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AMSTERDAM ATLANTA CALGARY CHICAGO HOUSTON LONDON NEW YORK SINGAPORE WINNIPEG

**BY ELECTRONIC MAIL**

Submission No. 18-394  
August 22, 2018

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: Recertification of Dormant Agricultural Options Contracts  
Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6**

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended ("Act"), and Commission Regulation 40.6, ICE Futures U.S., Inc. ("IFUS" or "Exchange") hereby certifies that the two Cocoa Calendar Spread Options Contracts set forth in the table below (collectively the "Contracts"), which have become dormant under Commission Regulation 40.1(b), continue to comply with the Commodity Exchange Act and the Commission's regulations thereunder and will remain listed by the Exchange.

Code	Contract
CC1	Cocoa Calendar Spread
CC2	Cocoa Calendar Spread

The Contracts are listed on IFUS pursuant to Chapter 9 of the Exchange's Rules, attached hereto as Exhibit A, which governs trading of all Cocoa Calendar Spread Options. Please note that the terms and conditions of the Contracts are not being changed. Furthermore, the Contracts are cleared by ICE Clear U.S., a derivatives clearing organization which clears all Exchange contracts other than Energy contracts; and the Exchange's Market Regulation staff performs the compliance and market surveillance function for the Contracts.

The Exchange certifies that each Contract remains in compliance with the Commodity Exchange Act and the Commission's regulations thereunder. The Exchange is not aware of any substantive opposing views with respect to the continued listing of the Contracts. ICE Futures US further certifies that a copy of this submission was posted on the Exchange's website concurrent with its filing with the Commission, which can be found 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,

A handwritten signature in black ink, appearing to read "Jason V. Fusco". The signature is written in a cursive style with a large, sweeping initial "J".

Jason V. Fusco  
Assistant General Counsel  
Market Regulation

Enc.

cc: Division of Market Oversight  
New York Regional Office

**EXHIBIT A**

**ICE Futures U.S.<sup>®</sup>, Inc.**

**COCOA RULES**

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# ICE FUTURES U.S.<sup>®</sup>, INC.

## COCOA RULES

### FUTURES

#### Rule 9.00. Definitions

As used in the Cocoa Rules:

(a) **Bulk storage** means storage in an Exchange-licensed warehouse in a manner other than in Exchange-Segregated Lots.

(b) **Certificate of Grade** means an electric record created by eCOPS<sup>®</sup> in accordance with eCOPS procedures which constitutes the Certificate of Growth, Description, Condition, Grade, Waste and Count. Such record shall state that the cocoa either meets or does not meet Exchange standards. Only cocoa meeting Exchange Standards is deliverable under the Exchange's Cocoa Rules.

(c) **Condition** of Cocoa shall be understood to mean whether or not the cocoa is hammy or smoky.

(d) **Count** shall be understood to mean the number of cocoa beans per kilogram as determined by the licensed grader in accordance with the Cocoa Rules.

(e) **Date of Delivery** shall mean the date which is ten (10) Business Days following the date of issue of the Delivery Notice, except as the Rules may otherwise provide.

(f) **Deliverer** shall mean the Clearing Member that has issued a Delivery Notice, and, as used in connection with grading procedures, includes a party submitting cocoa for grading in advance of tender.

(g) **Delivery Notice** shall mean the notice of intention to deliver one (1) or more Lots of Cocoa in the form prescribed by the Exchange.

(h) **Delivery Worksheet** shall mean an electronic record created on eCOPS on the day a Delivery Notice is issued to the Clearing Organization by a Clearing Member, which shall be maintained and updated, as applicable, during the ten (10) Business Days until the Date of Delivery, as further described in Rule 9.05(g).

(i) **Description** is the adjective accompanying Growth to indicate the season in which the cocoa was grown, a method of selection or curing or a commercial classification.

(j) **eCOPS** shall mean the electronic commodity operations system utilized by the Exchange.

(k) **EWR** shall mean the electronic warehouse receipt record created on eCOPS by a warehouse concerning cocoa that is stored in such warehouse.

(l) **Exchange Invoice** shall mean an electronic record created on eCOPS from the data contained on the Delivery Notice and Delivery Worksheet, showing the amount to be paid by the Receiver for the delivery of the Cocoa identified in such invoice. If the data for one (i) or more Certificates of Grade is not contained in the final Delivery Worksheet, the Exchange Invoice shall be calculated so that the amount to be paid by the Receiver is adjusted as specified in Rule 9.11, and eCOPS shall designate such Exchange Invoice as a "pro forma Exchange Invoice".

(m) **Exchange-Segregated Lot** means a Lot of ten (10) metric tons net of cocoa beans (in original shipping bags of average weight(s) customary for the Growth) which has been identified for

delivery under an Exchange contract by marking and separating it from other lots of cocoa and which is stored in a portion of an Exchange-licensed warehouse designated as a store for delivery purposes.

(n) **Growth** is the common commercial name of a variety of cocoa to indicate the country in which it was produced or the district in such country or the port from which it was shipped.

(o)(1) **Grade**, as a noun, refers to the percentage of defective and/or slatery beans as provided in the Cocoa Rules.

(2) **Grade**, as a verb, means the examination and/or certification of cocoa as to its Growth, Description, Condition, Grade and/or Count.

(p) **Last Notice Day** shall mean the tenth (10<sup>th</sup>) Business Day prior to the last Business Day of a delivery month or such other day as the Board shall determine.

(q) **Last Trading Day** shall mean the Business Day prior to the Last Notice Day.

(r) **Notice of Transfer** shall mean an electronic record created on eCOPS that changes the Title Holder of an EWR from a Clearing Member to the Clearing Organization or from the Clearing Organization to a Clearing Member in connection with a delivery of Cocoa.

(s) **Receiver** shall mean the Clearing Member to which a Delivery Notice has been allocated by the Clearing Organization.

(t) **Sampling Confirmation** shall mean an electronic record created on eCOPS in which a licensed master sampler notifies the Exchange and the Person requesting the sample to confirm that such sampler obtained the requested sample in accordance with the Rules.

(u) **Sampling Order** shall mean an electronic record created on eCOPS in which a Person requests that a sample of cocoa be obtained and graded in accordance with Exchange Rules and procedures.

(v) **Waste** shall mean the collective amount of flat beans, pieces of shell, dust, dried cocoa pulp, dried cocoa placenta and all non-cocoa material, as determined by the licensed grader in accordance with the applicable Cocoa Rules. Waste shall be expressed as the percentage of such Waste by weight in the graded sample.

(w) **Weight Note** shall mean an electronic record created on eCOPS in which a licensed weighmaster notifies the Exchange, owner of the cocoa and the warehouse storing such cocoa, as to the weight of the cocoa.

**Amended by the Board February 2, 2010; effective for the March 2012 delivery month [¶¶ (b), (v) and (w)].**

#### **Rule 9.01. Delivery Months**

Cocoa contracts shall not be recognized by the Exchange extending beyond a period of twenty-four (24) months, including the current month. Trading in Cocoa Futures Contracts shall be conducted for delivery in March, May, July, September and December and shall at all times be conducted in any such month contained in a 24-month cycle. Trading in a new delivery month shall be initiated at the opening of trading on the first (1<sup>st</sup>) Business Day of the twenty-third (23<sup>rd</sup>) month preceding any delivery month.

#### **Rule 9.02. Delivery Points**

(a) The delivery of Cocoa on Exchange Futures Contracts shall be made only from warehouses licensed by the Exchange located in the Port of New York District, the Delaware River Port District, the Port of Albany, the Port of Baltimore or the Port of Hampton Roads.

(b) For purposes of this Rule, the Port of New York District shall mean the district defined from time to time by the laws of New York and New Jersey and all areas located with five (5) miles from the boundary of such district; the Port of Albany shall mean the district defined from time to time by the laws of New York; the Delaware River Port District shall mean the district defined from time to time by the laws of New Jersey and Pennsylvania; the Port of Baltimore shall mean the district defined from time to time by the laws of Maryland; and the Port of Hampton Roads shall mean the twenty-five (25) square mile harbor formed by the confluence of the James, Nansemond and Elizabeth Rivers, and the Chesapeake Bay eastward into the Atlantic Ocean, and including on its perimeter the port facilities located in the cities of Chesapeake, Newport News, Norfolk and Portsmouth, Virginia; provided, however, the Port of Hampton Roads shall also be deemed to include the city of Suffolk, Virginia.

(c) The seller may choose the delivery point. There shall be no differential in price based on the delivery point.

**Amended by the Board December 4, 2015; effective December 24, 2015 commencing with the July 2017 contract month.**

**Rule 9.03. Form of Contracts**

(a) In order to make delivery of Cocoa under the Exchange Futures Contract, a Clearing Member must execute an eCOPS Participant Agreement with eCOPS, LLC. No delivery may be made using a warehouse receipt other than an EWR.

(b) No contract for the future delivery of Cocoa shall be noticed in any report, or in any manner recognized by the Exchange, unless both parties thereto shall be Clearing Members excepting that Clearing Members may offer their contracts for clearance to the Clearing Organization, which may become by substitution a party thereto in place of a Clearing Member, and thereupon such Clearing Organization shall become subject to the obligations thereof and entitled to all the rights and privileges of a Clearing Member in holding, fulfilling or disposing thereof.

(c) Contracts for the future delivery of Cocoa shall be in the following form:

**FORM OF CONTRACT FOR DELIVERY OF COCOA**

OFFICE OF .....

NEW YORK .....20 ..

**SOLD FOR**

**TO**

ten (10) metric tons net of cocoa beans (in original shipping bags of average weight(s) customary for the Growth), the Growth of any country or clime, including new or yet unknown Growths, deliverable from warehouses licensed by Exchange, at the seller's option, at one (1) of the delivery points provided in Rule 9.02, between the first (1<sup>st</sup>) and last days of \_\_\_\_\_, inclusive; the delivery within such time is to be at seller's option, upon notice to the buyer of ten (10) full Business Days, as may be prescribed by the Rules; the Cocoa is to be of any Grade, Waste and Count permitted by the Rules; at the price of \_\_\_\_\_, dollars per ton for the standard Grades, Growths, Condition, Waste and Counts, with additions or deductions for other Grades, Growths, Waste and Counts according to the rate of the Exchange, existing on the afternoon of the day previous to the date of the Delivery Notice.



Seller has the option to tender Cocoa in Exchange-licensed warehouses at one (1) of the delivery points provided in Rule 9.02, at an allowance and under such terms as may be prescribed in the Rules.

This contract is made in view of, and in all respects subject to the Rules and all differences and/or disputes that may arise hereunder shall be settled by arbitration pursuant to such Rules.

For, and in consideration of one dollar (\$1.00) to the undersigned in hand paid, receipt whereof is hereby acknowledged, the undersigned accepts this contract with all its obligations and conditions.

(d)(i) All contracts for the future delivery of Cocoa shall be binding upon Members and of full force and effect until the quantity and quality of the Cocoa specified in such contract shall have been delivered, and the price specified in said contract shall have been paid. No contract shall be entered into with any stipulation or understanding between the parties at the time of making such contract that the terms of said contract as specified above are not to be fulfilled, or that the Cocoa is not to be delivered and received in accordance with the Rules.

(ii) Subject to the prohibition in subparagraph (d)(i), the Deliverer and Receiver may enter into a mutually acceptable written agreement to deliver and receive under conditions other than those stipulated in the Rules. A delivery so made shall be considered complete upon written notification by the Deliverer and the Receiver to the Exchange and to the Clearing Organization. The making of any such agreement shall relieve the Clearing Organization of any further obligations with respect to any Exchange Futures Contract involved, and the Deliverer and Receiver shall indemnify the Exchange and the Clearing Organization against any liability, cost or expense either may incur for any reason as a result of the execution, delivery or performance of such contract or such agreement, or any breach thereof or default thereunder.

**Amended by the Board February 2, 2010; effective with the March 2012 delivery month [¶ (c) Waste].**

#### **Rule 9.04. Minimum Variations**

No Member shall offer to buy or sell Cocoa at variations of less than one dollar (\$1.00) per ton.

#### **Rule 9.05. Notice of Delivery or Demand for Cocoa Issuance of Notice**

(a) A Clearing Member with an open short Position wishing to make delivery of Cocoa under an Exchange Futures Contract shall present a Delivery Notice to the Clearing Organization as specified in paragraph (b) hereof.

(b) Every Delivery Notice:

(i) Shall be issued ten (10) full Business Days in advance of the Business Day designated for delivery;

(ii) Shall be presented to the Clearing Organization by the Clearing Member making delivery not later than the time specified by the Clearing Organization on the Business Day preceding the date of issue, or in the case of a partial Business Day, by 1:00 pm of such day;

(iii) Shall be for ten (10) metric tons of Cocoa;

(iv) Shall state the Growth of Cocoa and the Description of such Growth, and the delivery must consist of Cocoa of one (1) Growth and Description of such Growth only;

(v) Shall state from which Port the Cocoa will be delivered;

(vi) Notwithstanding the foregoing provisions of this paragraph (b), if a Clearing Member transfers any contracts after the close of trading in accordance with Rule 4.37(e):

(A) The failure of such Clearing Member to issue a Delivery Notice with respect to such contracts shall not be deemed a violation of this Rule;

(B) If any contracts transferred offset any contracts with respect to which the transferee had issued a Delivery Notice, such Delivery Notice shall be deemed amended to reflect the deletion of the contracts so offset; and

(C) If any contracts transferred do not offset any contracts with respect to which the transferee had issued a Delivery Notice, the transferee shall issue a Delivery Notice in accordance with this Rule.

(c) The Date of Delivery shall be ten (10) Business Days following the date of issue except as the Rules may otherwise provide.

(d) No Delivery Notice shall be issued on a day that is not a Business Day.

(e) Upon receipt of a Delivery Notice, the Clearing Organization shall issue it in accordance with the Clearing Organization Rules.

(f) A holder of a “stopped notice” may at the option of the issuer thereof arrange to have such notice taken back by such issuer upon such terms as are mutually agreed to by such issuer and such holder.

(g) During the ten (10) Business Days between the issuance of the Delivery Notice and the Date of Delivery, the Delivery Worksheet will be accessible to each Deliverer and Receiver through eCOPS, showing information as to the Delivery Date, Issuer, Stopper, Exchange ID, EWR Number, Warehouse, Delivery Port, Weight, Invoice Amount and such other information as the Exchange shall determine.

