

# NYBOT®

## Cocoa Rules

### TABLE OF CONTENTS

<b>Rule</b>	<b>Subject</b>
9.00	Definitions
9.01	Delivery Months
9.02	Delivery Points
9.03	Form of Contracts
9.04	Minimum Variations
9.05	Notice of Delivery or Demand for Cocoa Issuance of Notice
9.06	Penalty for Fraudulent or Fictitious Use of Names in the Issue of Notices for Cocoa
9.07	Good Delivery
9.08	Settlement of Contracts of Deceased or Bankrupt Members after Trading in Current Month Has Ceased
9.09	When Tender of Cocoa Deemed Accepted
9.10	Settlement of Contract, Issuance of Notices and Deliveries on Exchange Holidays—Cocoa
9.11	Delivery and Payment of Cocoa
9.12	Special Relief at Arbitration
9.13	Duties and Taxes to be Paid by Buyer of Cocoa
9.14	Sampling Cocoa
9.15	Fraudulently Packed Cocoa
9.16	Original Shipping Bags
9.17	Claims for Fraudulent Packing of Cocoa
9.18	Grading Cocoa
9.19	Grading Cocoa not Exchange Delivery; Informal Examination
9.20	Grading Cocoa not Exchange Delivery; Formal Examination
9.21	Statement of Open Contracts
9.22	Application of Notices
9.23	Weighing Cocoa
9.24	Rebagging of Cocoa
9.25	Clearing Member Reports to Clearing Organization
9.26	Breaks
9.27	Arbitration of Disputes
9.28	External Condition Procedure
	<b>Cocoa Options</b>
9.40	Option—Forms
9.41	Trading Months
9.42	Last Trading Day
9.43	Striking Prices
9.44	Premium Quotations
9.45	Obligations of Option Purchasers
9.46	Obligations of Option Grantors

- 9.47 Effect of Clearance
- 9.48 Expiration and Exercise of Options
- 9.49 Automatic Exercise Levels for Cocoa Options
- 9.50 Clearing Member Reports to Clearing Organization

**COCOA RESOLUTIONS**

**No.**

- 1. Prearranged Trade—Interpretation
- 2. Resolution Pursuant to Trading Rule 3.13—Cross Trades
- 3. Resolution Re Publication of Open Position (Rule 9.26)
- 4. Cocoa Grading Fees
- 5. Warehouse Procedures and Recordkeeping Requirements for  
the Storage of Exchange Cocoa
- 6. Rebagging of Cocoa—Interpretation
- 7. Grading Procedure When Cocoa Does Not Meet Count Re-  
quirement (Rule 9.18)
- 8. Cocoa Sampling Fee

# COCOA RULES

## 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 the Certificate of Growth, Description, Condition, Grade and Count described and authorized in the Cocoa Rules, and for the sake of brevity and convenience shall, throughout the Cocoa Rules, be called and referred to as the Certificate of Grade.

(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) **Deliverer**, as used in connection with grading procedures, includes a party submitting cocoa for grading in advance of tender.

(f) **Delivery Order** means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts, bills of lading or other documents of title to goods.

(g) **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.

(h) **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.

(i) **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.

(j)(1) **Grade**, as a noun, refers to the percentage of defective and/or slaty 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.

## 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 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 contracts shall be made only from warehouses licensed by the Exchange located in the Port of New York District, the Delaware River Port District 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; the Delaware River Port District shall mean the district defined from time to time by the laws of New Jersey and Pennsylvania; 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 9.03. Form of Contracts**

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

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

FORM OF CONTRACT FOR DELIVERY OF COCOA CONTRACT

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 of the delivery points provided in Cocoa Rule 9.02, between the first 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 and Count permitted by the Rules; at the price of \_\_\_\_\_, dollars per ton for the standard Grades, Growths, Condition and Counts, with additions or deductions for other Grades, Growths and Counts according to the rate of the Exchange, existing on the afternoon of the day previous to the date of the notice of delivery.

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

Either party is to have the right to call for Margins as the variations of the market for like deliveries may warrant, which Margins shall be kept good.

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 to the undersigned, in hand paid, receipt whereof is hereby acknowledged, the undersigned accepts this contract with all its obligations and conditions.

(b) Oral contracts (which shall always be presumed to have been made in the foregoing form) shall have the same force as written ones, if acknowledged in writing by both of the contracting parties before the close of the Business Day on which made.

(c)(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 said terms.

