

§ 9.21

(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 presented, and the reasons therefor, and citations to relevant authorities and to parts of the record of the exchange proceeding; and

(4) A conclusion stating the precise relief sought.

(c) *Length of appeal brief.* Without prior leave of the Commission, the appeal brief may not exceed thirty-five pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of testimony, exhibits, statutes, rules, regulations or similar materials.

§ 9.23 Answering brief.

(a) *Time for filing answering brief.* Within thirty days after service of the appeal brief, the exchange must file with the Commission an answering brief.

(b) *Contents of answering brief.* The answering brief generally must follow