**Amended by the Board January 24, 2007; effective February 2, 2007 [¶ (b)(ii)].**

**Amended by the Board March 24, 2016; effective April 13, 2016 [¶ (d)]**

#### **Rule 9.06. Reserved**

#### **Rule 9.07. Good Delivery**

(a) A tender of Cocoa shall be considered a good delivery when all requirements of the Rules pertaining thereto shall have been performed by both parties or a settlement made consistent therewith. A tender, conforming to the Rules, must be accepted and paid for by the Receiver on the Date of Delivery. Unless otherwise mutually agreed, payment shall be made by wire transfer to the Clearing Organization in same-day funds.

(b) Sound Cocoa must be delivered from one (1) store in a warehouse licensed by the Exchange, located at one (1) of the delivery points specified in Rule 9.02, in an Exchange-Segregated Lot as that term is defined in Rule 9.00, having no more than five (5) chops, except when a chop is added to make a deficiency in weight, but in no case shall the number of chops exceed six (6). For the purposes of this Rule, Sound Cocoa shall mean Cocoa for which no external condition has been noted by the Exchange sampler and which is packaged in bags made of sisal, henequen, jute, burlap or woven material having similar properties (any other material not permitted), without inner lining or outer covering of any other material.

(c) Cocoa tendered against a contract and found to be not a good delivery may be replaced by the tenderer provided that the replacement meets all of the requirements of the Rules and the Delivery Notice to which it is applicable. The lot used for such replacement may be a lot with a valid grading certificate, or a new lot for which grading has not yet been performed, in which case the provisions of paragraph (d) below are applicable.

(d) Where cocoa tendered is found to be not a good delivery (for failed Grade or for any other reason, including failure to meet the minimum weight provisions of Rule 9.23 and this Rule) the Sampling Order for the replacement(s) must be presented to the Exchange at least five (5) Business Days prior to the Date of Delivery specified in the Delivery Notice. If the Deliverer elects to submit

the Sampling Order after the time limits prescribed herein, the Exchange shall not be responsible in the event the results of such Sampling Order cannot be issued by the Date of Delivery, in which case the Deliverer shall be in default unless a mutually acceptable written agreement has been entered into as provided under Cocoa Rule 9.03. Notwithstanding the provisions of this paragraph, the Exchange shall not be liable in the event the results of any Sampling Order cannot be issued by the Date of Delivery.

(e) All merchandise delivered pursuant to any Exchange Futures Contract shall be of Grades conforming to United States standards.

#### DEFAULTS—COCOA

(f)(i) Except as otherwise provided for in the Rules, a Clearing Member shall be in default who shall:

(A) fail to issue or to tender a Delivery Notice, as required in Rule 9.05 or other section of the Rules, in fulfillment of any sale contracts outstanding in his name after trading in the current month has ceased;

(B) fail to timely become the Title Holder of a sufficient number of EWRs to satisfy its delivery obligations under any Delivery Notice issued by it, or to obtain the Weight Note or Certificate of Grade with respect to Cocoa being delivered pursuant to any such Delivery Notice (except as provided in the last paragraph of Rule 9.11 and in Rule 9.12); or

(C) fail to provide such other data as prescribed by the Exchange or otherwise fail to comply with the Rules relating to delivery of Cocoa.

(ii) The delivery weight of a contract shall be ten (10) metric tons (1% more or less). Any variation from ten (10) metric tons of more than 1% but not in excess of 5% shall constitute a default by the Deliverer on part of a contract; any variation in excess of 5% of ten (10) metric tons shall constitute a default by the Deliverer on an entire contract. Such default, partial or entire, shall not be excused or modified whether the weight variation be due to excessive or insufficient tender or failure to replace cocoa rejected by duly approved graders because of Grade or Growth.

(iii) Deficiency of weight due to allowances made in accordance with the Rules on Cocoa retendered on the Weight Note in force is excepted from the provisions of this section.

(iv) A Receiver shall be in default on an entire contract who, upon receipt of a tender of Cocoa in completion of an outstanding contract in conformity with the Rules, shall fail to pay in full the amount of the Exchange Invoice in accordance with the Rules.

(v) Defaults, unless mutually adjusted, shall be reported to the Arbitration Committee by the Clearing Member who has failed to receive satisfaction on the contract, which shall also make formal application for arbitration of the matter pursuant to the Arbitration Rules then in effect.

#### DAMAGES—COCOA

(g) Damages of five dollars and fifty cents (\$5.50) per ton, plus any proven loss because of the default, shall be paid by the defaulting Clearing Member to the injured party as follows:

(i) On ten (10) metric tons when an entire Cocoa Futures Contract is in default;

(ii) On any variation from ten (10) metric tons of not more than five percent (5%) when part of a Cocoa Futures Contract is in default.

(iii) The proven loss hereinabove referred to shall be the loss established before the Arbitration Committee as evidenced by the decision and award of said Committee and the award of said

Committee shall be final and binding upon every Person who may have a financial responsibility for or interest in the related defaulted contract.

(h) It shall be a violation of the Rules to default intentionally on any Exchange Futures Contract. If in the course of any arbitration there shall appear evidence of an intentional default, the Arbitration Committee shall report such evidence to the Exchange.

(i) Settlements, however, consistent with the Rules may be made between parties at issue by mutual consent.

**Amended by the Board June 22, 2017; effective July 10, 2017 [¶¶ (b) through (d)].**

**Rule 9.08. Reserved**

**Rule 9.09. When Tender of Cocoa Deemed Accepted**

(a) All bags of Cocoa tendered shall be regarded as accepted unless protest in writing be made by the Receiver upon the Deliverer as is hereinafter provided.

(b) The protest herein referred to shall specify the faults that are found with the tender and shall be accompanied by a demand that such faults be corrected before the time set for delivery. Copy of said protest shall be served on the Exchange for possible reference to the Arbitration Committee. If, at the time of delivery, the holder of the notice shall refuse to accept the Cocoa tendered because the conditions complained of have not been corrected, the Arbitration Committee shall decide whether or not the faults which were the subject of the protest justified refusal to accept the delivery. If the Arbitration Committee finds that the refusal to accept delivery was justified, the Deliverer shall be in default. If the Arbitration Committee finds that the refusal to accept delivery was unjustified, the Receiver shall be in default.

**Rule 9.10. Reserved.**

**Rule 9.11. Delivery and Payment of Cocoa**

(a) Delivery of Cocoa may be made on any Business Day between the first (1<sup>st</sup>) and last days of the delivery month, which shall not be a Saturday, Sunday or Exchange Holiday. All such deliveries shall be made by the transfer of EWRs through Clearing Members that have executed eCOPS Participant Agreements in the form specified by the Exchange.

(b) On the Date of Delivery, at 9:00 am, all information contained on the Delivery Worksheet for each Deliverer and Receiver shall be deemed complete, correct and final and may not be changed in any respect by a Deliverer or Receiver. At 9:00 am, on the basis of the information contained in such final Delivery Worksheet, the Exchange, through eCOPS, shall issue a Notice of Transfer causing the Clearing Organization to be identified in eCOPS as the Title Holder of the EWRs corresponding to the Cocoa identified in each such final Delivery Worksheet. The Clearing Organization shall thereafter debit the account designated by the Receiver for delivery purposes and credit the account designated by the Deliverer for such purposes for the full amount of the Exchange Invoice, and issue a Notice of Transfer causing the Receiver to be identified in eCOPS as the Title Holder of the corresponding EWRs.

(c) If the final Delivery Worksheet does not contain one (1) or more Certificates of Grade with respect to a given Lot on the Date of Delivery, then

(i) the Exchange Invoice shall be designated a pro forma Exchange Invoice and the Receiver's account shall be debited and the Deliverer's account credited by the Clearing Organization for the amount specified in the pro forma Exchange Invoice; and

(ii) the Deliverer must have the Certificate of Grade issued to the Receiver no later than the fifth (5<sup>th</sup>) Business Day following the last permissible delivery day of the delivery month, at which time the Receiver and the Deliverer shall settle directly between them any amounts due and owing based upon the information in the Certificate of Grade.

(d) The Exchange Invoice shall include charges for unexpired storage from the Date of Delivery.

(e) Should the Certificate of Grade not be ready for presentation, then the delivery shall take place as outlined above, but the estimated value of the Cocoa tendered must be stated upon the pro forma Exchange Invoice and a deduction of eleven dollars (\$11.00) per ton on the net weights delivered shall be used in calculating the pro forma Exchange Invoice amount. Any Deliverer, who shall present an Exchange Invoice showing a Grade and Growth warranting a deduction greater than the equivalent of eleven dollars (\$11.00) per ton, shall be subject to a complaint under the Disciplinary Rules.

#### **Rule 9.12. Special Relief at Arbitration**

In addition to the authority elsewhere vested in the Arbitration Committee by the Arbitration Rules, the Committee is hereby given explicit authority to grant measures of relief to a Member under the circumstances and in the manner hereinafter provided.

(a) If a Clearing Member shall issue a Delivery Notice against Cocoa beans stored in a warehouse licensed by the Exchange and, because of contingencies beyond his control that affect a substantial number of warehouses licensed by the Exchange, he is unable to have the Cocoa weighed into an Exchange-Segregated Lot and to have the Cocoa sampled and graded in accordance with the Rules, but is able to obtain an EWR covering the number of bags to make approximately ten (10) metric tons net, the Arbitration Committee may, after investigating the matter, authorize the Deliverer to proceed with the fulfillment of his contract in the manner specified in Rule 9.11(c), and the pro forma Exchange Invoice shall contain a deduction of two percent (2%) for any subsequent adjustment in weights and eleven dollars (\$11.00) per ton for any subsequent adjustment in Grade.

(b) Any required adjustments in payments made as hereinabove provided shall be made directly between the Deliverer and Receiver immediately after the impediments that necessitated the pro forma payments are removed, and the requirements of the Rules affecting the merchandise so tendered in fulfillment of a contract must be conformed with promptly when the interference is removed.

(c) If a Member, seeking relief under the provisions of this Rule, shall claim that his difficulties are due to contingencies beyond his control, he may present supporting evidence to the Arbitration Committee, and that Committee shall be the sole and final judge as to whether or not such was the case or whether the contingencies cited would justify the relief sought by the Member.

(d) Any apparently false or fraudulent statement of fact or circumstances made to the Arbitration Committee by a Member to obtain the benefit of any relief that may be granted by the Committee pursuant to this Rule may be reported by the Committee, or any member thereof, or by any Member who may have knowledge of the matter, to the Vice President/Market Regulation, whereupon the Disciplinary Rules may be invoked.

#### **Rule 9.13. Reserved**

#### **Rule 9.14. Sampling Cocoa**

(a) All Cocoa to be delivered in Exchange-Segregated Lots which must be graded pursuant to the Rules shall be sampled in accordance with the provisions of this Rule:

(i) Each Lot of cocoa to be sampled shall be sampled by one (1) duly licensed master sampler within two (2) Business Days following the receipt of the eCOPS Sampling Order (or three (3) Business Days in the case of Hampton Roads, the Port of Albany or the Port of Baltimore) or within such longer period as allowed by the Exchange for good cause shown.

(1) The master sampler shall be selected at random from a list of duly licensed master samplers by the Exchange and shall be impartial and unbiased and not have acted in any capacity as an importer with respect to such cocoa. Neither a Master Sampler nor a Sampler may sample cocoa if such Person or an immediate family member: (i) directly or indirectly has an ownership interest or is a partner or employee of a Firm which has an ownership interest in the cocoa submitted for Exchange sampling; (ii) directly or indirectly, is a Deliverer or Receiver of cocoa tendered under Exchange Futures Contracts or is a partner or employee of a Firm which is a Deliverer or Receiver of Cocoa tendered under Exchange Futures Contracts; (iii) directly or indirectly has an ownership interest in, or is an employee of, the warehouse operator where the cocoa submitted for Exchange sampling is stored; or (iv) has any other business or personal relationship that poses a conflict of interest with respect to the sampling of cocoa under Exchange Futures Contracts.

(2) The total charge for such sampling, including handling and transportation, shall be payable by the Person, who submitted the Sampling Order, to the master sampler. In the case of the first (1<sup>st</sup>) Exchange delivery under a Certificate of Grade or the first (1<sup>st</sup>) Exchange delivery under a recertification of grade, the Deliverer shall include one half of the total charge for sampling in the Exchange Invoice and paid by the Receiver on the Date of Delivery as required by Rule 9.11.

(3) Each master sampler shall maintain in strict confidence all information pertaining to a Sampling Order and to the circumstances and nature of its activities in drawing a sample, and shall not communicate such information to any Person other than a representative of the Exchange acting in his official capacity.

(ii) For sound cocoa to be sampled hereunder, (A) no external condition may appear on the bags and (B) the cocoa must be packaged in bags made of sisal, henequen, jute, burlap, or woven material having similar properties (any other material not permitted), without inner lining or other outer covering of any other material; provided however cocoa packaged in bags of polypropylene or other plastic material which has a United States Customs entry date prior to February 1, 1992 shall be considered sound. In the event an external condition of the bags does exist, or the cocoa is not packaged in bags made of permitted material, it shall be noted by the sampler who shall record such condition or improper packaging on the Sampling Order and immediately notify the Exchange by facsimile (or other equally expeditious manner) whereupon the Exchange shall promptly notify the owner. The existence of any external conditions on the bags or improper packaging noted by the sampler shall automatically cancel the Sampling Order.

(iii) For every Lot of cocoa to be sampled hereunder, a Sampling Order, in such form as prescribed by the Exchange, shall be sent by the Deliverer to the Exchange at least five (5) Business Days prior to the Date of Delivery specified on the Delivery Notice. If a Deliverer elects to submit a Sampling Order after the time limit prescribed herein, the Exchange shall not be responsible in the event the results have not been determined by the Date of Delivery in which case the Deliverer would be in default unless a mutually acceptable written agreement has been entered into as provided under Rule 9.03. Notwithstanding the provisions of this paragraph, the Exchange shall not be liable in the event that the results of any Sampling Order cannot be issued by the Date of Delivery.

(iv) The Exchange reserves the right, in its sole and absolute discretion, to refuse to accept or process any sample which it has reason to suspect was improperly drawn or is not fair and

representative of the cocoa to which it relates. The Exchange's acceptance or processing of a sample is not intended as and shall not be considered an acknowledgement, agreement, or representation by the Exchange that such sample has been properly drawn or is fair and representative.

(b) All Sampling Orders for Cocoa delivered on Delivery Notices shall be for about two and one-half (2 1/2) kilograms per chop of one hundred (100) bags or less and about five (5) kilograms per chop for chops of more than one hundred (100) bags, and all samples shall belong to the Receiver in lieu of a chop allowance.

(c) When the cocoa is sampled for grading purposes by the Deliverer, after being weighed for delivery, the weight of the samples drawn from each chop shall be deducted from the Exchange Invoice.

