



World Financial Center  
One North End Avenue, 13<sup>th</sup> Floor  
New York, New York 10282

**BY ELECTRONIC TRANSMISSION**

05-39  
September 15, 2005

Ms. Jean A. Webb  
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: **Request for Commission Approval of Amendments to Exchange  
Rules 9.02 and 9.14 -  
Submission Pursuant to Section 5c(c)(2) of the Act and Regulation 40.5**

Dear Ms. Webb:

Pursuant to Section 5c(c)(2) of the Commodity Exchange Act, as amended, and Commission Regulation 40.5, the Board of Trade of the City of New York, Inc. (the "Exchange") is requesting approval for amendments to Rule 9.02 and 9.14, attached as Exhibit A.

The addition of the ports of Albany and Baltimore as delivery points for the Exchange's Cocoa futures contract comes at a time when the storage space available at the currently designated ports has dramatically decreased. For example, in 1994 in Norfolk, Va., there was over 2 million sq.ft. of Exchange-licensed storage space. Today, the square footage has been reduced to 79,000 sq.ft. as two warehouses have not renewed their warehouse operator licenses. One of the remaining licensed warehouses is no longer accepting new inbound loads of cocoa for storage.

The Exchange, then, is seeking to implement the addition of Albany and Baltimore for delivery months that are already listed for trading, rather than waiting two years for a newly listed delivery month. The Exchange has been advised by Commission staff that, in order to add delivery points for delivery months already trading, the Exchange must show that certain conditions exist in each newly added port. Those conditions are:

(1) Deliverable cocoa at the new port must have the same commercial value, in storage, as cocoa at any of the current ports, i.e., there is no difference in value between growths between existing and new ports;

(2) Multiple buyers (grinders) must be receiving cocoa through the new port, and an active cash market should exist for cocoa in storage at the new port; and

(3) The new port has to actually be a cocoa port now and have the ability to provide all of the services (weighing, sampling, storage and land transportation, etc.) as the existing ports with the same standard at essentially the same costs as the existing ports.

In the absence of publicly available data on prices and commercial trading in Albany and Baltimore, the Exchange has conducted a survey of market participants to derive data relevant to items 1 and 2 above. The Exchange has conducted a review of services provided and costs for such services relevant to item 3. The results of the survey and review follow below.

**Item (1)** - Deliverable cocoa at the new port must have the same commercial value, in storage, as cocoa at any of the current ports, i.e., there is no difference in value between growths between existing and new ports.

The survey asked the participants two questions for each port: first, does an active cash market exist for cocoa in storage at the port, and second, does deliverable quality cocoa in the port have the same commercial value as cocoa of the same description in an existing port. If either answer was yes, the participants were asked to cite the relevant growth/port. Responses were as follows:

#### **ALBANY RESULTS**

<b>Respondent</b>	<b>Q.1 - Active Cash Market?</b>	<b>Q.2 - Equivalent Commercial Value?</b>
End User 1	Yes - no growth cited	Yes - no growth cited
End User 2	No Information	Yes -All Growths vs. Norfolk
End User 3	Yes, African	Yes, Africa/Philadelphia
End User 4	Yes, Ivory	Yes, Ivory/NY
Trader 1	Yes, Ivory and Nigeria	Yes, Ivory/NY, Philadelphia
Trader 2	Yes, Ivory/Nig./Indo	Yes, Ivory/Nig./Indo NYand Philly
Trader 3	Yes, Ivory	Yes, Ivory
Trader 4	Yes, Nigerian	No Information
Trader 5	Yes, Ivory, Ghana	Yes, Ivory to NY, Philly
Trader 6	No	No Information

**BALTIMORE RESULTS**

<b>Respondent</b>	<b>Q.1 - Active Cash Market?</b>	<b>Q.2 - Equivalent Commercial Value?</b>
End User 1	Yes - no growth cited	Yes - no growth cited
End User 2	Yes, Ivory	Yes -All Growths, Ports
End User 3	No Information	No Information
End User 4	Yes, Ivory	Yes, Ivory/Philadelphia
Trader 1	Yes, Ivory	Yes, Ivory/NY and Philadelphia
Trader 2	Yes, Ivory/Nig./Indo	Yes, Ivory-Nig.-Indo/NY and Philly
Trader 3	Yes, Ivory/Ecuador	Yes, Ivory/Ecuador
Trader 4	No Information	No Information
Trader 5	Yes, Ivory, Nigeria	Yes, Ivory/NY and Philadelphia
Trader 6	No	No Information

**Item (2)** - Multiple buyers (grinders) must be receiving cocoa through the new port, and an active cash market should exist for cocoa in storage at the new port.

