



Submission No. 21-20  
February 16, 2021

Mr. Christopher J. Kirkpatrick  
Secretary of the Commission  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

**Re: Amendments to Resolution No. 1 to Chapter 8 (Coffee “C” Futures) and Resolution No. 2 to Chapter 9 (Cocoa Futures) - Submission Pursuant to Section 5c(C)(1) of the Act and Regulation 40.6(a)**

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (the “Act”) and Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), ICE Futures U.S., Inc. (“IFUS” or “Exchange”) hereby certifies the amendments to Coffee “C” Resolution No. 1 and Cocoa Resolution No. 2 (collectively the “Resolutions”), set forth in Exhibit A. As discussed below, the amendments to the Resolutions (i) provide for the treatment of warehouse storage terms which conflict with relevant IFUS Rules, eCOPS Rules and the law; and (2) allow a warehouse operator to assert only a “specific warehouseman’s lien” against coffee/cocoa certified for delivery and/or any proceeds thereof in its possession.

The Exchange operates an electronic title registry system for its warehoused commodities known as eCOPS, LLC, which is the exclusive means of transferring title to Exchange certified coffee and cocoa in fulfillment of delivery obligations under the terms of the futures contracts in these products. Each licensed warehouse operator issues an electronic warehouse receipt (“EWR”) in eCOPS containing the salient terms of the particular lot of coffee or cocoa for which the EWR is issued. The warehouse also enters into eCOPS its general terms and conditions of storage (“Terms of Storage”), all of which are deemed to be a part of each EWR issued by the warehouse.

In order to ensure the integrity of the delivery process, the Exchange is amending the Resolutions to provide for the treatment of the Terms of Storage in the event it conflicts with relevant delivery requirements. Specifically, the rule states that:

In the event of any inconsistency between the Warehouse Terms and Conditions and any of the following, the conflicting Warehouse Terms and Condition shall be of no effect: the IFUS Rules, the eCOPS Rules, the requirements of law for a negotiable EWR, any agreement executed between the Warehouse and eCOPS, LLC and/or any agreement executed between the Warehouse and IFUS.

Additional amendments to the Resolutions are intended to help ensure that coffee/cocoa delivered on the Exchange is free from encumbrances, as required under the terms and conditions of each futures contract. Specifically, the amendments expressly prohibit a warehouse operator from asserting a “general warehouseman’s lien” against coffee or cocoa certified for Exchange delivery (i.e. one for charges or



expenses relating to goods other than the specific coffee/cocoa, including but not limited to other certified and/or non-certified coffee/cocoa stored by the warehouse operator for the same bailor, or for other obligations of such bailor). The amendments will only allow a warehouse operator to issue a “specific warehouseman’s lien” (one for charges related to the storage or transportation of the specific Exchange certified coffee/cocoa being delivered and for expenses necessary for its preservation or reasonably incurred in its sale pursuant to law). These amendments will allow a warehouseman’s lien to be asserted against Exchange certified stocks only to the extent that the liability sought to be discharged arises from those exact stocks. In practice, this restriction should make it easier for all parties (the deliverer, the receiver and the warehouse operator) to identify, assert and resolve any encumbrances prior to delivery on the Exchange.

The Exchange certifies that the amendments to the Resolutions, which will become effective on February 22, 2022, comply with the requirements of the Act and the rules and regulations promulgated thereunder. The Exchange has reviewed the designated contract market core principles (“Core Principles”) as set forth in the Act and has determined that the amendments comply with the following relevant Core Principles:

#### **COMPLIANCE WITH RULES**

The amendments are set forth in Resolution No. 1 to Chapter 8 (Coffee “C” Futures) and Resolution No. 2 to Chapter 9 (Cocoa Futures) and will be enforced by the Exchange. In addition, physical delivery against Coffee “C” futures and Cocoa futures contracts is subject to all relevant Exchange rules which are enforced by the Market Regulation Department.