(ii) Subject to the prohibition in subparagraph (c)(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 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 9.04. Minimum Variations**

No Member shall offer to buy or sell cocoa at variations of less than \$1.00 per ton.

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

(a)(i) When notice of delivery on the part of the seller or of demand of Cocoa by a buyer is required by contract it shall be given by the party furnishing the Cocoa in one case, and the buyer in the other case, to the party requiring said notice, ten (10) full Business Days prior to the date of delivery; said notice shall be given before 10:00 A.M. of the day of issuance (excepting as hereinafter provided). The issuer of a delivery notice shall have it registered and stamped at the office of the Clearing Organization before 5:00 P.M. on full Business Days and 1:00 P.M. on partial Business Days. No notice shall be issued, or call for delivery, on a day other than a full Business Day.

(ii) Every delivery notice shall be issued ten (10) full Business Days in advance of the Business Day designated for delivery.

(iii) Should the office of the party to whom notice is to be given be closed, it shall be good service to give notice to the Exchange. It shall endorse thereon the day and time of its receipt, and post notice thereof on the bulletin board of the Exchange.

#### **Formal Requisites of Delivery Notice**

(b) All notices must be for ten (10) metric tons of Cocoa.

(i) Delivery notices must 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. Delivery notices must also state where the Cocoa will be delivered.

(ii) If a notice is tendered by the Deliverer before the prescribed hours, on the tenth (10<sup>th</sup>) Business Day before the delivery of Cocoa is due, the notice shall be accepted by any Member to whom Cocoa is due under contract; and the price shall be made equal to the price of the contract on which it shall be tendered, provided that it is otherwise in accordance with such contract; and the Cocoa delivered on such notice shall be accepted in settlement of the contracts specified in the notice.

(iii) Each acceptor of a notice shall continue his (or their) liability to each other for the fulfillment of the contract under the Rules until the contract has been fulfilled.

(iv) A holder of a 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.

(v) The hours for the presentation of bill and delivery of negotiable warehouse receipts, weighmaster's return, Certificate of Grade and payment for Cocoa shall be between 12:00 noon and 2:01 P.M.

(vi) Delivery notices may be issued only against contracts cleared through the Clearing Organization, and may only be issued by said Clearing Organization or a member thereof and the Clearing Organization, shall retain all Original Margins held against contracts against which delivery notices may be issued or demanded until all such contracts have been completed in the last detail, or if notified of a default, shall retain the Original Margins on the contract in default until the default has been remedied or until the injured party to the defaulted contract has been reimbursed for the loss suffered and, if so ordered by the Arbitration Committee or any Special Arbitration Committee of the Exchange, the Clearing Organization, shall make available such Original Margins to pay the loss on a defaulted contract and make good to defaulted party any loss in excess of such Margins held for account and risk of the defaulting party.

(c) Notwithstanding the provisions of paragraph (b) above, if a Member transfers any contracts after the close of trading in accordance with Rule 4.11(e) the failure of such Member to issue a Delivery Notice with respect to such contracts shall not be deemed a violation of this Rule.

FORMS  
DELIVERY NOTICE  
New York,  
A.M. o'clock

To THE CLEARING ORGANIZATION.

Take notice that on ..... we shall deliver to you at ..... ten (10) metric tons in about ..... bags of ..... Cocoa, in Exchange-Segregated Lots in accordance with the terms of the contract of sale to you at ..... dollars per ton. We pledge ourselves to deliver a Sampling Order to the holder of this notice. We further pledge ourselves to deliver on the delivery date between the hours of 12:00 Noon and 2:01 P.M., to the holder of this notice, the negotiable warehouse receipt(s) for this Cocoa against payment for said cocoa, in accordance with the Rules of the New York Board of Trade®.

.....  
Per .....

CONDITIONS

In consideration of one (\$1.00) dollar paid to the acceptor, receipt of which is hereby acknowledged, it is agreed that the holder hereof will, between the hours of 12:00 Noon and 2:01 P.M. on the delivery date, receive the negotiable warehouse receipt(s) and pay for the Cocoa at the above rate per pound for standard Grades and Growths, with additions or deductions for other Grades, according to the rate of the New York Board of Trade existing on the afternoon of the day previous to the date of this notice. It is further agreed that each acceptor hereof shall continue his (or their) liability to each other for the fulfillment of the contract until this notice shall have been returned to the issuer thereof, and negotiable warehouse receipt(s) shall have been delivered, at which time all responsibility of intermediate parties shall cease.

The Clearing Organization

Per .....

..... o'clock: .....

New York, ..... 19 .....