(d) The minimum number of bags of cocoa to be sampled by samplers on Sampling Orders as above described shall be as follows:

<i>Chops of</i>	<i>On Original Sampling</i>	<i>On Re-sampling</i>
5 bags or less	Every Bag	Every Bag
6 to 25 bags	5 bags	5 bags
26 to 50 bags	10 bags	25% of total bags
51 to 75 bags	15 bags	25% of total bags
76 to 100 bags	20 bags	25% of total bags
101 and more	20% of total bags	25% of total bags

Each sample shall consist of cocoa drawn from at least two (2) sides of every pile, at least one (1) of which must be drawn from the long side of the tier or aisle.

(e) All cocoa sampled on Sampling Orders as herein provided shall be sampled into standard two (2) ply ten (10) lb. size bags furnished by the sampler. Immediately following the drawing of a sample, the sampler shall note the Lot number and the Exchange application identification number on the sample bag. The bag shall then be sealed and delivered to the Exchange.

(i) The sampler shall note the following information in the Sampling Order to the extent applicable:

(1) Any differences between the identifying Lot number which appear on the physical bags or tags of cocoa and those on the Sampling Order, together with an explanation of the nature of each such difference.

(2) The inaccessibility or illegibility of the identifying Lot numbers on the physical bags or tags of cocoa.

(3) The absence of a warehouse tag affixed to any side of the tier or aisle of the chop to be sampled where the marks or the physical bags of cocoa are inaccessible or illegible.

(4) The fact that the cocoa sampled is not stored so that two (2) sides (including at least (1) one long side) of the tier or aisle are accessible to the sampler as required by the Exchange's warehouse procedures.

In any such instance, the sampler should describe the condition of the cocoa as accurately as possible on the Sampling Order.

(ii) Signing of Sampling Orders

(1) The master samplers and an authorized representative of the warehouse where the sampled cocoa is located, shall each sign three (3) printed copies of the Sampling Order, and the warehouse representative shall indicate on each copy the date of such Sampling Order from the sampler.

(2) When a sample is drawn, the sampler shall issue a Sampling Confirmation which includes the date the sample was drawn, how the sample was sent including any waybill or tracking number and note any remarks.

(3) The issuance of a Sampling Confirmation shall be deemed to be a certification that each sample drawn pursuant to the Sampling Order was drawn in accordance with Exchange procedures.

(4) The signature of a warehouse representative shall be deemed to be a certification that on the date he signed the Sampling Order, the sampler appeared at the Licensed Store indicated on the Sampling Order and left the premises with samples in his possession.

(5) The master samplers shall sign and complete a printed copy of the Sampling Order, mark the Exchange application, identification numbers and Lot numbers on the outside of the sample bag and deliver the sample(s) and the Sampling Order to the Exchange.

(6) In the case where a sample cannot be drawn due to any external condition on the bags or improper packaging of the cocoa, both the samplers and warehouseman must sign a printed copy of the Sampling Order attesting thereto. This dated and duly signed Sampling Order must be forwarded to the Exchange, whereupon the Exchange shall promptly notify the owner that the sample could not be drawn.

(f) Once the sample has been drawn, the master sampler shall scrape the bag surface area of the tier hole to re-close the bag weaving to minimize spillage.

(g) These sampling procedures have been designed to promote the integrity and impartiality of the sampling process, and do not constitute an assumption by the Exchange in any respect of any responsibility of the Person on whose behalf the cocoa is sampled, and the Exchange shall have no liability for any acts or omissions in connection with such sample. The Exchange shall not be liable in any way by reason of the fact that any sample was not drawn in accordance with these procedures, or was otherwise improperly drawn, or was not fair and representative of the cocoa to which it is purported to relate.

**Amended by the Board May 20, 2010; effective May 25, 2010 [¶ (a)(i)(2)].**

**Amended by the Board December 15, 2011; effective January 9, 2012 [¶ (a)(i)(1)].**

**Amended by the Board September 10, 2014 effective September 29, 2014 [¶¶ (a)(ii) and (e)(ii)(6)].**

#### **Rule 9.15. Fraudulently Packed Cocoa**

(a) Fraudulently packed cocoa shall be rejectable.

(b) The Receiver of Cocoa can require any package to be opened and the actual quality to be ascertained, in which event all expense and loss shall be paid by the party whose sampler is shown to be in error.

(c) False or fraudulently packed cocoa shall include bags containing a foreign substance, bags containing damaged cocoa in the interior without indication of such damage upon the exterior of the bags, bags composed of good cocoa immediately next to the bag and decidedly inferior cocoa in the interior of the bags in such manner as not to be readily detected by the trier, bags the marks on which indicate a specific Growth or Grade, but which contain cocoa of a decidedly inferior or different Growth or Grade.

#### **Rule 9.16. Original Shipping Bags**

Any Claim by a Receiver that Cocoa beans tendered under an Exchange Futures Contract are not in original shipping bags of average weight(s) customary for the Growth shall be submitted to the Arbitration Committee.



**Rule 9.17. Claims for Fraudulent Packing of Cocoa**

(a) After Cocoa has been examined, received and passed by the broker or agent of the buyer, no Claim may be made against the seller except for fraudulent packing. Claims for fraudulent packing must be made by the buyer within eight (8) days of discovery thereof, and the date of the discovery shall be incorporated in the sworn statement of the Claimant; in no case, however, shall any Claim for fraudulent packing be valid after ninety (90) days from the Date of Delivery.

(b) Claims for fraudulent packing shall be made in writing, and shall state the particulars of the fraudulent packing, the marks by which the Cocoa was sold, and all other legible marks and numbers upon the bags. It shall also state the loss sustained by the buyer; such loss shall be the difference in market value on the day the Claim is dated between the fraudulent bag and a bag of Cocoa of the Grade and Growth bought in proper condition.

(c) Any Claim made in accordance with the above, and verified by oath or affirmation, shall be deemed prima facie valid in favor of the Claimant, subject to reference to the Arbitration Committee.

(d) In all cases of Claims for fraudulent packing, the party making the Claim shall have the right to return or the seller to demand the return of such bag or bags; in this event, the seller shall pay the cost of transportation both from and returning to the delivery point, and shall deliver other bags of the Grade and Growth sold, if demanded by the buyer.

**Rule 9.18. Grading Cocoa for Exchange Delivery**

(a) All Cocoa to be delivered in Exchange-Segregated Lots must be certified as deliverable with respect to Growth, Description, Condition, Count, Waste and Grade in accordance with the provisions of this Rule.

(b) The Growth, Description, Condition, Count, Waste and Grade of Cocoa which may be delivered on an Exchange Futures Contract are as follows:

*(i) Growth and Description*

The following Growths and Descriptions of Cocoa, as such Growths and Descriptions may from time to time be known in the trade, may be delivered at the premiums or at par as indicated below:

**Group A—Addition of \$160—per metric ton**

- |                       |                        |
|-----------------------|------------------------|
| Ghana—Main Crop       | Nigeria—Main Crop      |
| Ivory Coast—Main Crop | Sierra Leone—Main Corp |
| Lome—Main Crop        |                        |

**Group B—Addition of \$80—per metric ton**

- |                                  |                    |                              |
|----------------------------------|--------------------|------------------------------|
| Arriba (Ecuador)                 | Ivory Coast        | Salvador                     |
| Bahai (Brazil)                   | Jamaica            | Samoa                        |
| Cameroon                         | Indonesia-Java     | Sanchez (Dominican Republic) |
| Ecuador                          | Liberia—Main Crop  | Sao Tomé                     |
| Chiapas (Mexico)                 | Masie Nguema       | Sri Lanka                    |
| Colombia                         | (Fernando Poo)     | Surinam                      |
| Costa Rica                       | New Guinea         | Tabasco (Mexico)             |
| Ghana—Mid-Crop                   | New Hebrides       | Trinidad                     |
| Grenada                          | Nicaragua          | Venezuela                    |
| Guatemala                        | Nigeria—Light Crop | Victoria (Brazil)            |
| Hispaniolas (Dominican Republic) | Panama             | Zaire                        |
| Honduras                         | Peru               |                              |

**Group C—At Par**

Bolivia

Haiti

Indonesia-Sulawesi

Malaysia

Para (Brazil)

All other growths not presently specified in Groups A, B or C.

*(ii) Condition*

Cocoa which is smoky or hammy is not deliverable.

*(iii) Count*

(1) The standard Count and the maximum Count of each group of Cocoa shall be as follows:

<i>Class</i>	<i>STANDARD COUNT</i>	<i>MAXIMUM COUNT</i>
<i>A</i>	<i>1000 per kg</i>	<i>1200</i>
<i>B</i>	<i>1100</i>	<i>1300</i>
<i>C</i>	<i>1200</i>	<i>1400</i>

Cocoa exceeding the maximum of its class to be deliverable at the next lower class premium and count requirement.

Cocoa exceeding 1400 beans per kilo shall not be deliverable.

(2) The following variations of Count may be delivered at the discounts noted below, with such discounts to be applied as a reduction to the invoice weight:

**Bean Count  
Above Standard**

**Discount  
Percentage:**

1 to 25 beans	0.5%
26 to 50 beans	1.0%
51 to 75 beans	1.5%
76 to 100 beans	2.0%
101 to 125 beans	2.5%
126 to 150 beans	3.0%
151 to 175 beans	3.5%
176 to 200 beans	4.0%

(3) When a Lot of cocoa does not meet the Count requirement for the class set forth in its Sampling Order, the Lot shall be rejected, the grading process stopped, and the submitter advised of the rejection and the reason for such rejection. Thereafter, the submitter may present another Sampling Order to the Exchange noting the next lower (or higher) class and payment of the appropriate fee, whereupon the cocoa shall be graded in accordance with the Rules.

(iv) *Grade*

(1) The standard Grade is Cocoa, otherwise sound, defective to a maximum extent of: 4% by count show mold or 4% by count are insect infested or damaged; or a total of 6% by count show mold and are insect infested or damaged (or such other standards or lesser percentages as may from time to time be prescribed by the Food and Drug Administration or similar federal agency) and slatey to a maximum extent of ten percent (10%) by count. Except as provided in subparagraph (2)(A) of this paragraph, cocoa which exceeds any of the percentages prescribed in this Rule shall not be delivered on an Exchange Futures Contract.

(2) The following variations from standard Grade may be delivered at the premiums or discounts indicated below:

(A) For each one percent (1%) slatey more than ten percent (10%), a deduction of two dollars and twenty cents (\$2.20) per metric ton; but in the case of Indonesia-Sulawesi, Sanchez and Haiti Cocoa beans, no deduction shall be made for excess slate.

(v) *Waste*

The standard or par amount of acceptable Waste is from 0% to 1.00%. Waste exceeding 5.00% shall not be deliverable. Waste in excess of 1.00% and up to and including 5.00% may be delivered subject to the deductions noted below, with such deductions applied as a reduction to the invoice weight:

For Waste From:

- 1.01% to 2.50% - a deduction equal to the percentage of Waste minus 1.0;
- 2.51% to 5.00% - a deduction equal to 1.5 plus the product of 1.5 times (the percentage of Waste minus 2.5)

(c) The Growth, Description, Condition, Count, Waste and Grade of Cocoa to be delivered on an Exchange Futures Contract must be established by duly licensed graders in accordance with the following:

(i) All Cocoa to be delivered during the delivery period of an Exchange Futures Contract

must be graded between the first Business Day after the last delivery day of the prior delivery period and the last delivery day of the current delivery period inclusive, as evidenced by the Certificate of Grade except as otherwise provided on redeliveries. If the Cocoa which is to be delivered has been graded previously and the Certificate of Grade is no longer valid pursuant to paragraph (d)(ii)(2) of this Rule with respect to Grade, the Deliverer may elect to have the cocoa completely regraded or partially regraded. For the avoidance of doubt, Cocoa which has been graded in accordance with this Rule and which has failed to meet the requirements set forth in Paragraph (b) above, may not be regraded for Exchange delivery and shall not be delivered, in whole or in part, on an Exchange Futures Contract.

(ii) The cocoa will be graded by a panel of three (3) licensed graders in accordance with such procedures as from time to time may be promulgated by the Board of Cocoa Graders.

(1) The graders shall be selected by the Exchange from the entire list of licensed graders, and the Exchange, in a practical and equitable manner, shall rotate the service of graders.

(2) The graders selected shall have no interest, beneficial or prejudicial, in the cocoa to be graded. No licensed grader may grade cocoa if such grader or an immediate family member; (i) directly or indirectly has an ownership interest in, or is a partner or employee of, a Firm which has an ownership interest in the cocoa submitted for grading; (ii) commencing five business days prior to first notice day of the expiring cocoa delivery month, directly or indirectly holds or controls a position in such delivery month; (iii) directly or indirectly has an ownership interest in, or is an employee of, the warehouse operator where the cocoa submitted for grading is stored; or (iv) has any other business or personal relationship that poses a conflict of interest with respect to the grading of cocoa under Exchange Futures Contracts.

(3) All grading of cocoa, except as may be provided in Rules 9.19 and 9.20, shall be conducted in the City of New York.

(iii) The graders shall promptly meet to grade the cocoa, and each grader shall use every effort within his knowledge and experience to determine the true Growth, Description, Condition, Count, Waste and Grade of the cocoa and shall not knowingly grade a parcel of cocoa in which he has a direct interest, beneficial or prejudicial. The graders shall forward their decision as to the Grade of the cocoa within three (3) Business Days following, but excluding, the day of their appointment.

(iv) Each grader shall grade the cocoa as follows:

(1) If the graders agree that the cocoa (a) is of the Growth and Description tendered and (b) is not hammy or smoky, then:

(A) Each of the graders shall grade the cocoa and specify his determination of grade on a grading memorandum.

(B) If the panel of graders determines that the cocoa satisfies the requirements for delivery set forth hereunder, the panel shall so indicate on the grading memorandum, and a Certificate of Grade, setting forth the Growth, Description, Count, Condition and Grade of the Cocoa as provided in Rule 9.18(d), shall be issued which states that the Cocoa meets Exchange standards.

(2) If the panel of graders determines that the cocoa (1) is not the Growth and Description tendered or (2) is hammy or smoky or (3) does not satisfy the grade requirements for delivery set forth hereunder, a Certificate of Grade shall be issued stating that the cocoa does not meet Exchange standards, the panel of graders shall file a written report with the Exchange which sets forth the reasons for its determination and the Deliverer shall be promptly notified that the cocoa cannot be delivered on an Exchange Futures Contract.