#### **CONTRACTS NOT READILY SUBJECT TO MANIPULATION**

Coffee “C” futures and Cocoa futures are not readily subject to manipulation as they are based on an established and liquid cash markets for the underlying. We believe the amendments to the Resolutions help ensure physical delivery of unencumbered goods in accordance with the Exchange’s delivery procedures. In addition, physical delivery against Coffee “C” futures and Cocoa futures contracts is subject to all relevant Exchange rules which are enforced by the Market Regulation Department.

The Exchange is not aware of any opposing views with regard to the amendments and further certifies that, concurrent with this filing, a copy of this submission was posted on the Exchange’s website at <https://www.theice.com/futures-us/regulation#rule-filings>

If you have any questions or need further information, please contact me at 212-748-4021 or at [jason.fusco@theice.com](mailto:jason.fusco@theice.com).

Sincerely,

Jason V. Fusco  
Assistant General Counsel  
Market Regulation

Enc.



## EXHIBIT A

(In the text of the amendments below, additions are shown underscored and deletions are bracketed and lined through.)

### COFFEE "C" RESOLUTIONS

#### No. 1. Warehouse Procedures and Recordkeeping Requirements for the Storage and Loadout of Exchange Cocoa

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#### XII. Warehouse Terms and Conditions; Permitted Lien on Exchange Certified Coffee

An Exchange licensed coffee warehouse operator shall provide for entry of the warehouse operator's standard terms and conditions for EWRs (the "Warehouse Terms and Conditions") into the eCOPS system. In the event of any inconsistency between the Warehouse Terms and Conditions and any of the following, the conflicting Warehouse Terms and Condition shall be of no effect: the IFUS Rules, the eCOPS Rules, the requirements of law for a negotiable EWR, any agreement executed between the Warehouse and eCOPS,LLC and/or any agreement executed between the Warehouse and IFUS.

An Exchange licensed coffee warehouse operator may assert a warehouseman's lien against coffee certified for delivery and/or against any proceeds thereof in its possession, but only for charges related to the storage or transportation of such Exchange certified coffee and for expenses necessary for the preservation of such Exchange certified coffee or reasonably incurred in its sale pursuant to law.

An Exchange licensed coffee warehouse operator may not assert a warehouseman's lien or other lien or security interest against coffee certified for delivery and/or against any proceeds thereof in its possession for charges or expenses relating to other goods, including but not limited to other certified and/or non-certified coffee stored by the warehouse operator for the same bailor, or for other obligations of such bailor.

### COCOA RESOLUTIONS

#### No. 2. Warehouse Procedures and Record Keeping Requirements for the Storage and Loadout of Exchange Cocoa

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#### XII. Warehouse Terms and Conditions; Permitted Lien on Exchange Certified Cocoa

An Exchange licensed cocoa warehouse operator shall provide for entry of the warehouse operator's standard terms and conditions for EWRs (the "Warehouse Terms and Conditions" into the eCOPS system). In the event of any inconsistency between the Warehouse Terms and Conditions and any of the following, the conflicting Warehouse Terms and Conditions shall be of no effect: the IFUS Rules, the



eCOPS Rules, the requirements of law for a negotiable EWR, any agreement executed between the Warehouse and eCOPS,LLC and/or any agreement executed between the Warehouse and IFUS.

An Exchange licensed cocoa warehouse operator may assert a warehouseman's lien against cocoa certified for delivery and/or against any proceeds thereof in its possession, but only for charges related to the storage or transportation of such Exchange certified cocoa and for expenses necessary for the preservation of such Exchange certified cocoa or reasonably incurred in its sale pursuant to law.

An Exchange licensed cocoa warehouse operator may not assert a warehouseman's lien or other lien or security interest against cocoa certified for delivery and/or against any proceeds thereof in its possession for charges or expenses relating to other goods, including but not limited to other certified and/or non-certified cocoa stored by the warehouse operator for the same bailor, or for other obligations of such bailor.