

§ 9.33

Commission directs otherwise. In the event the Commission affords the parties the opportunity to present oral argument before the Commission, the oral argument will proceed in accordance with the provisions of § 10.103 (b) and (d) of this chapter.

§ 9.33 Final decision by the Commission.

(a) *Opinion and order.* Upon review, the Commission may affirm, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the exchange. The Commission's decision will be contained in its opinion and order which will be based upon the record before it, including the record of the exchange proceeding, and any oral argument made in accordance with § 9.32. Except as provided in paragraph (b) of this section, the opinion and order will constitute the final decision of the Commission, effective upon service on the parties. In the event the Commission is equally divided as to its decision, the Commission will affirm without opinion the decision of the exchange, which will constitute the Commission's final decision.

(b) *Order of summary affirmance.* If the Commission finds that the result reached in the decision of the exchange is substantially correct and that none of the arguments on appeal made by the appellant raise important questions of law or policy, the Commission may, by appropriate order, summarily affirm the decision of the exchange without opinion, which will constitute the Commission's final decision. Unless the Commission expressly indicates otherwise in its order, an order of summary affirmance does not reflect a Commission determination to adopt the exchange final decision, including any rationale contained therein, as its opinion and order, and neither the exchange's final decision nor the Commission's order of summary affirmance will serve as a Commission precedent in other proceedings.

(c) *Standards of review.* In reviewing an exchange disciplinary, access denial or other adverse action, the Commission will consider whether:

(1) The exchange disciplinary, access denial or other adverse action was

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taken in accordance with the rules of the exchange;

(2) Fundamental fairness was observed in the conduct of the proceeding resulting in the disciplinary, access denial or other adverse action;

(3)(i) In the case of a disciplinary action, the record contains substantial evidence of a violation of the rules of the exchange, or (ii) in the case of an access denial or other adverse action, the record contains substantial evidence supporting the exchange action; and

(4) The disciplinary, access denial or other adverse action otherwise accords with the Act and the rules, regulations and orders of the Commission thereunder.

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