(3) If any grader determines that the cocoa is of the Growth and Description tendered, but is hammy or smoky or, conversely, if any grader determines that the cocoa is not hammy or smoky but is not of the Growth and Description tendered, then

(A) each grader shall report his determination to the Exchange; and

(B) the cocoa shall be promptly submitted for examination to a new panel of three (3) licensed graders, to be graded in accordance with the same procedure as outlined in subparagraphs (c)(ii) and (c)(iii) above; provided, however, that before the cocoa is submitted to the panel for grading, the Deliverer shall be notified, and he may request that new samples be taken for reexamination by the original graders or withdraw the Lot of cocoa under examination and substitute therefor another Lot of cocoa of the same Growth and Description, which shall be graded in accordance with the procedure outlined in subparagraphs (c)(ii) and (c)(iii) above; and

(C) each grader on the panel shall grade the cocoa by voting, in accordance with the procedures outlined in subparagraph (c)(iv).

(v) The graders shall determine the Count of cocoa by multiplying by ten (10) the number of beans in one hundred (100) grams, pull out any extraneous material and add back beans to bring the weight up to one hundred (100) grams, fairly taken from the sample under examination and jointly weighed and counted.

(1) At the request of either grader, the test may be repeated a second (2<sup>nd</sup>) and third (3<sup>rd</sup>) time, but if more than one (1) test is made, the results shall be averaged.

(2) The Count, so established shall be final and binding and shall be recorded on the grading memorandum.

(vi) The Grader shall determine the waste of the cocoa by pulling out all Waste as defined in Rule 9.00 from a 300 gram sample, weighing the aggregate amount of such waste to the nearest tenth of a whole gram, and dividing that weight by 300. The resulting number shall be rounded to the nearest hundredth of a percent.

The Waste so established shall be final and binding, and shall be recorded on the grading memorandum.

(vii) The fees for grading shall be such amounts as may from time to time be established by the Board. All grading fees shall be payable by the Person, who submitted the Sampling Order, to the Exchange within ten (10) days of receipt of an invoice from the Exchange. This fee shall be distributed by the Exchange to the graders selected hereunder in the amounts established by the Board. In the case of the first (1<sup>st</sup>) Exchange delivery under a Certificate of Grade or the first (1<sup>st</sup>) Exchange delivery under a recertification of grade, one half of the grading fees paid to the Exchange shall be included in the Exchange Invoice and paid by the Receiver on the Date of Delivery as required by Rule 9.11, unless it shall be determined that the cocoa is not good delivery, in which case the entire grading fee shall be for the account of the Deliverer, unless such fees are otherwise apportioned by the Special Arbitration Committee appointed in accordance with Rule 9.27.

(d) The Growth, Description, Condition, Count, Waste and Grade of Cocoa finally established by the graders under the foregoing procedure shall be recorded in a Certificate of Grade.

(i) The Certificate of Grade shall be in such form as prescribed by the Exchange and shall include the date of the determination of Grade. The Certificate of Grade shall include the following information:

(1) a declaration that the Cocoa is good delivery, that it is of the Growth and Description named therein and that the Condition and Grade are within Exchange requirements;

(2) the Count;

(3) the Waste;

(4) the quantity, mark and date of customs entry of each chop, with the grade thereof;

(5) Exchange number and Lot number;

(6) the date of each Delivery Notice issued for the Cocoa graded and to be graded under the Certificate; and

(7) the percentage of moldy and of insect infested (including insect damaged) beans as determined by each grader or by the panel.

(ii) The Growth, Description, Condition, Count, Waste and Grade of a particular Lot of Cocoa indicated on the Certificate of Grade shall be deemed the true Growth, Description, Condition, Count, Waste and Grade of such Cocoa and

(1) for purposes of delivery, the Certificate of Grade shall be valid, as regards Growth, Description, Condition, Count, Waste and Grade of a Lot of Cocoa for the entire delivery period in or for which the Certificate of Grade was issued and the next subsequent period; and

(2) for purposes of redelivery, the Certificate of Grade shall be valid indefinitely, as regards Growth, Description, Condition, Waste and Count, of a Lot of Cocoa, or any chop thereof, as long as the Lot or chops to which it is applicable can be identified. The Certificate of Grade shall be valid as to Grade during the entire month of the initial delivery period in or for which the Certificate of Grade was issued and the next subsequent delivery period (provided the bags are in good condition).

(iii) The Exchange shall not issue a Certificate of Grade which states that the cocoa meets Exchange standards if:

(1) the graders certifying to the Grade have not been licensed by the Exchange;

(2) any two (2) graders certifying to the Grade are members of the same Firm;

(3) the same party acts as a Deliverer and Receiver of the Cocoa, except upon proof that such party is acting for two (2) Principals, and that, the actual Deliverer and Receiver are in fact separate and distinct; or

(4) the cocoa is not to be delivered pursuant to a contract sold on the Exchange.

**Amended by the Board May 22, 2007; effective May 23, 2007 [¶ (c)(v)].**

**Amended by the Board February 13, 2008; effective February 19, 2008 [¶¶ (b)(i) and (iii)(3)].**

**Amended by the Board November 12, 2008; effective November 17, 2008 [¶ (c)(i)].**

**Amended by the Board February 2, 2010; effective with the March 2012 delivery month [¶¶ (a) through (d)].**

**Amended by the Board May 20, 2010; effective May 25, 2010 [¶ Addition of CCN Ecuador to Group B].**

**Amended by the Board June 23, 2011; effective with the July 2013 delivery month [¶¶ (iii)(b)(2)].**

**Amended by the Board June 19, 2013; effective with the January 2015 delivery month [¶¶ (b)(i)].**

**Amended by the Board September 25, 2013; effective October 31, 2013 [¶¶ (c)(ii)(2)].**

**Amended by the Board July 15, 2015; effective July 31, 2015 [¶¶(b)(iv)(2)],**

**Amended by the Board December 4, 2015; effective December 30, 2015 [¶¶ (b)(i) Change in Name of CNN to Ecuador, (c)(i)].**

**Rule 9.19. Grading Cocoa not Exchange Delivery; Informal Examination**

(a) Any Person who has been licensed by the Exchange as a Cocoa grader, may examine any parcel of cocoa beans upon the request of any Member or non-member of the Exchange to determine the quality and condition of such cocoa and may sign, as a grader licensed by the Exchange, a letter reporting his findings and opinion (hereinafter referred to as the letter) providing the provisions of this Rule are observed:

(b) The party requesting the examination of the cocoa shall inform the grader as to the owner of the cocoa and of the names of any other parties who may have an actual or potential interest therein and provide evidence of the agreement of the owners to the examination.

(c) The grader shall have no direct interest, beneficial or prejudicial, in the parcel of cocoa to be examined, and upon request shall produce a letter confirming that he is an Exchange-licensed grader, which letter must be acknowledged by the Exchange's Commodity Operations Department ("Commodity Operations").

(d) The cocoa to be examined shall be sampled by a master sampler licensed by the Exchange, under the direction of the grader by whom he shall be selected, to whom he shall make a written report identifying the parcel of cocoa sampled and the number of bags sampled, with any other particulars that may be requested by the grader, and the sampler shall seal the sample where drawn and deliver the sealed sample to the grader. The grader shall pay the master sampler and collect the master sampler's fee from the party requesting the examination of the cocoa. The fee for sampling shall be the regular fee for sampling plus any additional amount that may be agreed upon to cover any extra work involved in sampling the parcel of cocoa to be examined.

(e) The grader shall use every effort within his knowledge and experience to determine the true quality and condition of the parcel of cocoa, and the letter which he shall sign as a grader licensed by the Exchange shall accurately set forth his findings as to the quality and condition of the cocoa for which such letter is issued.

(f) The grader shall collect from the party requesting the examination of the cocoa such fees as the Board may from time to time prescribe.

(g) The grader shall deliver his letter, duly signed, and the sampler's report to the party requesting the examination; and to Commodity Operations a copy of each, sealed in an envelope, properly marked and dated for identification, and such envelope shall not be opened except by order of the Board. Such envelopes shall be retained for a period of not less than six (6) years from the date thereon.

(h) The grader shall pay to the Exchange one fifth (1/5) of the fee collected for examining cocoa pursuant to this Rule.

(i) Any complaint against a master sampler or grader for violation of this Rule, or for misconduct thereunder, shall be made to the Warehouse and License Committee who shall hear the complaint and the defense, and if the complaint shall appear to that Committee to be justified it shall report the matter, with its recommendations, to the Board for action by it.

(j) The penalty for violation of this Rule may be the suspension or revocation of the license of the Licensee found guilty and/or such other penalty as the Board, within the Rules, may determine.

**Amended by the Board April 15, 2009; effective April 24, 2009 [¶¶ (c), (g) and (i)].**

**Rule 9.20. Grading Cocoa not Exchange Delivery; Formal Examination**

(a) Any Person holding cocoa beans stored in a public warehouse, whether or not licensed by the Exchange, may submit such cocoa for examination by Persons who have been licensed by the Exchange as cocoa graders, providing the conditions in this Rule are observed.

(b) The holder of the cocoa shall send to Commodity Operations a Sampling Order for the cocoa involved, accompanied by a request for such an examination and an agreement to pay the costs pertaining thereto.

(c) The Exchange shall appoint a licensed master sampler to sample the cocoa. The cocoa shall be graded by three (3) graders licensed by the Exchange to be selected by Commodity Operations. The sampling and grading shall be done in accordance with the Rules and practice.

(d) The graders shall have no direct interest, beneficial or prejudicial, in the parcel of cocoa to be examined.

(e) The graders shall use every effort within their knowledge and experience to determine the true quality and condition of the parcel of cocoa, and the grading memorandum which they shall sign as graders licensed by the Exchange shall accurately set forth their findings as to the quality and condition of the cocoa for which such grading memorandum is issued.

(f) Each of the graders shall collect from the party requesting the examination a fee corresponding to the regular grading fees of the Exchange.

(g) The graders shall report their grades to the Exchange, which shall cause them to be recorded on the grading memorandum, and after the same has been duly signed by the licensed graders, the Certificate of Grade shall be issued by the Exchange, but such Certificate of Grade shall not be valid for a delivery of cocoa against an Exchange Futures Contract.

(h) Modification of the above Rule may be made, if necessary, to conform to any arrangement which might be made by an individual Member or a non-member with the U.S. Government in the event cocoa has been seized or detained by a Governmental authority, in which case the fee for examination shall be five dollars (\$5) for each grader to each sample examined.

**Amended by the Board April 16, 2009; effective April 24, 2009 [¶¶ (b) and (c)].**

**Rule 9.21. Reserved.**

**Rule 9.22. Reserved.**

### **Rule 9.23. Weighing Cocoa**

(a) Cocoa to be delivered in an Exchange-Segregated Lot must weigh ten (10) metric tons, one percent (1%) more or less (in original shipping bags of average weight(s) customary for the Growth) and must be weighed in accordance with the following Rule.

(i) All Cocoa to be delivered hereunder must be weighed (unless a Weight Note is in force as hereinafter provided) within thirteen (13) full Business Days preceding the delivery and must be weighed by a duly licensed weighmaster (or a weigher employed by such weighmaster).

(ii) Before the cocoa is weighed, (1) all unnecessary bagging must be removed from the cocoa (or a fair deduction for the weight thereof shall be made) and for this purpose all bagging in excess of that which is customary and not essential to cover and protect the Cocoa in a proper manner shall be deemed unnecessary (the tare allowance on Exchange deliveries of cocoa shall be actual bag tare, as established by the weighers using a tare bag scale in the customary manner); (2) any bags of cocoa having an accumulation of dust or other foreign matter must be brushed clean (or replaced by other bags not having such an accumulation); and (3) the scales must meet the specifications of the National Institute of Standards and Technology and must be calibrated within twenty (20) days before the first (1<sup>st</sup>) delivery date of each Exchange delivery period, by a



certified scale company. Scales having a weight capacity over one thousand (1,000) pounds, shall have a tolerance level of one (1) pound, plus or minus, per one thousand (1,000) pounds, and must be tested before each day of weighing. The owner of the scales must produce evidence of the last calibrated test by showing a card of identification upon which is recorded the number and make of the scales, the date when tested and the signature of the weighmaster (or his substitute) and scale company technician who was present at the time the test was made.

(iii) The weighmaster who weighs any cocoa into Exchange-Segregated Lots shall:

(1) Not have acted in any capacity as an importer with respect to cocoa and shall be impartial and unbiased;

(2) Securely fix to one (1) of the visible bags in each chop a durable tag, approved by the Exchange, identifying the chop of cocoa as to steamer, date of import, mark, number of bags in chop, Lot number, chop number and date of weighing. In addition, the weigher shall mark with marking ink on a prominent bag in each Lot the Lot number and the number of bags in the Lot;

(3) Issue a Weight Note, which shall include the following:

(A) The Weight Note shall state the weight, identification and location of the cocoa and the date the Cocoa was weighed.

(B) The identification and location of the cocoa may be given by including the information specified in subparagraph (a)(iii)(2) herein and the following further information: name and location of the warehouse operator, and the Licensed Store in which the cocoa was weighed.

(C) The Weight Note will be deemed to include the following certification:

"I hereby certify that the cocoa specified in this Weight Note was weighed in accordance with every provision of the Bylaws and Rules of ICE Futures U.S., Inc., and that the weights stated herein are correctly reported."

(b) The weight of the cocoa determined in accordance with the procedures set forth in paragraph (a) of this Rule, as evidenced of the Weight Note, shall be deemed the true weight of the cocoa for the following purposes:

(i) For delivery of Cocoa, provided the Cocoa has been weighed within thirteen (13) full Business Days;

(ii) For redelivery of Cocoa and for delivery of Cocoa which has not been weighed within thirteen (13) full Business Days, in whole or for any complete chop or chops, provided such chop or chops have at no time been moved from the Licensed Store specified in the Weight Note and provided further that the following allowances are made for loss of weight.

(A) In the case of Sanchez, Haiti or Jamaica Cocoa, the allowances for loss in weight shall be as follows:

(I) On Lots comprised of Cocoa which arrived at a port in the continental United States on a date less than forty (40) days prior to the date on which the actual weighing was completed, as shown by the Weight Note on which the delivery is invoiced hereinafter the Weight Note Date; both dates exclusive, when redelivered or delivered within thirty (30) days of the Weight Note Date, one percent (1%); when redelivered or delivered within thirty-one (31) and sixty (60) calendar days of the Weight Note Date, two percent (2%); thereafter an additional one-fourth of one percent for each additional thirty (30) calendar day period or fractional part thereof following the Weight Note Date.

(II) On Lots comprised of Cocoa which arrived at a port in the continental United States on a date more than forty (40) days, but less than seventy (70) days, prior to the Weight Note

Date, both dates exclusive, when redelivered or delivered within thirty (30) calendar days of the Weight Note Date, one percent (1%); thereafter an additional one-fourth of one percent for each additional thirty (30) calendar day period or fractional part thereof following the Weight Note Date.

