 9.25; and the Division of Market Oversight and/or the Division of Clearing and Intermediary Oversight when participating in a proceeding under this part pursuant to § 9.26.

(i) *Record of the exchange proceeding* means all testimony, exhibits, papers and records produced at or filed in an exchange disciplinary or access denial proceeding or served on a party to that proceeding; all documents, minutes or other exchange records serving as a basis for or reflecting the findings, rationale and conclusions concerning the adverse action taken by an exchange; a transcript of any proceeding before any body of the exchange in connection with the exchange proceeding; and a copy of all exchange rules which form the basis for the exchange proceeding.

(j) *Rules of the exchange* means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, or written and publicly available interpretation or stated policy of the exchange, or instrument corresponding thereto.

(k) *Summary action* means a disciplinary action resulting in the imposition of a penalty on a member of an exchange for violation of rules of the exchange authorized under the provisions of § 8.17(b) (penalty for impeding progress of hearing), § 8.25 (member responsibility action) or § 8.27 (penalty for violation of rules relating to decorum, attire, submission of records or similar activities) of this chapter.

[52 FR 25366, July 7, 1987; 52 FR 27286, July 20, 1987, as amended at 67 FR 62352, Oct. 7, 2002]

§ 9.3 Provisions referenced.

Except as otherwise provided in this part, the following provisions of the Commission's rules relating to reparations contained in part 12 of this chapter apply to this part: § 12.3 (Business address; hours); § 12.5 (Computation of time); § 12.6 (Extensions of time; adjournments; postponements); § 12.7 (Ex parte communications); and § 12.12 (Signature).

§ 9.4 Filing and service; official docket.

(a) *Filing with the Proceedings Clerk; proof of filing; proof of service.* Any document that is required by this part to be

filed with the Proceedings Clerk must be filed by delivering it in person or by mail to: Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. To be timely filed under this part, a document must be delivered or mailed to the Proceedings Clerk within the time prescribed for filing. A party must use a means of filing which is at least as expeditious as that used in serving that document upon the other parties. Proof of filing must be made by attaching to the document for filing an affidavit of filing executed by any person 18 years of age or older or a proof of filing executed by an attorney-at-law qualified to practice before the Commission. The proof of filing must certify that the attached document was deposited in the mail, with first-class postage prepaid, addressed to the Proceedings Clerk, Office of Proceedings, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, on the date specified in the affidavit. Proof of service of a document must be made by filing with the Proceedings Clerk, simultaneously with the filing of the required document, an affidavit of service executed by any person 18 years of age or older or a certification of service executed by an attorney-at-law qualified to practice before the Commission. The proof of service must identify the persons served, state that service has been made, set forth the date of service, and recite the manner of service.

(b) *Formalities of filing*—(1) *Number of copies.* Unless otherwise specifically provided, an original and two conformed copies of all documents filed with the Commission in accordance with the provisions of this part must be filed with the Proceedings Clerk.

(2) *Title page.* All documents filed with the Proceedings Clerk must include at the head thereof, or on a title page, the name of the Commission, the title of the proceeding, the docket number (if one has been assigned by the Proceedings Clerk), the subject of the particular document and the name of the person on whose behalf the document is being filed.

(3) *Paper, spacing, type.* All documents filed with the Proceedings Clerk