Messrs. T. & Co.:

We accept the above, with all its conditions and obligations, and you will please take a notice that, in accordance therewith, we shall deliver you ten (10) metric tons (in about ..... bags) of Cocoa, on account of our contract of sale to you, dated ..... the Cocoa to be paid for at the price indicated on the delivery notice.

**Rule 9.06. Penalty for Fraudulent or Fictitious Use of Names in the Issue of Notices for Cocoa**

No Member shall make a fraudulent or fictitious use of any name or names in the issue of any notice for the delivery of any Commodity pursuant to an Exchange contract.

**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 before 2:01 P.M. on the specified day of delivery. Unless otherwise mutually agreed payment shall be made by wire transfer in same day funds.

(b) 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 also all of the requirements of the delivery notice to which it is applicable.

(c) Where cocoa tendered is found to be not a good delivery (for failed Grade or for any other reason) the declaration of submission and sampling order for the replacement(s) must be presented to the Exchange at least five (5) Business Days prior to the delivery date specified in the Delivery Notice. If the Deliverer elects to submit the declaration of submission and sampling order after the time limits prescribed herein, the Exchange shall not be responsible in the event the results of such declaration and order cannot be issued by the delivery date in which case the Deliverer would be in default unless a mutually acceptable written agreement has been entered into as provided under Cocoa Rule 9.03.

(d) All merchandise delivered pursuant to any Exchange Futures Contract shall be of Grades conforming to United States standards, if such standards shall have been officially promulgated and adopted by the CFTC.

**DEFAULTS—COCOA**

(e)(i) Except as otherwise provided for in the Rules, a Member shall be in default who shall fail to issue or to tender a notice, as required in Cocoa 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: or when the Deliverer fails to tender to the Receiver before 2:01 P.M. on the specified day of delivery warehouse receipts, Certificate of Grade issued by the Exchange, weighmaster's return and invoice (except as provided in last paragraph of Cocoa Rule 9.11 and in Cocoa Rule 9.12) or such data as prescribed by the Exchange which evidences these documents, or otherwise fails to comply with the Rules relating to delivery of cocoa.

(ii) The delivery weight of a contract shall be ten (10) metric tons (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 weighmaster's return 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 Deliverer's invoice in accordance with the Rules.

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

#### DAMAGES—COCOA

(f) Damages of \$5.50 per ton, plus any proven loss because of the default, shall be paid by the defaulting Member to the injured Member as follows:

(i) On ten (10) metric tons when an entire cocoa contract is in default;

(ii) On any variation from ten (10) metric tons of not more than 5% when part of a Cocoa 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 corporation, including the Clearing Organization, firm or person who may have a financial responsibility for or interest in the related defaulted contract.

(g) 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.

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

#### **Rule 9.08. Settlement of Contracts of Deceased or Bankrupt Members After Trading in Current Month Has Ceased**

(a) If the death of a Member is posted or announced after trading in the current month has ceased, so that a contract with him for future delivery of merchandise in the current month cannot be closed in the open market as provided in the Rules, then the other party to such contract shall, within six (6) Exchange business hours after such death is announced or posted, close it as follows:

(i) If it is a contract in which such deceased Member was the seller, the other party to such contract shall buy an amount of spot merchandise or delivery notices evidencing the same; in all cases in an amount equal to that called for in the contract.

(ii) If it is a contract in which such deceased Member was the buyer, the other party to such contract shall sell an amount of spot merchandise equal to that called for in such contract, or, at his option, shall sell such an amount for future delivery in the subsequent month, delivering against such sale the merchandise which would have been delivered against the contract with the deceased Member.

(b) Notice of the time, manner and price at which such deceased Member's contracts were thus closed shall be given promptly to his estate, and such price shall be the basis of settlement between the parties to the contract.

#### **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. Settlement of Contract, Issuance of Notices and Deliveries on Exchange Holidays—  
Cocoa**

(a) All Cocoa contracts falling due on Exchange Holidays shall be settled on the preceding day; but where two (2) Exchange Holidays occur on consecutive days, contracts falling due upon the first of such Exchange Holidays shall be settled upon the Business Day immediately preceding, and those maturing upon the second of such Exchange Holidays shall be settled upon the Business Day next following the same.

(b)(i) Delivery notices in fulfillment of contracts for future delivery shall not be issued on Saturdays and such Exchange Holidays as are prescribed by the Rules, or ordered by the Exchange or by the Board of Governors, except as hereinafter provided.