(III) On Lots comprised of Cocoa which arrived at a port in the continental United States on a date seventy (70) days or more prior to the Weight Note Date, both dates exclusive, when redelivered or delivered within thirty (30) calendar days of the Weight Note Date, one-fourth of one percent; thereafter an additional one-fourth of one percent for each additional thirty (30) calendar day period or fractional part thereof following the Weight Note Date.

(IV) For the purposes of this Rule, the date of arrival of Cocoa shall be the date on which the vessel in which the Cocoa was imported was entered at the United States Custom House at the port in the continental United States at which the Cocoa was discharged. The name of the vessel and date of entry shall be plainly stated on every invoice for Sanchez, Haiti or Jamaica Cocoa delivered on the Exchange.

(a) Omission of such information shall invalidate the Exchange Invoice and the Deliverer shall be in default in respect to the contract to which the Exchange Invoice was applicable.

(b) In case of falsification of such information the Deliverer may be proceeded against before the Arbitration Committee by any Member who has thereby been caused loss or damage and shall, in addition, be subject to discipline as provided in the Disciplinary Rules.

(B) In the case of other Growths and Descriptions of Cocoa the allowance for loss of weight shall be one-quarter of one percent for each thirty (30) calendar day period or fractional part thereof from the Weight Return Date.

(c) Any Cocoa to be delivered in Exchange-Segregated Lots may, at the option of the holder, be reweighed and may be delivered and redelivered on such reweights (subject to the allowances hereinabove provided) but the reweighing of such Cocoa shall invalidate the original weights for the purposes of delivery or redelivery.

(d) Any bag of cocoa shall be deemed unmerchantable, and may be rejected, unless it is the approximate standard weight of a bag of the particular Growth of cocoa, or an approximate weight not exceeding the customary maximum or not less than the customary minimum of weights of a particular Growth, shipments of which are made from the country of origin in bags of varying capacities; provided, however, and anything herein to the contrary notwithstanding, bags originally of standard or average weight that have become slack through the usual process of handling and the contents of which are the original contents of such bags shall be deemed to be the original bags of standard or average weight for all Exchange purposes.

(e) The Exchange shall not be liable in any way by reason of the fact that the Cocoa covered by a Weight Note was not weighed, or that a Weight Note was not prepared, in accordance with these procedures. The Exchange has no liability for any actions or omissions of its own employees or others in connection with the weighing of Cocoa.

(f)(i) Any movement of Cocoa from the Licensed Store specified in the Weight Note shall invalidate such weights for the purposes of delivery or redelivery.

(ii) In the event Cocoa is moved from one (1) Licensed Store to another Licensed Store of the same warehouse operator or the Licensed Store of another warehouse operator, the warehouse operator moving the Cocoa shall:

- (1) obtain authorization from the Member owning the Cocoa and the Exchange;
- (2) provide for Exchange supervision of the move; and

(3) bear the cost of re-weighing.

**Amended by the Board April 15, 2009; effective April 24, 2009 [¶ (a)(iii)(3)(C)].**

#### **Rule 9.24. Rebagging of Cocoa**

When to protect the contents of an original bag(s) of Cocoa stored in a warehouse licensed by the Exchange, it shall be necessary to rebag such Cocoa, such rebagging may be done, within the discretion of the Warehouse and License Committee, and upon the following conditions:

(a) The owner of the Cocoa shall make a written request to the Exchange reciting the circumstances requiring the rebagging, the name and address of the warehouse, steamer, date of arrival, mark, Growth and number of bags in Lot of Cocoa and approximate number of such bags requiring rebagging; also, name of weigher licensed by the Exchange who is to do such rebagging, and the owner shall agree to assume all expenses involved.

(b) The Exchange shall refer such request to the Warehouse and License Committee who may, within their discretion, permit such rebagging to be done under the supervision of a second licensed weigher who shall be appointed by the Exchange.

(c) The new bag(s) shall be marked with the mark or marks of the original bag(s) and a record of such rebagging shall be made by the warehouse company upon the warehouse receipt covering the Cocoa. A record of such rebagging shall also be made by the weighmaster, certified to by the weighmaster appointed by the Exchange and reported to the Exchange. Such bag(s) shall be deemed original bags for Exchange purposes.

(d) All expenses incurred in connection with such rebagging shall be borne by the owner of the Cocoa.

**Amended by the Board April 15, 2009; effective April 24, 2009 [¶ (b)].**

#### **Rule 9.25. Reserved.**

#### **Rule 9.26. Reserved.**

#### **Rule 9.27. Arbitration Of Disputes**

(a)(i) Any dispute between Clearing Members, except as to Grade or external condition, in which one (1) Clearing Member claims that the other Clearing Member has failed to meet his obligations as Deliverer or Receiver under a Cocoa Futures Contract traded on this Exchange shall be settled by arbitration in accordance with the provisions of this Rule; provided that, if the Claimant does not notify the Exchange of such failure within three (3) Business Days of the date on which such Clearing Member becomes aware of such failure, said Clearing Member shall be deemed to have waived its rights under this Rule, without prejudice to any other rights or remedies at law or under any other provisions of the Rules.

(ii) Each notice filed pursuant to subparagraph (a)(i) hereof shall be accompanied by a nonrefundable check payable to the Exchange in the amount of three hundred seventy-five dollars (\$375).

(b) Upon receipt by the Exchange of the notice and payment required by subparagraph (a)(ii) hereof, the Exchange shall forward one (1) copy of said notice to the Clearing Member against whom the Claim is being asserted and one (1) copy of said notice to any other Clearing Member joined in the arbitration pursuant to subparagraph (c)(viii) hereof.

(c) A Special Arbitration Committee of three (3) disinterested members of the Cocoa Committee shall be appointed by the Chairman within one (1) Business Day of the Exchange's receipt of the notice and payment required by subparagraph (a)(iii) hereof. The Special Arbitration Committee shall

establish the date, time and place for a hearing. Each Special Arbitration Committee shall determine the procedures to be followed in any hearing before it, except that the following shall apply in every case:

(i) A Clearing Member who is a party to the arbitration ("party") shall be entitled to appear personally at the hearing(s).

(ii) Each party, at his own expense, shall have the right to be represented by counsel in any aspect of the proceedings.

(iii) Each party shall be entitled to (1) prepare and present all relevant facts in support of the Claims and grievances, defenses or counterclaims which arise out of the transaction or occurrence that is the subject matter of the proceeding and to present rebuttal evidence to such Claims or grievances, defenses or counterclaims made by other parties, (2) examine other parties, (3) examine any witnesses appearing at the hearing(s), and (4) examine all relevant documents presented in connection with the Claim or grievance, or any defense or counterclaim applicable thereto.

(iv) The formal rules of evidence shall not apply.

(v) No verbatim record shall be made of the proceedings, unless requested by a party who shall bear the cost of such record. If such a request is made, a stenographic transcript shall be taken, but not transcribed unless requested by a party who shall bear the cost of such transcription.

(vi) Ex parte contacts by any party with members of the Special Arbitration Committee shall not be permitted.

(vii) The Special Arbitration Committee shall have the power, on the request of any party or on its own motion, to require any Person to testify and/or produce documentary evidence in the proceedings as and to the extent provided for in Rule 21.04.

(viii) Any party to the dispute may apply to the Special Arbitration Committee for permission to join as a party any other Member (1) who is or may be liable to such party for all or part of the Claim being asserted against him, or (2) who claims an interest in the subject of the dispute. The Special Arbitration Committee shall have complete and absolute discretion to grant or deny any such application, in whole or in part.

(ix) The rights and duties set forth in this Rule with respect to parties shall apply to any Member joined as a party pursuant to subparagraph (c)(viii) hereof.

(d) To compensate the aggrieved party for the necessary adjustments in his position, the party adjudged in default shall pay five percent (5%) of the settlement price determined by the Special Arbitration Committee, or eleven dollars (\$11.00) per metric ton, whichever shall be greater, to the aggrieved party in addition to the settlements outlined below.

(e) In the case where a Deliverer is determined to be in default by the Special Arbitration Committee for failure to meet delivery obligations then:

(i) where the settlement price determined by the Special Arbitration Committee is higher than the price stated on the Delivery Notice, the Deliverer shall be required to pay to the Receiver the difference between such settlement price and the price stated on the Delivery Notice; or

(ii) where the settlement price determined by the Special Arbitration Committee is lower than the price stated on the Delivery Notice, the Receiver shall be required to pay to the Deliverer the difference between such settlement price and the price stated on the Delivery Notice.

(f) In the case where a Receiver is determined to be in default by the Special Arbitration Committee for failing to meet receiving obligations then:

(i) where the settlement price determined by the Special Arbitration Committee is higher than the price stated on the Delivery Notice, the Deliverer shall be required to pay to the Receiver the difference between such settlement price and the price stated on the Delivery Notice; or

(ii) where the settlement price determined by the Special Arbitration Committee is lower than the price stated in the Delivery Notice, the Receiver shall be required to pay to the Deliverer the difference between such settlement price and the price stated on the Delivery Notice.

(g) The obligations of the parties under this Rule shall be satisfied without any setoff or deduction whatsoever. Upon final payment as set forth in paragraph (i) hereof, the net amount of any variation Margins which have been paid to either party from the date of issuance of the Delivery Notice to the date of payment of the settlement of the default, shall be collected from such party by the Clearing Organization and paid to the other party.

(h)(i) The Special Arbitration Committee shall render its award in writing adjudging which, if any, party is in default, declaring the settlement price, awarding the amount of money, if any, to be paid by the party in default, and granting any further remedy or relief which it deems just and equitable.

(ii) The Special Arbitration Committee may, in its sole and absolute discretion, order that the amounts payable pursuant to paragraphs (e) or (f), as the case may be, be paid directly to the aggrieved party, in whole or in part, by a party other than the Deliverer or Receiver, as the case may be; provided that the aggrieved party's rights shall not be prejudiced by any such order.

(iii) The award of the Special Arbitration Committee shall be final and binding upon each of the parties to the arbitration, and judgment upon such award may be entered by any court having jurisdiction. In addition, any award, if not complied with within the time specified in the award, shall be enforceable by disciplinary proceedings pursuant to the Rules.

(i) The payments prescribed above shall be made by the close of business on the second (2<sup>nd</sup>) Business Day after notification in writing of the Special Arbitration Committee's award. Payment and settlement of any default as determined above shall be effected through the Exchange. Such payment shall be accepted as final payment.

#### **Rule 9.28. External Condition Procedure**

(a) Any Claim by a Member that Cocoa tendered for delivery or delivered under an Exchange Futures Contract has an external condition on the bag **which** renders it unsound shall be in accordance with the provisions of this Rule.

(i) The Receiver shall notify the Exchange of any Claim hereunder within three (3) Business Days of the Date of Delivery. Failure to notify the Exchange within the specific time shall be deemed a waiver of the Receiver's rights to assert a Claim that Cocoa tendered for delivery or delivered under an Exchange Futures Contract has an external condition on the bag.

(ii) The Receiver's notice to the Exchange shall identify the location of the Cocoa involved, together with the basis for the Receiver's Claim that an external condition on the Cocoa bag exists. Upon receipt of such notice, the Receiver shall be billed and immediately thereafter pay to the Exchange a non-refundable fee in the amount of three hundred seventy-five dollars (\$375). A copy of such notice shall also be served upon the Deliverer by the Receiver.

(b) The Exchange will cause the Cocoa to be surveyed by an Exchange licensed master sampler ("sampler") selected randomly by the Exchange from the panel of licensed samplers. The sampler selected shall not include any sampler who previously sampled the Cocoa either in the current delivery period or a prior delivery period for which a valid Certificate of Grade with respect to grade exists or any sampler who, in the Exchange's sole discretion, might not be impartial.

(c) The sampler will survey the Cocoa which is the subject of the dispute and determine whether any external condition exists on the bags. The determination of the sampler shall be final and binding, and there shall be no appeals therefrom.

(d) If the sampler determines that no external condition exists on the bags of Cocoa which are the subject of the dispute, the Receiver, in addition to the fee paid to the Exchange to initiate this procedure, shall pay the sampler's fee.

(e) If the sampler determines that the bags of Cocoa which are the subject of the dispute have an external condition, the Deliverer shall be required to correct the external condition existing on the bags or substitute other Cocoa within five (5) Business Days after receipt of written notification of the decision of the sampler. The Deliverer shall also be responsible for payment of the sampler's fee.

(f) The filing of a notice in accordance with this Rule shall not affect the obligation of a Receiver to pay for Cocoa delivered against a Cocoa Futures Contract, provided that all documents necessary for such delivery have been duly presented to the Receiver by the Deliverer.

## COCOA OPTIONS

### Rule 9.40. Option—Forms

(a) All Cocoa Call Options shall be in the following form:

#### COCOA CALL OPTION

New York, N.Y. \_\_\_\_\_ 20\_\_

\_\_\_\_\_ (the Grantor) hereby grants to \_\_\_\_\_ (the Purchaser) an Option to enter into one (1) Cocoa Futures Contract on the ICE Futures U.S.<sup>®</sup>, Inc. to purchase Cocoa for delivery in \_\_\_\_\_ (the delivery month of the Option's Underlying Futures Contract) at a price of \_\_\_\_\_ dollars per metric ton (the Strike Price).

The Purchaser hereby agrees to pay a Premium of \$\_\_\_\_\_ for this Option.

This Option is, and any Exchange Futures Contract resulting from its exercise shall be, made in view of, and in all respects subject to, the Rules of the Exchange, of the Clearing Organization, and of any successor to either of them, as adopted or amended from time to time.

(b) All Cocoa Put Options shall be in the following form:

#### COCOA PUT OPTION

New York, N.Y. \_\_\_\_\_ 20\_\_

\_\_\_\_\_ (the Grantor) hereby grants to \_\_\_\_\_ (the Purchaser) an Option to enter into one (1) Cocoa Futures Contract on the ICE Futures U.S.<sup>®</sup>, Inc. to sell Cocoa for delivery in \_\_\_\_\_ (the delivery month of the Option's Underlying Futures Contract) at a price of \_\_\_\_\_ dollars per metric ton (the Strike Price).

The Purchaser hereby agrees to pay a Premium of \$\_\_\_\_\_ for this Option.

This Option is, and any Exchange Futures Contract resulting from its exercise shall be, made in view of, and in all respects subject to, the Rules of the Exchange, of the Clearing Organization, and of any successor to either of them, as adopted or amended from time to time.

(c) Cocoa Options shall not be transferred, assigned or otherwise disposed of other than on the Exchange, subject to the Rules and to the Rules of the Clearing Organization.

