

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

must be typewritten, must be on one grade of good white paper no less than 8 or more than 8½ inches wide and no less than 10½ or more than 11½ inches long, and must be bound on the top only. They must be double-spaced, except for long quotations (3 or more lines) and footnotes which should be single-spaced.

(4) *Signature*. The original copy of all papers must be signed in ink by the person filing the same or by his duly authorized agent or attorney.

(c) *Service*—(1) *General requirements*. All documents filed with the Proceedings Clerk must, at or before the time of filing, be served upon all parties. A party must use a means of service which is at least as expeditious as that used in filing that document with the Proceedings Clerk. One copy of all motions, petitions or applications made in the course of the proceeding, all notices of appeal, all briefs, and letters to the Commission or an employee thereof must be served by a party upon all other parties.

(2) *Manner of service*. Service may be either personal or by mail. Service by mail is complete upon deposit of the document in the mail. Where service is effected by mail, the time within which the person served may respond thereto will be increased by three days.

(3) *Designation of person to receive service*. The first document filed in a proceeding by or on behalf of any party must state on the first page the name and postal address of the person who is authorized to receive service for the party of all documents filed in the proceeding. Thereafter, service of documents must be made upon the person authorized unless service on a different authorized person or on the party himself is ordered by the Commission, or unless pursuant to §9.8 the person authorized is changed by the party upon due notice to all other parties. Parties must file and serve notification of any changes in the information provided pursuant to this subparagraph as soon as practicable after the change occurs.

(4) *Service of orders and decisions*. A copy of all notices, rulings, opinions and orders of the Commission will be served on each of the parties and will be deemed served upon deposit in the mail.

(d) *Official docket.* Upon receipt of a notice of appeal filed in accordance with § 9.20, or a petition for stay pending review filed in accordance with § 9.24, the Proceedings Clerk will establish and thereafter maintain the official docket of that proceeding and will assign a docket number to the proceeding.

[52 FR 25366, July 7, 1987, as amended at 60 FR 49334, Sept. 25, 1995]

#### § 9.5 Motions.

(a) *In general.* An application for a form of relief not otherwise specifically provided for in this part must be made by a written motion, filed with the Proceedings Clerk. The motion must state the relief sought and the basis for the relief and may set forth the authority relied upon.

(b) *Answer to motions.* Any party may serve and file a written response to a motion within ten days after service of the motion, or within such longer or shorter period as established by these rules, or as the Commission may direct.

(c) *Motions for procedural orders.* Motions for procedural orders, including motions for extensions of time, may be acted on at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of the action.

(d) *Dilatory motions.* Frivolous or repetitive motions dealing with the same subject matter will not be permitted and such motions will summarily be denied.

#### § 9.6 Sanctions for noncompliance.

In the event that any party fails to file any document or make any appearance which is required under this part, the Commission may, in its discretion, and upon its own motion or upon the motion of any party to the proceeding, dismiss the proceeding before it, or, based on the record before it, affirm, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the exchange.

#### § 9.7 Settlement.

At any time before there has been a final determination by the Commission with respect to any notice of appeal

filed in accordance with § 9.20, the parties may file a stipulation for dismissal based on a settlement agreement. Thereupon, the Commission may issue an order terminating the proceeding before the Commission as to the parties to the settlement agreement. The entry of such an order does not affect the Commission's authority under the Act.

#### § 9.8 Practice before the Commission.

(a) *Practice—(1) By non-attorneys.* An individual may appear *pro se* (on his own behalf); a general partner may represent the partnership; a *bona fide* officer of a corporation, trust or association may represent the corporation, trust or association.

(2) *By attorneys.* An attorney-at-law who is admitted to practice before the highest Court in any State or territory, or of the District of Columbia, who has not been suspended or disbarred from appearance and practice before the Commission in accordance with provisions of part 14 of this chapter may represent parties as an attorney in proceedings before the Commission.

(b) *Debarment of counsel or representative during the course of a proceeding.* Whenever, while a proceeding is pending before the Commission, the Commission finds that a person acting as counsel or representative for any party to the proceeding is guilty of contemptuous conduct, the Commission may order that such person be precluded from further acting as counsel or representative in the proceeding. The proceeding will not be delayed or suspended pending disposition of the appeal; *Provided*, That the Commission may suspend the proceedings for a reasonable time for the purpose of enabling the party to obtain other counsel or representative.

(c) *Withdrawal of representation.* Withdrawal from representation of a party will be only by leave of the Commission. Such leave to withdraw may be conditioned on the attorney's (or representative's) submission of an affidavit averring that the party represented has actual knowledge of the withdrawal, and such affidavit must include the name and address of a successor counsel (or representative) or a statement that the represented party