The survey asked whether or not multiple grinders are receiving cocoa through each port. Responses were as follows:

<b>RESPONDENT TYPE</b>	<b>ALBANY</b>			<b>BALTIMORE</b>		
	<b>YES</b>	<b>NO</b>	<b>No Info</b>	<b>YES</b>	<b>NO</b>	<b>No Info</b>
<b>End User</b>	<b>1</b>		<b>3</b>	<b>1</b>		<b>3</b>
<b>Trader</b>	<b>4</b>		<b>2</b>	<b>3</b>	<b>1</b>	<b>2</b>
<b>TOTAL</b>	<b>5</b>	<b>0</b>	<b>5</b>	<b>4</b>	<b>1</b>	<b>5</b>

**Item (3)** - The new port has to actually be a cocoa port now and have the ability to provide all of the services (weighing, sampling, storage and land transportation, etc.) as the existing ports with the same standard at essentially the same costs as the existing ports.

The Exchange has compiled the following data on the cost of storage, weighing and sampling services in Baltimore and Albany and in existing ports:

<b>WAREHOUSE</b>	<b>MONTHLY STORAGE</b>	<b>WEIGHING</b>
C. Steinweg/Baltimore	.60 per bag*	.40 per bag*
Federal Marine/Albany	.60 per bag*	.70 per bag **
Port of New York average	.60 per bag	.59 per bag
Delaware River average	.60 per bag	.53 per bag

Hampton Roads average	.96 per bag	.60 per bag
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LICENSED SAMPLERS	PORT	CHOP RATE	SPLIT CHOP
Sampler A	Albany & Baltimore	68.50 + 20 % delivery	Additional 28.00
Sampler B	Albany & Baltimore	65.00 + 20 % delivery	Additional 25.00
All Samplers	Average New York	65.00 + 15 % delivery	Average 31.00
All Samplers	Average Delaware/Hampton Rd	65.00 + 20% delivery	Average 31.00

\* Proposed rate

\*\*Proposed rate by independent licensed weigher.

The Exchange has also sought data on the costs of transporting cocoa from each of the two new ports to end user locations vs. similar costs for current ports. The rates below were provided by an East-Coast based trucking firm, for shipment of beans in bags on pallets, average weight 44,000 lbs., per van.

TRUCKING TARIFF RATES*					
Destination	Rates from – <b>ALBANY, NY</b>	Rates from – <b>BALTIMORE</b>	Rates from – <b>HAMPTON RD</b>	Rates from – <b>NEW YORK, NY</b>	Rates from – <b>PHILA./CAMDEN</b>
E.Greenville, PA	\$550	\$425	\$625	\$475	\$450
Elizabethtown, PA	\$475	\$425	\$575	\$500	\$425
Glendale, CA	\$3,000	\$2,850	\$2,950	\$3,100	\$2,950
Hackettstown, NJ	\$475	\$500	\$650	\$500	\$450
Hershey, PA	\$475	\$400	\$575	\$500	\$425
Lititz, PA	\$475	\$375	\$575	\$500	\$425
Milwaukee, WI	\$950	\$850	\$925	\$1,075	\$950
Newark, DE	\$475	\$375	\$550	\$500	\$375

\*Plus 16% FSC – as of July 30, 2005

Average All

\$859

\$775

\$928

\$894

\$806

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The data collected with respect to items 1-3 above demonstrate that the addition of the ports of Albany and Baltimore will not have a material impact on the price of cocoa and that the required conditions exist in those ports. Therefore, the Exchange is requesting approval to the amendments of Rules 9.02 and 9.14 which will designate the ports of Albany and Baltimore as delivery points for the Exchange's Cocoa futures contract and that said amendments be made effective for the May 2006 contract.

The Exchange certifies that the amendments comply with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder.

The amendments were adopted by the Exchange's Board of Governors on September 14, 2005. They will become effective on a date set by the President after approval by the Commission for the May 2006 Cocoa futures contract. Those in opposition were only opposed to the new ports being made delivery points for already listed delivery months. They expressed the view that they could not conclusively determine whether or not the addition of a new port would affect the value of an already listed contract. They believed that the new ports changed the terms and conditions of the contract and, therefore, should be implemented only for newly listed delivery months.

If you have any questions or need further information, please contact me at [jfassler@nybot.com](mailto:jfassler@nybot.com) or 212-748-4084.

Sincerely,

Jill S. Fassler  
Vice President  
Associate General Counsel

cc: Riva Adriance  
Thomas Leahy  
CFTC, Division of Market Oversight  
Allen Cooper  
CFTC, New York Regional Office

(In the text of the amendments below, additions are underlined.)

**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 and the Port of Albany shall mean the district defined from time to time by the laws of New York and New Jersey, as applicable; 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.

**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 provision 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.

[REMAINDER OF RULE UNCHANGED]

**EXHIBIT A**