### Rule 9.41. Trading Months

(a) Except as the Board may from time to time prescribe otherwise, Cocoa Options shall be traded with respect to Option Months determined in accordance with the following:

(i) Trading shall be conducted in an Option traded on the March futures which shall expire the preceding February, an Option traded on the May futures which shall expire the preceding April, an Option traded on the July futures which shall expire the preceding June, an Option traded on the September futures which shall expire the preceding August, and an Option traded on the December futures which shall expire the preceding November, hereinafter referred to as the "Regular Option Months"; and

(ii) Trading shall also be conducted in an Option traded on the March futures which shall expire in December, an Option traded on the March futures which shall expire in January, an Option traded on the May futures which shall expire in March, an Option traded on the July futures which shall expire in May, an Option traded on the September futures which shall expire in July, an Option traded on the December futures which shall expire in September, and an Option traded

on the December futures which shall expire in October, hereinafter referred to as the "Serial Option Months".

(b) If trading has commenced in the Underlying Futures Contract, a new Option shall be listed for trading as follows:

(i) a new Regular Option Month shall be listed for trading on the first (1<sup>st</sup>) trading day following the first (1<sup>st</sup>) trading day for the Underlying Futures Contract month; and

(ii) a new Serial Option Month shall be listed for trading on the first (1<sup>st</sup>) day of the third (3<sup>rd</sup>) calendar month preceding the Serial Option Month.

#### **Rule 9.42. Last Trading Day**

(a) The Last Trading Day shall be, for any Regular or Serial Option Month, the first (1<sup>st</sup>) Friday of the calendar month preceding such Regular or Serial Option Month; provided, however, that in the event the Exchange is closed on any such Friday then:

(i) if the determination that the Exchange would be closed was made more than one (1) week prior thereto, the term "Last Trading Day" shall mean the trading day preceding such Friday; and

(ii) if such determination was made at any other time, the term "Last Trading Day" shall mean the first (1<sup>st</sup>) trading day after such Friday.

#### **Rule 9.43. Strike Prices**

(a) Trading shall only be conducted in Regular or Serial Cocoa Options having Strike Prices determined in accordance with this Rule.

(b) The Strike Prices of Options shall be at levels (the "prescribed levels") set at intervals (the "prescribed intervals") of fifty dollars (\$50).

(c) Except as the Board or President may from time to time prescribe otherwise, Cocoa Options shall be listed for trading with particular Strike Prices for each Option Month as follows:

(i) At the time Cocoa Options for any Regular Option Month are first (1<sup>st</sup>) listed for trading pursuant to Rule 9.41, they shall be listed with thirteen (13) Strike Prices each for Puts and Calls at the prescribed fifty dollar (\$50) level.

(ii) Any listing of Strike Prices prescribed by the Board or the President under this Rule shall be made effective upon adoption or as otherwise determined by the Board or the President.

(d) An Option shall be delisted if for ten (10) consecutive trading days no Transaction is executed, and there is no open position, in such Option; provided, however, that no Option shall be so delisted if it has a Strike Price which is at the first (1<sup>st</sup>) fifty dollar (\$50) or one hundred dollar (\$100) prescribed level above the Settlement Price of the Underlying Futures Contract on the previous trading day, or is at either of the six (6) prescribed fifty dollar (\$50) or one hundred dollar (\$100) levels above or below such level; and provided further that no Option shall be so delisted if there is an Option in another class with the same Strike Price that does not otherwise qualify for delisting; and provided further that, in the case of Serial Options and the next Regular Option Month with an expiration subsequent to the expiration of the Serial Option(s), no Option shall be delisted unless it can be delisted for any Serial Option Month and such next Regular Option.

**Amended by the Board on March 26, 2008; effective March 28, 2008 [¶¶ (b), (c)(i) and (ii)].**

#### **Rule 9.44. Premium Quotations**



Premiums shall be quoted in dollars per metric ton. The minimum fluctuation in Premiums shall be one dollar (\$1.00) per metric ton, except that Trades may occur at a price of one dollar (\$1.00) per Option Contract if such Trades result in the liquidation of Positions for both parties to the Trade.

#### **Rule 9.45. Obligations of Option Purchasers**

(a) The Purchaser which purchases a Cocoa Option on the Floor of the Exchange shall cause such Option to be submitted by a Clearing Member to the Clearing Organization for clearance in accordance with the Rules of the Clearing Organization.

(b) The Purchaser which clears a Cocoa Option shall pay in full the Premium to the Clearing Organization in accordance with the Rules of the Clearing Organization.

(c) The Purchaser of a Cocoa Option shall, upon exercising such Option in accordance with the Rules, enter into an Underlying Futures Contract to buy (in the case of a Call) or to sell (in the case of a Put) Cocoa for delivery in the Regular or Serial Option Month's Underlying Futures Contract, at the Strike Price specified in such Option; provided, however, that any such contract entered into upon exercise shall be entered into for the account of the Person having purchased the Cocoa Option.

#### **Rule 9.46. Obligations of Option Grantors**

(a) The Grantor which grants a Cocoa Option on the Floor of the Exchange shall cause such Option to be submitted by a Clearing Member to the Clearing Organization for clearance in accordance with the Rules of the Clearing Organization.

(b) The Grantor which clears a Cocoa Option shall make such Margin deposits as the Clearing Organization may require.

(c) The Grantor of a Cocoa Option shall, upon being assigned an Exercise Notice in accordance with the Rules of the Clearing Organization, enter into an Underlying Futures Contract to sell (in the case of a Call) or to buy (in the case of a Put) Cocoa for delivery in the Regular or Serial Option Month's Underlying Futures Contract, at the Strike Price specified in such Option; provided, however, that any such contract entered into upon assignment of an Exercise Notice shall be entered into for the account of the Person having granted the Cocoa Option.

#### **Rule 9.47. Effect of Clearance**

Upon acceptance of a Cocoa Option by the Clearing Organization, the Clearing Organization shall be substituted as, and assume the position of, the Purchaser to the Clearing Member which is the Grantor and the position of the Grantor to the Clearing Member which is the Purchaser; and thereupon the Clearing Organization shall have all the rights and obligations with respect to such Option as the parties for which it is substituted.

#### **Rule 9.48. Expiration and Exercise of Options**

(a) The Purchaser must receive from its Customer which intends to exercise a Cocoa Option on the Last Trading Day, notification of such intention not later than 4:00 PM on such day. In order for a Purchaser to exercise a Cocoa Option for its own account on the Last Trading Day it must have done so or have made a determination to do so not later than 4:00 PM on such day. The Purchaser must make and maintain a record of all notices received and all determinations made pursuant to this Rule, and such record must show by time stamp or otherwise the date and time of receipt or making.

(b) The Purchaser of a Cocoa Option may exercise such Option on any Business Day by giving an Exercise Notice, in the form prescribed by the Clearing Organization, to the Clearing Organization not later than 5:00 P.M. Such Notice shall be effective upon the opening of Cocoa futures trading on the Business Day following the day of receipt by the Clearing Organization. An Exercise Notice with

respect to a Cocoa Option purchased on the day such Notice is given shall not be effective unless such Option has been accepted by the Clearing Organization. An Exercise Notice which is given with respect to an Option which is not accepted by the Clearing Organization shall be deemed withdrawn by the Purchaser.

(c) If an Exercise Notice is given, the Purchaser shall deposit Original Margin for the Underlying Futures Contract with the Clearing Organization at such time as may be required by the Clearing Organization.

(d) Upon exercise of each Cocoa Option, notification thereof shall be given to the Option Grantor.

**Rule 9.49. Automatic Exercise Levels for Cocoa Options**

After the close on the Last Trading Day in the Cocoa Options Contract, the Clearing Organization will automatically exercise any open long Option that has a Strike Price below (in the case of a Call Option) or above (in the case of a Put Option) the Settlement Price of the Underlying Futures Contract on that day by an amount which equals or exceeds the minimum price increment permitted under the Rules for the Underlying Futures Contract, unless, before 5:00 p.m. on the Last Trading Day, the Clearing Member carrying such Option gives the Clearing Organization written instructions that any such Option is to expire unexercised.

## CALENDAR SPREAD OPTIONS ON COCOA FUTURES

### Rule 9.60. Scope of Chapter

(a) A Transaction involving Options to enter into Cocoa Calendar Spread Futures Contracts on the Exchange shall be referred to as either a “Cocoa Spread Option” or “CCSO”.

(b) A Cocoa Put Spread Option represents an Option to assume a short Position in the first (1<sup>st</sup>) expiring Cocoa Futures Contract in the spread and a long Position in the second (2<sup>nd</sup>) expiring Cocoa Futures Contract in the spread traded on the Exchange. A Cocoa Call Spread Option represents an Option to assume a long Position in the first (1<sup>st</sup>) expiring Cocoa Futures Contract in the spread and a short Position in the second (2<sup>nd</sup>) expiring Cocoa Futures Contract in the spread traded on the Exchange.

(c) For the purposes of this Chapter, unless otherwise noted herein, the following terms shall have the following meanings:

(i) the term “Spread Price” shall mean the mathematical result of subtracting the price of the second (2<sup>nd</sup>) delivery month of the Underlying Futures Contract in the CCSO from the price of the first (1<sup>st</sup>) delivery month of the Underlying Futures Contract in the CCSO; and

(ii) the term “Settlement Spread Price” shall mean the mathematical result of subtracting the Settlement Price of the second (2<sup>nd</sup>) delivery month of the Underlying Futures Contract in the CCSO from the Settlement Price of the first (1<sup>st</sup>) delivery month of the Underlying Futures Contract in the CCSO.

### Rule 9.61. Option – Forms

(a) All Cocoa Call Spread Options shall be in the following form:

#### COCOA CALL SPREAD OPTION

New York, N.Y. \_\_\_\_\_ 20\_\_

\_\_\_\_\_ (the Grantor) hereby grants to \_\_\_\_\_ (the Purchaser) a spread Option to enter into one Cocoa futures spread on ICE Futures U.S. to purchase Cocoa for delivery in \_\_\_\_\_ (the first (1<sup>st</sup>) delivery month in the Option’s Underlying Futures Contract of the spread) and to sell Cocoa for delivery in \_\_\_\_\_ (the second (2<sup>nd</sup>) delivery month in the Option’s Underlying Futures Contract of the spread) at a Spread Price of \_\_\_\_\_ dollars per metric ton (the Strike Price of the CCSO).

The Purchaser hereby agrees to pay a Premium of \$\_\_\_\_\_ for this CCSO.

This CCSO is, and any Exchange Futures Contracts resulting from its exercise shall be, made in view of, and in all respects subject to, the Rules of ICE Futures U.S., of the Clearing Organization, and of any successor to either of them, as adopted or amended from time to time.

(b) All Cocoa Put Spread Options shall be in the following form:

## COCOA PUT SPREAD OPTION

New York, N.Y. \_\_\_\_\_ 20\_\_

\_\_\_\_\_ (the Grantor) hereby grants to \_\_\_\_\_ (the Purchaser) a spread Option to enter into one Cocoa futures spread on ICE Futures U.S. to sell Cocoa for delivery in \_\_\_\_\_ (the first (1<sup>st</sup>) delivery month of the Option's Underlying Futures Contract of the spread) and to buy for delivery in \_\_\_\_\_ (the second (2<sup>nd</sup>) delivery month of the Option's Underlying Futures Contract of the spread) at a Spread Price of \_\_\_\_\_ dollars per metric ton (the Strike Price of the CCSO).

The Purchaser hereby agrees to pay a Premium of \$ \_\_\_\_\_ for this CCSO.

This CCSO is, and any Exchange Futures Contracts resulting from its exercise shall be, made in view of, and in all respects subject to, the Rules of ICE Futures U.S., of the Clearing Organization, and of any successor to them, as adopted or amended from time to time.

(c) Cocoa Spread Options shall not be transferred, assigned or otherwise disposed of other than on the Exchange, subject to the Rules of the Exchange and the Clearing Organization.

### Rule 9.62. Trading Months

(a) Except as the Board may otherwise prescribe, expiration months of the Underlying Futures Contract which are eligible for listing with respect to Cocoa Spread Options shall be: March, May, July, September and December.

(b) Except as the Board may otherwise prescribe, Cocoa Spread Options shall be listed for trading as follows:

(i) **1 month series:** Each of the first four expiration months paired with its next successive expiration month;

(ii) **2 month series:** Each of the first three expiration months paired with its second successive expiration month;

(iii) **3 month series:** Each of the first two expiration months paired with its third successive expiration month;

(iv) **4 month series:** The first expiration month paired with its fourth successive expiration month; and

(v) **5 month series:** Each of the first five expiration months paired with its fifth successive expiration month.

(c) If trading has commenced in the Underlying Futures Contract, a new CCSO shall be listed as follows:

(i) with respect to the one month, two month, three month and four month series, a new CCSO shall be listed for trading on the first trading day following the expiration of a CCSO contained in the series; and

(ii) with respect to the five month series, a new CCSO shall be listed for trading on the first trading day following the first trading day for the far month related futures contract.

### Rule 9.63. Last Trading Day

The Last Trading Day for any CCSO series pair shall be the day as provided for in Cocoa Rule 9.42, as that day would apply to the first expiring delivery month in the pair.

#### **Rule 9.64. Strike Prices**

(a) Trading shall only be conducted in a CCSO having a Strike Price determined in accordance with this Rule.

(b) The Strike Prices of a CCSO that is listed for trading shall be at levels which are at intervals of ten dollars per metric ton (\$10.00).

(c) Except as the Board or President may otherwise prescribe, a CCSO shall be listed for trading with particular prices for each CCSO as follows:

(i) At the time any CCSO is first listed for trading pursuant to Rule 9.62, they shall be listed with seven (7) ten dollar Strike Prices, as required in paragraph (b), each for Puts and Calls. The first (1<sup>st</sup>) ten dollar (\$10) Strike Price shall be set at the prescribed level which is equal to the Settlement Spread Price for the underlying futures spread on the previous trading day, or if such Settlement Spread Price is not equal to any such prescribed level, then at the next prescribed level above such Settlement Spread Price. The other six (6) ten dollar (\$10) Strike Prices shall be at each of the three (3) prescribed levels above and the three (3) prescribed levels below the first (1<sup>st</sup>) Strike Price.

(ii) Whenever the Strike Prices of a listed CCSO do not include the first (1<sup>st</sup>) prescribed ten dollar (\$10) level above the Settlement Spread Price for the underlying futures spread on the previous trading day, or either of the three (3) ten dollar (\$10) prescribed levels above or below such a level, they shall be listed for trading the following day.

