



Submission No. 21-38
June 18, 2021

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: Amendment to ICE Futures U.S. Rule 9.18 - Grading Cocoa for Exchange Delivery
Submission Pursuant to Section 5c(C)(1) of the Act and Regulation 40.6(a)**

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (the “Act”) and Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), ICE Futures U.S., Inc. (“IFUS” or “Exchange”) hereby certifies the clarifying amendments to Exchange Rules 9.18(c)(i) and 9.18(d)(ii)(1) set forth in Exhibit A.

In accordance with IFUS Rule 9.18(d)(ii)(1), a Certificate of Grade for Exchange cocoa is valid for the delivery period in, or for which, the Certificate of Grade was issued and the next subsequent delivery period. Thus, certificates are good for two delivery periods, but not longer. It has come to the attention of the Exchange that an amendment made to Rule 9.18(c)(i) over a decade ago inadvertently created a conflict with the foregoing provision because read literally, it suggests that cocoa must be graded in or for the actual delivery period in which it is delivered.¹ Such a standard would clearly preclude the use of certificates of grades for two delivery periods--the current and longstanding practice.

As explained in IFUS Submission No. 08-62, the purpose of the 2008 amendment to paragraph (c)(i) of the Rule was only to expand the period of time during which grading may occur. It was not intended to impact in any way the valid duration of a Certificate of Grade. And, neither the Exchange nor the industry practices have been altered since the time of the amendment, despite its inconsistent wording, thereby confirming that the awkward phrasing was either overlooked or otherwise without consequence to the valid duration of a certificate.

The Exchange is therefore amending paragraph (c)(i) of the Rule to eliminate the conflicting language and clearly incorporate into paragraph (d)(ii)(1) of the Rule the proper language relating to Certificates of Grade. Specifically, the language which currently states that cocoa must be graded during the current delivery period is being deleted from paragraph (c)(i) and replaced with language that requires the cocoa to be graded as provided in the Cocoa Futures Rules, i.e., paragraph (d)(ii)(1) of Rule 9.18. An additional amendment is being made to paragraph (d)(ii)(1) to more simply and clearly reflect the change that was intended by the 2008 amendment which expanded the period during which grading may occur in relation to a delivery period. Specifically, the amendment provides that a Certificate of Grade is issued “in

¹ IFUS Rule 9.18(c)(i) states that: “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.”



or for” a delivery period if it is issued after the last delivery day of the prior delivery period, but prior to the last delivery day of such delivery period. Though stated differently, the convention is unchanged by the wording of the amendment.

The Exchange certifies that the amendments, which are non-substantive, will become effective on July 5, 2021, and comply with the requirements of the Act and the rules and regulations promulgated thereunder. Specifically, the amendment eliminates any ambiguity regarding the validity of a Certificate of Grade for two delivery periods, in furtherance of Core Principles 2 (Compliance with the Rules) and 7 (Availability of General Information).

The Exchange is not aware of any opposing views with regard to the amendment to Rule 9.18(c)(1) and further certifies that, concurrent with this filing, a copy of this submission was posted on the Exchange’s website at <https://www.theice.com/futures-us/regulation#rule-filings>

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

Sincerely,

A handwritten signature in black ink that reads "Jason V. Fusco". The signature is fluid and cursive, with a long, sweeping underline.

Jason V. Fusco
Assistant General Counsel
Market Regulation

Enc.



EXHIBIT A

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

Rule 9.18. Grading Cocoa for Exchange Delivery

(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 have a valid Certificate of Grade as provided for in these Rules. [~~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.

(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.

(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 as follows:
 - a. if issued during a delivery period, for the [entire] remainder of such delivery period [in or for which the Certificate of Grade was issued] and the subsequent delivery period; [~~and~~]or
 - b. if issued outside of a delivery period, for the next two delivery periods; and

[REMAINDER OF RULE UNCHANGED]