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New York, New York 10055

BY ELECTRONIC TRANSMISSION

Submission No. 24-137
September 13, 2024

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

**Re: Amendments to Certain Cocoa Rules
Submission Pursuant to Regulation 40.6(a)**

Dear Mr. Kirkpatrick:

Pursuant to Commodity Futures Trading Commission (“CFTC” or “Commission”) Regulation 40.6(a), ICE Futures U.S., Inc. (“Exchange”) certifies the amendments to Exchange Rules 9.00, 9.03, 9.07, 9.14, 9.16, and 9.23, and Resolutions No. 1 and 2 to Chapter 9, set forth in attached Exhibit A. The amendments address certain provisions applicable to Cocoa contracts as discussed below.

I. Rule 9.00(m). Definitions (and Related Provisions)

The Exchange is amending Rule 9.00 to establish a specific range of weights for the bags used in cocoa deliveries. Currently, Exchange Rule 9.00(m) defines an Exchange-Segregated Lot as a “Lot of ten (10) metric tons net of cocoa beans (in original shipping bags of average weight(s) customary for the Growth) . . .” Even though “average weight(s) customary for the Growth” and similar language is used in several Cocoa Rules, the Rules do not specify a particular minimum or maximum bag weight for any Growth or Origin.

The Exchange is amending Rule 9.00(m) and related Rules by removing references to customary bag weights. The Exchange is instead addressing bag weight requirements by amending Rule 9.07(b) to provide that a bag should weigh at a minimum 45kg and at a maximum 75kg, for all Growths. Rule 9.23(d) has further been amended by including a reference to Rule 9.07(b).

Following the recommendation from the Exchange’s Cocoa Committee, the Exchange believes that the bag weight range noted above is commercially appropriate and that setting a specific range of allowed bag weights for all Growths provides greater clarity for market participants than the current imprecise provisions.

II. Additional Clarifying Amendments

The Exchange is further amending Rule 9.00 (Definitions) to create three new terms:

- “**Alternative Delivery Procedure** - shall be understood to mean a mutually acceptable written agreement between the Deliverer and Receiver to deliver and receive under conditions other than those stipulated under the Rules, and subject to the provision of Rule 9.03(d)(ii).”
- “**Chop** shall mean all or any portion of a shipment of cocoa of identical origin, ports of embarkation and identifying marks.”
- “**Pro Forma Delivery** - shall mean a delivery that is made subject to the provisions of Rule 9.11(c).”

Rules 9.03(d)(ii), 9.07(b), 9.11(c), 9.14, 9.18, and 9.23, and Resolutions No. 1 and 2 in Chapter 9, have been amended to incorporate the new defined terms noted above. These new terms were incorporated to add clarity to several sections of the Cocoa Rules.

Each of the foregoing amendments was reviewed by the Cocoa Committee, which determined that the amendments align with standard commercial practice and/or with best practices established in other similar futures contracts and would not impact the value of the Cocoa contract. The Cocoa Committee’s vote to recommend adoption of these proposed amendments was unanimous. The Cocoa Committee’s vote to recommend implementation of the proposed amendments with an effective date as early as is possible following filing with the Commission was also unanimous. Further, the amendments and implementation timeline were approved by the Exchange’s Board of Directors by unanimous vote.

Certifications

The Exchange certifies that the amendments the Exchange Rules and the related provisions comply with the requirements of the Act and the rules and regulations promulgated thereunder. The Exchange has reviewed the designated contract market core principles ("Core Principles") as set forth in the Act and has determined that the amendments comply with the following relevant Core Principles:

COMPLIANCE WITH RULES: Trading in Cocoa contracts is subject to all relevant Exchange rules, which are enforced by the Market Regulation Department.

CONTRACTS NOT READILY SUBJECT TO MANIPULATION: The Exchange’s Cocoa contracts are not readily subject to manipulation as they are based on established and liquid underlying cash markets and derivative contracts traded at other designated contract markets in compliance with CFTC Regulation 38.200. In addition, trading of the contracts will be monitored by the Market Regulation Department.

AVAILABILITY OF GENERAL INFORMATION: The Exchange will issue a notice and post the amended Cocoa Rules to ensure that market participants are aware of the amendments.

PROTECTION OF MARKETS AND MARKET PARTICIPANTS: The amendments to the above-referenced Exchange Rules comply with Core Principle 12 and CFTC Regulation 38.650 as the rules are provided in furtherance of the Exchange’s

promotion of fair and equitable trading and to protect markets and market participants from abusive practices by any market participant and their agents.

FINANCIAL INTEGRITY OF CONTRACTS: The Exchange's Cocoa contracts will continue to be cleared by ICE Clear U.S., a registered derivatives clearing organization subject to Commission regulation, and carried by registered futures commission merchants qualified to handle customer business.