(iii) Any listing of Striking Prices prescribed by the Board or President under this Rule shall be made effective upon adoption or as otherwise determined by the Board or the President.

(d) A CCSO shall be delisted if for ten (10) consecutive trading days no Transaction is executed, and there is no open position, in such CCSO; *provided however*, that no CCSO shall be so delisted if it has a Strike Price which is at the first (1<sup>st</sup>) ten dollar (\$10) level above the Settlement Spread Price of the underlying futures spread on the previous trading day, or is at either of the three (3) prescribed ten dollar (\$10) levels above or below such level as set forth in subparagraphs (c)(i) and (c)(ii); and provided further that no CCSO shall be delisted if there is a CCSO in another class with the same Strike Price that does not otherwise qualify for delisting.

#### **Rule 9.65. Premium Quotations**

Premiums shall be quoted in dollars per metric ton. The minimum fluctuation in Premiums shall be \$1.00 per metric ton, except that Trades may occur at a price of \$1.00 per CCSO contract if such Trades result in the liquidation of Positions for both parties to the Trade.

#### **Rule 9.66. Obligations of CCSO Purchasers**

(a) The Purchaser which purchases a CCSO on the Floor of the Exchange shall cause such CCSO to be submitted by a Clearing Member to the Clearing Organization for clearance in accordance with the Clearing Organization Rules.

(b) The Purchaser which clears a CCSO shall pay in full the Premium to the Clearing Organization in accordance with the Clearing Organization Rules.

(c) The Purchaser of a CCSO shall, upon exercising such CCSO in accordance with the Rules,

enter into Underlying Futures Contracts to buy the first (1<sup>st</sup>) delivery month in the CCSO and sell the second (2<sup>nd</sup>) delivery month in the CCSO (in the case of a Call) or to enter into Underlying Futures Contracts to sell the first (1<sup>st</sup>) delivery month in the CCSO and buy the second (2<sup>nd</sup>) delivery month of the CCSO (in the case of a Put), at a Spread Price equal to the Strike Price specified in such CCSO; *provided, however*, that any such contracts entered into upon exercise shall be entered into the account of the Person having purchased the CCSO.

(d) Futures contracts entered into by the Purchaser of a CCSO, as provided for in paragraph (c) herein, shall have prices assigned to those futures contracts in the following manner:

(i) The first (1<sup>st</sup>) delivery month futures contract shall be assigned the price equal to the Settlement Price for that month on the day of exercise; and

(ii) The second (2<sup>nd</sup>) delivery month futures contract shall be assigned the price that is the mathematical result of the first (1<sup>st</sup>) delivery month futures contract Settlement Price, as provided for in subparagraph (d)(i) herein, minus the Spread Price specified in such CCSO.

#### **Rule 9.67. Obligations of CCSO Grantors**

(a) The Grantor which grants a CCSO on the Floor of the Exchange shall cause such CCSO to be submitted by a Clearing Member to the Clearing Organization for clearance in accordance with the Clearing Organization Rules.

(b) The Grantor of a CCSO shall make such Margin deposits as the Clearing Organization may require.

(c) The Grantor of a CCSO shall, upon being assigned an Exercise Notice in accordance with the Clearing Organization Rules, enter into Underlying Futures Contracts to sell the first (1<sup>st</sup>) delivery month of the CCSO and buy the second (2<sup>nd</sup>) delivery month of a CCSO (in the case of a Call) or to enter into Underlying Futures Contracts to buy the first (1<sup>st</sup>) delivery month of the CCSO and sell the second (2<sup>nd</sup>) delivery month in the CCSO (in the case of a Put), at a Spread Price equal to the Strike Price specified in such CCSO; *provided, however*, that any such contracts entered into upon assignment of an Exercise Notice shall be entered into for the account of the Person having granted the CCSO.

(d) Futures contracts entered into by the Grantor of a CCSO, as provided for in paragraph (c) herein, shall have prices assigned to those futures contracts in the following manner:

(i) The first (1<sup>st</sup>) delivery month futures contract shall be assigned the price equal to the Settlement Price for that month on the day of exercise; and

(ii) The second (2<sup>nd</sup>) delivery month futures contract shall be assigned the price that is the mathematical result of the first (1<sup>st</sup>) delivery month futures contract Settlement Price, as provided for in subparagraph (d)(i) herein, minus the Spread Price specified in such CCSO.

#### **Rule 9.68. Effect of Clearance**

Upon acceptance of a CCSO by the Clearing Organization, the Clearing Organization shall be substituted as, and assume the position of the Purchaser to the Clearing Member which is the Grantor and the position of the Grantor to the Clearing Member which is the Purchaser; and thereupon the Clearing Organization shall have all the rights and obligations with respect to such CCSO as the parties for which it is substituted.

#### **Rule 9.69. Expiration and Exercise of CCSOs**

(a) The Purchaser must receive from its Customer which intends to exercise a CCSO on the Last Trading Day, notification of such intention not later than 3:00 p.m. on such day. In order for a Purchaser to exercise a CCSO for its own account on the Last Trading Day it must have done so or have made a determination to do so not later than 3:00 p.m. on such day. The Purchaser must make and maintain a record of all notices received and all determinations made pursuant to this Rule, and such record must show by time stamp or otherwise the date and time of receipt or making.

(b) The Purchaser of a CCSO may exercise such CCSO on any Business Day by giving an Exercise Notice, in the form prescribed by the Clearing Organization, to the Clearing Organization no later than 5:00 p.m. Such notice shall be effective upon the opening of Cocoa futures trading on the Business Day following the day of receipt by the Clearing Organization. An Exercise Notice with respect to a CCSO purchased on the day such notice is given shall not be effective unless such CCSO has been accepted by the Clearing Organization. An Exercise Notice which is given with respect to a CCSO which is not accepted by the Clearing Organization shall be deemed withdrawn by the Purchaser.

(c) If an Exercise Notice is given, the Purchaser shall deposit Original Margin for the Underlying Futures Contract with the Clearing Organization at such time as may be required by the Clearing Organization.

(d) Upon exercise of each CCSO, notification thereof shall be given to the CCSO Grantor.

#### **Rule 9.70. Automatic Exercise Levels**

After the close on the Last Trading Day in the Cocoa Spread Options Contract, the Clearing Organization will automatically exercise any open long CCSO that has a Striking Price below (in the case of a Call) or above (in the case of a Put) the Settlement Spread Price of the Underlying Futures Contracts on that day by an amount which equals or exceeds the minimum price increment permitted under the Rules for the Underlying Futures Contract, unless, before 5:00 p.m. the Last Trading Day, the Clearing Member carrying such CCSO gives the Clearing Organization written instructions that any such CCSO is to expire unexercised.

## COCOA RESOLUTIONS

### No. 1. Cocoa Grading Fees

WHEREAS, Rule 9.18 authorizes the Board to establish fees, payable by the Person, who submitted the Sampling Order, to the Exchange, for grading Cocoa in accordance with the Rules;

NOW, THEREFORE, BE IT RESOLVED, that with respect to each Lot graded by Exchange licensed graders, the Person, who submitted the Sampling Order, shall pay the Exchange the following fees, which shall be distributed by the Exchange to such graders as indicated below:

<b>Number Of Chops</b>	<b>Grading Fee</b>	<b>Exchange Portion</b>	<b>Grader Portion</b>	<b>Fee per Grader</b>
1 to 2	\$117	\$54	\$63	\$21
3	\$129	\$57	\$72	\$24
4	\$141	\$60	\$81	\$27
5 to 6	\$153	\$63	\$90	\$30

and;

BE IT FURTHER RESOLVED that, the “number of chops” referred to in the above chart is for each Lot which for the purposes of this Resolution shall mean the entire quantity of Cocoa beans tendered in fulfillment of one (1) Exchange Cocoa Futures Contract; and

BE IT FURTHER RESOLVED, that where a Sampling Order is filed with the Exchange and cocoa is received for grading and where the Exchange is then requested to cancel the submission for grading, the Exchange shall retain its portion of the Grading Fee and the remainder of the Grading Fee(s) shall be returned to the Person submitting the Sampling Order. Where the Exchange receives a request to cancel the submission for grading and the grading has already occurred, no portion of the Grading Fee(s) shall be returned to the Person submitting the Sampling Order.

**Amended by the Board December 9, 2010; effective January 1, 2011 through May 31, 2011.**

**Amended by the Board December 9, 2010; effective July 25, 2011.**

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

RESOLVED, THAT following are the minimum acceptable standards and procedures to be followed by Exchange licensed Cocoa warehouse in connection with the storage of Exchange Cocoa.



## **I. Location and Physical Structure of Warehouse**

Any location for the storage of Exchange Cocoa must be maintained on a continuing basis in accordance with the following standards and shall be subject to examination by the Exchange:

1. It must be weather tight and rodent proof as to roof, walls, doors and windows. Any hole or opening which allows access to weather, rodents, or birds must be sealed. Floors must be free of cracks, seep holes, and crevices. Holes which are screened are considered rodent proof.

2. It must comply with all applicable laws, customs and other requirements of each jurisdiction in which any Licensed Store is located, including any pertinent fire regulations and have sufficient floor load limits.

A. If, at any time, any licensed warehouse operator becomes aware that the laws of the jurisdiction, in which a Licensed Store is located, conflict, or are likely to conflict, with the requirements of the Rules, the warehouse operator shall immediately notify the Exchange. In the event of a conflict, the Exchange shall determine whether, in its reasonable opinion, the conflict is reconcilable with the Rules and shall determine whether, in its absolute discretion what action, if any, to take. If the Exchange determines in its sole discretion that the conflict will not immediately prejudice the warehouse operator from complying with the Rules, the Exchange shall, without prejudice to its rights and powers under the Rules, consult with the warehouse operator as to what, if any, remedial action to take.

3. It must have light sufficient to permit cleaning crews to work, and weighing and sampling to be performed efficiently and to identify storage deficiencies and problems without the need for any supplemental lighting, but it need not have natural light.

a. Sufficient lighting in an empty warehouse shall be defined as a minimum reading of two (2.0) foot-candles on a light meter calibrated at two hundred (200) foot-candles as recorded on the floor at all storage locations in the storage area during scheduled working hours.

b. Sufficient lighting in a warehouse with cargo in store shall be defined as a minimum reading on a light meter calibrated at two hundred (200) foot-candles of:

(i) 2.0 foot-candles as recorded on the floor in the center of all equipment aisles.

(ii) .4 foot-candles as recorded on the floor in the center of all sampling and inspection aisles.

The above readings will be basis a light meter approved by the Exchange.

4. It must have proper ventilation to the outside. Proper ventilation may include screened openings positioned to allow ventilation using prevailing winds. Windows, ventilators or other ventilating openings shall be screened at all times.

5. It must not be artificially heated except to a minimum level to prevent freezing of pipes.

6. It shall have (and the warehouse shall maintain) a sufficient number of material handling devices (e.g., fork lift trucks, elevators, etc.) which are operable and available to perform the warehouse's duties in an orderly and efficient fashion.

7. It shall be free of leaking pipes.

8. It shall be equipped with operational toilet facilities which are clean, in good repair and supplied with proper soaps, towels, etc. Alternatively, public toilet facilities must be located within 100 yards of the warehouse facility.

9. It shall have signs, clearly visible in all toilets, requiring employees to wash hands after use of the toilet facilities.

10. It shall have signs, clearly visible at all entrances, prohibiting smoking, eating or drinking in the warehouse except in designated areas which are closed off and separated from the storage areas.

11. It shall have signs or postings, clearly visible throughout the warehouse, marking storage locations within the building.

12. It shall be physically segregated from any non-licensed storage areas by walls and doors sufficient to prevent access by rodents, insects or odors.

## **II. Housekeeping Practices**

1. The floor shall be maintained broom clean at all times. Active storage areas shall be swept clean at the end of each work day. Inactive storage areas, corners, ledges or other non-storage areas must be clean at all times.

2. It shall inspect the warehouse on at least a weekly basis so that the walls, ceiling, overhead pipes, and beams shall be maintained reasonably free of cobwebs, accumulated dirt, dust, excreta, or loose foreign matter, peeling paint or damaged insulation.

3. It shall store and dispose of rubbish in a manner which will minimize the development of odor and prevent waste from becoming an attractant, harborage, or breeding place for pests.

4. It shall repair cracks, seep holes and crevices in floors and walls (such as around door frames, expansion joints, pipes and sills).

5. It shall maintain outside areas free of conditions which may result in a build-up of pest problems, including, but not limited to, all outside loading and unloading areas as well as the grounds around the warehouse.

These conditions include, but are not limited to:

A. Litter and waste which must be deposited in and secured in containers with tightly fitting covers.

B. Uncut vegetation which must be no higher than four (4) inches within thirty (30) feet of the building line.

C. Improper or inadequate drainage.

## **III. Basic Storage Practices**

In order to ensure adequate space for sampling, inspection and effective fire protection, assist ventilation, aid in circulation and generally provide ample space for appropriate pest control programs:

1. Cocoa should be stored on pallets which provide a minimum of four (4) inches distance from the floor. In no event shall any cocoa bag touch the floor or overhang the edge of a pallet more than four (4) inches.

2. The pallets, including those stored for future use, must be kept clean and in good repair. Before each use pallets must be cleaned of all foreign matter, including, but not limited to, dirt, dead insects, pupal cases, webbing, etc., before each use.

3. Cocoa shall be stored a minimum of twenty-four (24) inches from the ceiling and a minimum of eighteen (18) inches below any sprinkler head.

4. Cocoa should be stored a minimum of twenty-four (24) inches from any wall.

5. Twenty (20) inches of space shall be maintained between Cocoa piles. Piles of Cocoa shall be stored in such a manner as to permit at least two faces (front or back and one long side) to be available for inspection and/or sampling. Cocoa shall not be stored higher than five (5) pallets high or one hundred (100) bags high, whichever is less. The equipment aisles should have at least thirteen and one-half (13.5) feet of space for equipment to operate without contacting bags of Cocoa.

6. Slack bags must be placed on a separate pallet in front of the pile. This pallet shall be stored in front of the Exchange Lot or at the top tier at the front of the lot.

7. All space requirements shall be measured from the bag or the pallet, whichever is closer, to the sprinkler, ceiling, or wall, etc.

#### **IV. Stored Cocoa**

1. All cocoa bags entering a Licensed Store must be kept clean and free from any and all foreign matter which could be detrimental to the delivery of the Cocoa contained therein on the Exchange. The owner of the Cocoa shall be responsible for the cleaning of Cocoa bags entering a Licensed Store.

