

§ 9.12

17 CFR Ch. I (4–1–07 Edition)

properly addressed and postpaid document. Where delivery to the person disciplined or denied access is effected by such mail, the time within which a notice of appeal or petition for stay may be filed will be increased by three days.

(e) *Certification.* Copies of the notice and the submission of any additional information provided pursuant to this section must be certified as true and correct by a duly authorized officer, agent or employee of the exchange.

[52 FR 25366, July 7, 1987, as amended at 60 FR 49334, Sept. 25, 1995; 67 FR 62352, Oct. 7, 2002]

§ 9.12 Effective date of disciplinary or access denial action.

(a) *Effective date.* Any disciplinary or access denial action taken by an exchange will not become effective until at least fifteen days after the written notice prescribed by § 9.11 is delivered to the person disciplined or denied access; *Provided, however,* That the exchange may cause a disciplinary action to become effective prior to that time if:

(1) As authorized by § 8.25 of this chapter, the exchange reasonably believes, and so states in its written decision, that immediate action is necessary to protect the best interests of the marketplace; or

(2) As authorized by § 8.17(b) of this chapter, the exchange determines, and so states in its written decision, that the actions of a person who is within the exchange's jurisdiction have impeded the progress of a disciplinary hearing; or

(3) As authorized by § 8.27 of this chapter, the exchange determines that a person has violated exchange rules relating to decorum or attire, or timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities; or

(4) The person against whom the action is taken has consented to the penalty to be imposed and to the timing of its effectiveness.

(b) *Notice of early effective date.* If the exchange determines in accordance with paragraph (a)(1) of this section that a disciplinary action will become effective prior to the expiration of fifteen days after written notice thereof,

it must notify the person disciplined in writing, either personally or by telegram or other means of written telecommunication to the person's last known address, stating the reasons for the determination. The exchange must also by telegram or other means of written telecommunication immediately notify the Commission (Attention: Contracts Markets Section, Division of Market Oversight). Where notice is delivered by telegram or other means of written telecommunication, the time within which the person so notified may file a petition for stay pursuant to § 9.24(a)(2) will be increased by one day.

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

§ 9.13 Publication of notice.

Whenever an exchange suspends, expels or otherwise disciplines, or denies any person access to the exchange, it must make public its findings by disclosing at least the information contained in the notice required by § 9.11(b). An exchange must make such findings public as soon as the disciplinary action or access denial action becomes effective in accordance with the provisions of § 9.12 by posting a notice in a conspicuous place on its premises to which its members and the public regularly have access for a period of five consecutive business days. Thereafter, the exchange must maintain and make available for public inspection a record of the information contained in the disciplinary or access denial notice.

§§ 9.14–9.19 [Reserved]

Subpart C—Initial Procedure With Respect to Appeals

§ 9.20 Notice of appeal.

(a) *Time to file.* Except as provided in § 9.1(b), any person who is the subject of disciplinary or access denial action by an exchange or any person who is otherwise adversely affected by any other action of an exchange may, at any time within thirty days after notice of the disciplinary or access denial action has been delivered to the person disciplined or denied access in accordance with § 9.11, or within thirty days after notice

Commodity Futures Trading Commission

§ 9.22

of another adverse action, file a notice of appeal of such disciplinary, access denial or other adverse action. The Commission may dismiss any appeal for which a notice of appeal is not timely filed.

(b) *Contents.* The notice of appeal need consist only of a brief statement indicating that the party is requesting Commission review of the exchange action, and must include:

(1) The name and address of the appellant, and any duly authorized agent or officer of the appellant;

(2) The name and docket number of the exchange proceeding;

(3) The date on which the disciplinary, access denial or other adverse action was imposed by the exchange or the date on which the final exchange decision was rendered, and the dates upon which the exchange action has or will become final and effective;

(4) A copy of the notice provided to the appellant by the exchange in accordance with the provisions of § 9.11, in the case of a disciplinary or access denial action, or otherwise, in the case of any other adverse exchange action;

(5) The relief sought from the action of the exchange;

(6) The appellant's request for a copy of the record of the exchange proceeding, or portions of the record not in the appellant's possession, and a representation that the appellant agrees to pay the exchange reasonable fees, as provided in the rules of the exchange, for printing that copy; and

(7) A nonrefundable filing fee of \$100 remitted by check, bank draft or money order, payable to the Commodity Futures Trading Commission.

[52 FR 25366, July 7, 1987; 52 FR 27286, July 20, 1987]

§ 9.21 Record of exchange proceeding.

(a) *Filing of record.* Within thirty days after service of the notice of appeal, the exchange must file two copies of the record of the exchange proceeding (as defined in § 9.2(i)) with the Proceedings Clerk, and serve a copy on the appellant and any other party to the proceeding, provided that such person has agreed to pay the exchange reasonable fees, as provided in the rules of the exchange, for printing the copy. The record must be bound as a unit, must

be chronologically indexed and tabbed, must be certified as correct by a duly authorized official, agent or employee of the exchange, and must contain a certificate of service on the appellant or any other party to the proceeding (or waiver of service for failure to pay costs pursuant to this rule).

(b) *Motion that the Commission not accept notice of appeal.* Within fifteen days after service of the notice of appeal, the exchange may file a motion that the Commission not accept a notice of appeal of any matter that the exchange contends is excluded from this part by §§ 9.1(b), 9.2(a) and 9.2(g). Such motion must be accompanied by an affidavit averring facts in support of the motion. The filing of such motion will operate to stay the filing of the record and subsequent submissions pending the Commission's ruling on such motion. The appellant may serve and file a written response to such motion within ten days after service of the motion.

§ 9.22 Appeal brief.

(a) *Time to file.* Any person who has filed a notice of appeal in accordance with the provisions of § 9.20 must perfect the appeal by filing an appeal brief with the Proceedings Clerk within thirty days after service of the record of the exchange proceeding. The Commission may dismiss any appeal for which an appeal brief is not timely filed.

(b) *Contents.* Each appeal brief submitted to the Commission pursuant to this section must include, in the order indicated:

(1) A statement of the issues presented for review;

(2) *A statement of the case.* The statement must first indicate briefly the nature of the case and include a full description of the disciplinary, access denial or other adverse action. There must follow a clear and concise statement of all facts relevant to the consideration of the appeal, including, if known, each alleged act or omission forming the basis of the exchange action, with appropriate references to the record of the exchange proceeding;

(3) *An argument.* The argument may be preceded by a summary. The argument must contain the contentions of the appellant with respect to the issues