The Exchange is not aware of any substantive opposing views expressed by members or others with respect to the amended Exchange Rules, and certifies that, concurrent with this filing, a copy of this submission was posted on the Exchange's website and may be accessed at <https://www.ice.com/futures-us/regulation>.

If you have any questions or need further information, please contact me at (312) 836-6748 or frances.mendieta@ice.com.

Sincerely,



Frances M. Mendieta
Director, Enforcement Counsel
Market Regulation

cc: Division of Market Oversight
New York Regional Office

EXHIBIT A

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

Rule 9.00. Definitions

As used in the Cocoa Rules:

- (a) **Alternate Delivery Procedure (or ADP)** shall mean a mutually acceptable written agreement between the Deliverer and Receiver to deliver and receive under conditions other than those stipulated under the Rules, and subject to the provisions of Rule 9.03(d)(ii).
- ([a]b) **Bulk storage** means storage in an Exchange-licensed warehouse in a manner other than in Exchange-Segregated Lots.
- ([b]c) **Certificate of Grade** means an electric record created by eCOPS® 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.
- (d) **Chop** shall mean all or any portion of a shipment of cocoa of identical origin, ports of embarkation and identifying marks.
- ([e]e) **Condition** of Cocoa shall be understood to mean whether or not the cocoa is hammy or smoky.
- ([e]f) **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]g) **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]h) **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]i) **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]j) **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]k) **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]l) **eCOPS** shall mean the electronic commodity operations system utilized by the Exchange.
- ([k]m) **EWR** shall mean the electronic warehouse receipt record created on eCOPS by a warehouse concerning cocoa that is stored in such warehouse.
- ([l]n) **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]o) **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.

([p]) **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.

([q]) (1) **Grade**, as a noun, refers to the percentage of defective and/or slatey 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.

([r]) **Last Notice Day** shall mean the tenth (10th) Business Day prior to the last Business Day of a delivery month or such other day as the Board shall determine.

([s]) **Last Trading Day** shall mean the Business Day prior to the Last Notice Day.

(r) **Pro Forma Delivery** shall mean a delivery that is made subject to the provisions of Rule 9.11(c).

([t]) **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.

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

([v]) **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.

([w]) **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.

([x]) **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.

([y]) **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.

Rule 9.03. Form of Contracts

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

FORM OF CONTRACT FOR DELIVERY OF COCOA

OFFICE OF
NEW YORK20 ..

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 (1st) 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.

- (d)(ii) Subject to the prohibition in subparagraph (d)(i), the Deliverer and Receiver may enter into [a] mutually acceptable Alternate Delivery Procedures (“ADP”) through a written agreement to deliver and receive under conditions other than those stipulated in the Rules. An ADP 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.

Rule 9.07. Good Delivery

- (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) [e]Chops, except when a [e]Chop is added to make a deficiency in weight, but in no case shall the number of [e]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, and with a minimum bag weight of 45 kg and a maximum bag weight of 75 kg.

Rule 9.14. Sampling Cocoa

- (b) All Sampling Orders for Cocoa delivered on Delivery Notices shall be for about two and one-half (2 1/2) kilograms per [e]Chop of one hundred (100) bags or less and about five (5) kilograms per [e]Chop for [e]Chops of more than one hundred (100) bags, and all samples shall belong to the Receiver in lieu of a [e]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 [e]Chop shall be deducted from the Exchange Invoice.

(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:

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

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 9.18. Grading Cocoa for Exchange Delivery

(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:

(4) the quantity, mark and date of customs entry of each [e]Chop , with the grade thereof;

(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:

(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 [e]Chop thereof, as long as the Lot or [e]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).

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.

(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 [e]Chop a durable tag, approved by the Exchange, identifying the [e]Chop of cocoa as to steamer, date of import, mark, number of bags in [e]Chop, Lot number, [e]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;

(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 [e]Chop or [e]Chops, provided such [e]Chop or [e]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.

(d) Any bag of cocoa shall be deemed unmerchantable, and may be rejected, unless it is within the bag weight range specified in Rule 9.07(b) ~~[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 which originally met that weight range ~~[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 compliant with the bag weight provisions of Rule 9.07(b) ~~[the original bags of standard or average weight]~~ for all Exchange purposes.

COCOA RESOLUTIONS

No. 1. Cocoa Grading Fees

BE IT FURTHER RESOLVED that, the “number of [e]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

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

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 [e]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)

5. The warehouse shall maintain stock record cards (or equivalent records) for each [e]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 [e]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.

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 [e]Chop identification
- c. The approximate number of bags in each [e]Chop, together with identifying marks and [e]Chops (The exact number of bags will be given to the warehouse by the weigher.)