2. The warehouse shall be responsible to the owner for maintaining cocoa bags in a Licensed Store in accordance with Exchange standards. The warehouse shall keep stored cocoa bags and beans clean, undamaged and free from any and all foreign matter (including but not limited to dirt, bird droppings, dead or live insects, pupal cases, webbing) which could be detrimental to the delivery of the cocoa. The warehouse shall conduct a weekly inspection of each Lot of Exchange Cocoa to determine its condition and conformity with Exchange standards. The warehouse shall take all necessary precautions to prevent contamination/infestation of the bags.

3. Torn bags, bags from which beans are sifting, or bags which are in peril of having cocoa beans spilled therefrom must be promptly repaired. The floor of the Licensed Store must be kept free of spilled beans.

4. Except with respect to the prompt repair of torn bags, bags from which beans are sifting or bags which are in peril of cocoa beans being spilled therefrom, prior to undertaking any other maintenance of cocoa bags in a Licensed Store, including the rebagging of cocoa, the warehouse shall notify the owner, in writing, of the maintenance to be performed and provide the owner five (5) Business Days from receipt of the notice within which to respond.

If no response is received by the warehouse within such time, the owner shall be deemed to have authorized the maintenance and all costs associated with said maintenance.

If the response received from the owners is, in the opinion of the warehouse, insufficient to bring the cargo into compliance with Exchange standards, the warehouse shall notify the Exchange.

5. It shall be the responsibility of the warehouse to ensure that each chop of Exchange Cocoa is properly identified, both in the storage area and in the warehouse's office records.

6. If excessive spillage results from sampling, the warehouse shall promptly notify the sampler and the Exchange.

7. It shall remove all cocoa from slings upon weighing the cocoa into Exchange Lots.

#### **V. Pest Control**

1. Warehouses who store Exchange Cocoa shall cause recognized pest control companies to conduct periodic inspections of their facilities and implement effective pest control programs so that there shall be no birds, rodents or other animals (including dogs and cats) in a Licensed Store.

(I) It shall maintain a written pest control program, available for evaluation by Exchange personnel, which shall include:

- A. Name of key warehouse contact person
- B. Name of service provider
- C. Services to be performed
- D. Frequency of Service

- E. Conditions noted
- F. Provider comments

(II) It shall also maintain records which reflect:

- A. Fumigation dates
- B. Fumigant used
- C. Lots/sections fumigated
- D. Owner notification

2. No ingredient used for pest or rodent control shall be used in such a manner or in such places as to contaminate the Cocoa.

3. The warehouse shall remove from the area in or around the storage facility such known bird attractions as grains, foods and similar materials.

4. It shall render rodent control services at least twice per month.

5. It shall maintain rodent control equipment along inside perimeter walls spaced twenty-five (25) feet, or less, apart. Rodent control equipment shall also be placed on both sides of exterior entryways inside of the building at a distance not to exceed five (5) feet from an entryway. Rodent control equipment can be glue boards, traps or other mechanical devices.

6. Rodent control programs shall take into consideration the exterior as well as the interior conditions of the warehouse.

7. Bait is to be used only on the exterior. The bait shall be safe and effective. Only anticoagulant poisons of their equivalent in effectiveness and safety shall be used in enclosed bait stations, with no bait being used inside the warehouse.

8. It shall ensure pesticides (insecticides, rodenticide, avicides, etc.) used in the warehouse pest control program are registered with the appropriate government agencies and used in the appropriate manner in accordance with approved label directions. Rodent tracking dust shall not be used in the warehouse.

A. If required by law, applicators are to be certified.

B. Application must be performed in such manner as not to damage the Cocoa beans.

9. One (1) full time warehouse employee shall be assigned as key contact Person on pest control issues/procedures.

**VI. Control of Other Products Stored in Cocoa Areas**

No odorous products or things may be stored in such manner or place as to enable the odor to be imparted to the cocoa. The odor from any odorous product or thing must not be discernible within the cocoa storage area. No cocoa should be stored in any area where such foreign odors prevail.

The warehouse shall store cocoa separate from other cargo which may adversely affect the cocoa such as chemicals, high fire risk materials and odorous products.

**VII. Record Retention**

The following records relating to Exchange Cocoa shall be kept and maintained by the warehouse for at least the indicated periods of time after the Cocoa has been removed from the warehouse:

Category of Document	Time Period
Sampling Orders	2 years
Receiving Reports	2 years
Stock Record Cards	2 years

Negotiable Warehouse Receipts	2 years
Documents reflecting any movement of Exchange cocoa into or from a licensed store	2 years
Weight Note	2 years

### VIII. Requirements

All records must be kept neat, tidy, orderly and current so that independent auditors can verify warehouse records against physical stocks.

1. Before cocoa may be placed in a Licensed Store, the warehouse must be in possession of a copy of the delivery order (or equivalent document or information) and the following identifying information for such cocoa, which shall be reflected in the warehouse's records relating to such cocoa:

- a. Growth
- b. Number of bags
- c. Shipper's brand (if on the bags)
- d. Crop year (if on the bags)
- e. Marks and chop numbers (or letters) in their entirety
- f. Carrier (*i.e.*, vessel, railroad or truck transport); location (pier, etc.); and date of arrival of vessel (where appropriate)

2. When cocoa is physically placed in the store, the warehouse shall record the identifying information for the cocoa on the warehouse receiving report (or equivalent record). The warehouse shall also record there all exceptions—*i.e.*, the number of stained, torn, mended, slack, short or improperly marked bags. A written record of any exception noted by the warehouse shall be made, and the warehouse shall send a written report describing such exception immediately to the storer of the cocoa. If no exception is noted, a written report to that effect shall be sent to the storer as soon as practicable. If improperly marked bags arrive at the warehouse, the storer shall be notified of such fact immediately by telephone before the delivering carrier leaves the warehouse.

3. The warehouse shall compare the identifying information for the cocoa set forth on the delivery order with the information on the cocoa bags. If there is a material difference between the information supplied on the delivery order (or equivalent record) and the information on the bags, the warehouse shall note such difference on the warehouse's receiving form (or equivalent record) and shall notify the storer of the cocoa immediately of the discrepancy. No EWR shall be issued by the warehouse with respect to such cocoa until the discrepancy with respect to the identification of the cocoa has been resolved.

4. The warehouse shall record the identifying information for the cocoa, as set forth on the cocoa bags, on warehouse tags, which shall be affixed at all times to at least two sides of each pile of cocoa bags.

5. The warehouse shall maintain stock record cards (or equivalent records) for each chop of Exchange cocoa on which shall be recorded all pertinent details necessary to fulfillment of an efficient warehouse's responsibilities, including all movements of the cocoa, changes in its ownership and when the cocoa has been weighed.

6. The warehouse shall issue an EWR which shall identify the number of bags comprising the chop, all markings contained on the bags (in their entirety), the specific location where the cocoa is stored and the name of the carrier (*i.e.*, vessel, railroad or truck transport) on which the cocoa arrived.

7. When cocoa is sampled for the purpose of grading by Exchange licensed graders, a copy of the Sampling Order and the Sampling Confirmation shall be left with the warehouse and shall be maintained by the warehouse as part of the permanent files for the cocoa covered by the sampling order.

a. When a sample is drawn, the warehouse shall sign three printed copies of the Sampling Order in the space provided.

b. By signing the Sampling Order, the warehouse shall be deemed to certify that on the date he signed the Sampling Order the sampler appeared at the Licensed Store indicated on the Sampling Order and left the premises with samples in his possession.

8. Once an Exchange Lot number has been assigned to cocoa, both the Exchange Lot number and the EWR number shall become part of the permanent record of that cocoa and shall be noted on the warehouse record cards and warehouse tags, etc. Under no circumstances shall the warehouse issue a new Exchange Lot number to any cocoa that has previously been assigned an Exchange Lot number and has failed grading for Exchange Delivery.

9. Any physical deliveries of bags of cocoa from the warehouse should be reflected on the Record Cards by deducting the number of bags delivered from the total number of bags in storage.

10. When bags of cocoa are to be weighed into Exchange lots, orders should be received from the owner of the cocoa with complete identification and instructions as to:

a. Exchange Lot number

b. Warehouse receipt (if previously issued) or other appropriate chop identification

c. The approximate number of bags in each chop, together with identifying marks and chops (The exact number of bags will be given to the warehouse by the weigher.)

d. Carrier (*i.e.*, vessel, railroad or truck transport; location (pier, store, etc.); and arrival date of vessel (where appropriate))

e. Cargo number

f. Weighing instructions and name of the weighmaster

11. The warehouse shall receive from the weighmaster a complete report of the weight of bags that are torn, mended and slack; the weight of the sound bags; the Exchange Lot number for the bags; the location of the bags; any exceptions, including improperly marked bags; and whether any bags were lost in leveling off.

12. The warehouse shall separate Exchange Cocoa from cocoa which has not been certificated so that at any time the total number of bags of Exchange cocoa can be determined.

13. It is a violation of Exchange Rules for a warehouse to provide any weighmaster or weigher with any information pertaining to any previous weighing of cocoa without the prior permission of the Exchange.

14. The warehouse shall promptly issue negotiable warehouse receipts for any cocoa stored by it upon the demand of the owner of the cocoa. Any such warehouse receipt shall provide for a limit of liability of at least two hundred fifty (250) times the monthly storage rate of the goods.

15. The warehouse shall only accept an electronic delivery order for any Lot for which an EWR has been issued.

## **IX. Storage and Handling Rates**

1. At the time it applies for a license from the Exchange and at the time it applies for renewal of such license, the warehouse operator shall submit to the Exchange its charges for the storage and handling of Exchange Cocoa (the "Rates"). Such Rates shall be reasonable and competitive with the Rates charged by other Exchange licensed coffee warehouse operators within the same Exchange delivery port.

2. The Rates may only be increased once per year with the renewal of the warehouse operator's license. The Exchange must receive written notice of any proposed increase in the Rate at least ninety (90) days prior to the renewal date of the warehouse operator's license.

3. The Warehouse and License Committee will review any proposed increase to determine if it is reasonable and competitive with the Rates charged by other Exchange licensed cocoa warehouse operators within the same Exchange delivery port. If the Warehouse and License Committee determines that the proposed increase in the Rates is reasonable and competitive, then the increase shall become effective on the renewal date of the warehouse operator's license. If the Warehouse and License Committee determines that the increase in the Rates is not reasonable and competitive, then the increase shall not become effective with respect to Exchange Cocoa stored in the warehouse operator's Licensed Store(s).

#### **X. Violations**

Violations of the standards and procedures set forth in this Resolution shall not be grounds for a Receiver to reject a delivery or to hold a Deliverer in default, provided, however, that nothing in this section shall alter or abridge the rights of a Receiver under any other provision of the Rules to reject a delivery or to hold a Deliverer in default.

#### **XI. Minimum Loadout Rate**

Following the receipt of a valid electronic delivery order for any lot for which an EWR has been issued, accompanied by instructions for prompt shipment, a Warehouse Operator shall promptly commence load out of cocoa in accordance with the following minimum load out rates:

1. Warehouse Operators holding up to 30,000 MT of Exchange certified cocoa in a delivery point shall load out a minimum of 250 MT of Exchange certified cocoa per working day in respect of each applicable delivery; and
2. Warehouse Operators holding more than 30,000 MT of Exchange certified cocoa in a delivery point shall load out a minimum of 500 MT of Exchange certified cocoa per working day in respect of each applicable delivery

For purposes of determining compliance with the minimum load out rates, the actual loading out rate shall be calculated as an average over the period during which the cocoa covered by a delivery order is loaded out.

Load out for each valid electronic delivery order must be completed in full within sixty (60) calendar days from the date (the "Commencement Date") on which the owner has fulfilled all its obligations in furtherance of the delivery order, or such other date as the owner and Warehouse Operator shall mutually agree. If after the expiry of sixty (60) calendar days from the Commencement Date the load out on a delivery order has not been completed in full, the Warehouse Operator may not collect any further storage charges on the balance of the cocoa that is the subject of the delivery order.

Exchange certified cocoa which is moved between two Licensed Stores of the same Warehouse Operator will not be counted towards the daily minimum load out requirements, and will not be subject to the minimum load out rate or the maximum number of days to complete loadout of a delivery order.

A Warehouse Operator that receives multiple Delivery Orders for loadout in the same period shall load out cocoa pursuant to all such delivery orders in a consistent and equitable manner.

In the event that, on any day, load out is hindered by a strike, lockout, or other cause beyond the

control of the Warehouse Operator, such day shall not be counted in determining compliance of the Warehouse Operator with the minimum load out rate or with calculating timely completion of load out under these Rules.

**Amended by the Board April 11, 2007; effective April 16, 2007 [¶ VIII.15].**

**Amended by the Board April 15, 2009; effective April 24, 2009 [¶¶ (I), (IX)(X)].**

**Amended by the Board December 15, 2011; effective January 9, 2012 [¶¶ (IX)(2) and (3)].**

**Adopted by the Board December 5, 2014; effective May 1, 2015 [¶¶(XI)].**

**Amended by the Board December 4, 2015; effective December 30, 2015 [¶ (VIII)].**

### **No. 3. Rebagging of Cocoa—Interpretation**

WHEREAS, Rule 9.24 permits rebagging of Cocoa to protect the contents of an original bag of Cocoa (stored in a warehouse licensed by the Exchange) which original bag has become soiled, torn, or otherwise damaged; and

WHEREAS, Rule 9.07 requires that "Sound Cocoa must be delivered", and

WHEREAS, questions have arisen as to whether rebagging permits/includes "reconditioning" so as to yield Sound Cocoa:

NOW, THEREFORE, BE IT RESOLVED that the Board hereby interprets rebagging to refer to the transfer of the entire, sound contents of a damaged bag into new, clean, whole bags, which transfer was effected by a licensed weighmaster and a checking weighmaster. Rebagging is neither applicable nor available to bags where any portion of the contents has been damaged, wet or in any other circumstances has become not sound. Proper rebagging is tantamount to original bagging.

BE IT FURTHER RESOLVED that "reconditioning", a process wherein damaged cocoa beans are purged and the remaining are repackaged, is absolutely prohibited. Reconditioned cocoa beans are considered not sound for purposes of delivery against any Exchange contract. This prohibition is universal and pertains whether the cocoa was "reconditioned" on the dock or in a licensed warehouse or in any other location.



**No. 4 Cocoa Sampling Fee**

WHEREAS, Rule 9.14(a)(ii) provides that no external condition may appear on the cocoa bags in order for the cocoa to be sampled which results in the sampler not being paid;

NOW, THEREFORE BE IT RESOLVED that when a sampler finds that an external condition appears on the cocoa bag and does not take the sample in accordance with Rule 9.14(a)(ii), the sampler be paid twenty-five percent (25%) of the normal sampling fee.