(ii) When the last day on which a delivery notice may be issued for delivery in the current month is declared an Exchange Holiday too late for the issuance thereof on the preceding notice day, such notice may be given in the usual manner on such Exchange Holiday.

(iii) When the last delivery day of the current month is declared an Exchange Holiday too late for a delivery notice to be issued requiring delivery on the preceding Business Day, the delivery shall be completed on said Exchange Holiday.

(c) Members having Cocoa contracts open in the current month must keep their offices open for the purpose of receiving such notices or of completing such deliveries.

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

(a) 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 Cocoa Rule 9.02, in an Exchange-Segregated Lot, as that term is defined in Cocoa 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; 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.

(b) The party who is the holder of a delivery notice shall notify the issuer thereof and upon request shall show it to the issuer, but such party shall retain the delivery notice until the delivery is completed.

(c) Should the Certificate of Grade be ready for presentation, the issuer of the notice shall on the day of delivery, between the hours of 12:00 Noon and 2:01 P.M., present at the office of the party holding the delivery notice a bill, weigher's return, Certificate of Grade, and negotiable warehouse receipt duly endorsed or such data prescribed by the Exchange which evidences for foregoing documents, for each delivery of about ten (10) metric tons of Cocoa, whereupon the delivery and payment shall be simultaneously made, without any setoff or deduction whatsoever, except as provided for in paragraph (e) hereof.

(d) Upon delivery of a negotiable warehouse receipt, it shall be the option of the Deliverer to add to the invoice charges for unexpired storage charges from date of delivery evidenced as paid on the warehouse receipt or to allow the charges of the warehouse, in which the Cocoa is stored from the date to which the storage has been paid and so stamped on the warehouse receipt to the date of delivery.

(e) Should the Certificate of Grade not be ready for presentation, the delivery shall take place as outlined above, but the estimated value of the Cocoa tendered must be stated upon the bill; the Receiver in making payment of the bill presented may retain \$11.00 per ton on the net weights delivered until the Certificate of Grade is furnished. Any Deliverer of Cocoa who shall present a bill showing a Grade and Growth greater than the equivalent of \$11.00 per ton, shall be subject to a complaint under the Disciplinary Rules. The difference between the amount stated upon the bill and that paid shall be, if demanded, deposited in a designated depository of the Exchange in the same manner as required in the deposit of Margins, until the Certificate of Grade is furnished. On such deposits the party shall be entitled to interest at the rate allowed by the depository on the amount ascertained in final settlement to be due to each; but all such deposits are at the risk of the parties depositing them.

#### **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 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 Lot and to have the Cocoa sampled and graded in accordance with the Rules, but is able to obtain a negotiable warehouse receipt 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 by presenting to the Receiver such negotiable warehouse receipt together with a pro forma invoice for the Cocoa covered by the same, which invoice the Receiver shall pay after deducting 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 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 to the Board of Governors by the Committee, or any member thereof, or by any Member who may have knowledge of the matter, whereupon the Board shall report the matter to the Vice President/Market Regulation who shall proceed under the Disciplinary Rules. If found guilty, the offending Member may be penalized as provided in the Disciplinary Rules.

#### **Rule 9.13. Duties and Taxes to be Paid by Buyer of Cocoa**

Whenever an Import Duty, or Internal Tax is levied upon Cocoa, such duty or tax, shall, unless otherwise explicitly provided in the contract, be assumed and be payable by the buyer.

#### **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 sampling order (or three (3) Business Days in the case of Hampton Roads) 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. Any master sampler which has also been granted a warehouse license shall be excluded from this selection process. Upon receipt of an order to draw new samplers from a particular Lot of cocoa, the Vice President Commodity Operations shall designate two (2) licensed master samplers other than the master sampler who drew the original samples.

(2) The total charge for such sampling shall be payable by the Deliverer to the master sampler. In the case of an initial delivery under a Certificate of Grade or an initial delivery under a recertification of grade, the Deliverer shall include one half of the charge for sampling in the bill which shall be presented to the Receiver and paid by the Receiver on the day of delivery as required by Cocoa 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, no external condition may appear on the bags. In the event an external condition of the bags does exist, it shall be noted by the sampler who shall record such condition on the sampling order and immediately notify the Exchange by facsimile (or other equally expeditious manner) whereupon the Exchange shall promptly notify the owner of such condition. The existence of any external conditions on the bags noted by the sampler shall automatically cancel the declaration of submission.

(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 delivery date specified on the Delivery Notice accompanied by a declaration of submission which shall contain such information as required by the Exchange. 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 delivery date in which case the Deliverer would be in default unless a mutually acceptable written agreement has been entered into as provided under Cocoa Rule 9.03.

(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.

(1) Form of Declaration of Submission  
DECLARATION OF SUBMISSION  
PURSUANT TO THE RULES OF THE  
NEW YORK BOARD OF TRADE

DATE \_\_\_\_\_

NEW YORK BOARD OF TRADE

I/WE HEREWITH ENCLOSE SAMPLING ORDER  
FOR THE FOLLOWING COCOA TENDERED OR TO BE  
TENDERED ON THE EXCHANGE:

*(Strike out  
portion not  
applicable)* LOT NO \_\_\_\_\_ MARK \_\_\_\_\_  
GROWTH \_\_\_\_\_ DESCRIPTION \_\_\_\_\_  
NO. OF BAGS \_\_\_\_\_ EX SS \_\_\_\_\_  
DATE OF CUSTOMS ENTRY \_\_\_\_\_

(A) This Cocoa has been previously delivered on the Exchange under D.N. No. \_\_\_\_\_, Lot No. \_\_\_\_\_, Dated \_\_\_\_\_

(B) This cocoa has not been previously tendered by Me/Us and rejected or delivered on the Exchange; it is contained in original bags in original condition and was discharged in the U.S. Port of \_\_\_\_\_

- (2) Form of Sampling Order
- (3) Form of Grading Request

[A] GRADING ON TENDER

I/We request that this cocoa be graded by three licensed graders pursuant to the Rules as follows:

Complete grading	[    ]	Partial Grading:	
		For condition	[
			]
		For grade	[
			]
		For count	[
			]

[B] GRADING BEFORE TENDER

I/We request that this Cocoa be graded by three licensed graders pursuant to the Rules as follows:

Complete grading	[    ]	Partial Grading:	
		For condition	[
			]
		For grade	[
			]
		For count	[
			]

(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 invoice by the Deliverer and from the warehouse receipt by the warehouseman.

(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 orders as herein provided shall be sampled into standard 2 ply 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 number on the sample bag. The bag shall then be sealed and delivered to the Exchange.

(i) The sampler shall note the following information upon 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) copies of the sampling order, and the warehouse representative shall indicate on each copy the date of such sampling order from the sampler.

(2) The sampler shall note any remarks.

(3) The signature of the sampler shall be deemed to be a certification that each sample drawn pursuant to the sampling order was drawn in accordance with these 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 the sampling order, mark the Exchange application and lot numbers on the outside of the sample bag and deliver the sample(s) and the sampling order to the Exchange.

(6) Both the master samplers and the warehouse shall retain a copy of each sampling order in their respective files for a period of at least two (2) years.

(7) In the case where a sample cannot be drawn due to any external condition on the bags, both the samplers and warehouseman must sign the sampling order attesting to the existence of a present external condition. 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 Member 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.

**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 shall 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 the 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**

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

(b) The Growth, Description, Condition, Count 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

Ivory Coast—Main Crop

Lome—Main Crop

Nigeria—Main Crop

Sierra Leone—Main Crop

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

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

**Group C—At Par**

Bolivia

Haiti

Indonesia-Sulawesi

Malaysia

Para (Brazil)

Peru

Sanchez (Dominican Republic) and all other growths not presently specified above.

*(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:

***Discount for excess Bean Count above standard***

		<b><i>Total Discount</i></b>
For 1st. 25 beans or part thereof	\$ 2.00 per ton	\$ 2.00 per ton
For 2nd 25 beans or part thereof	4.00 per ton	6.00 per ton
For 3rd 25 beans or part thereof	6.00 per ton	12.00 per ton



For 4th 25 beans or part thereof	8.00 per ton	20.00 per ton
For 5th 25 beans or part thereof	10.00 per ton	30.00 per ton
For 6th 25 beans or part thereof	12.00 per ton	42.00 per ton
For 7th 25 beans or part thereof	14.00 per ton	56.00 per ton
For 8th 25 beans or part thereof	16.00 per ton	72.00 per ton

(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 \$2.20 per metric ton; but in the case of Sanchez and Haiti Cocoa beans, no deduction shall be made for excess slate.

(c) The Growth, Description, Condition, Count 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 on an Exchange Futures Contract must be graded between the twentieth (20<sup>th</sup>) Business Day prior to the first (1<sup>st</sup>) Business Day of a delivery period and the last delivery day of such delivery period inclusive, as evidenced by the Certificate of Grade except as otherwise provided on redeliveries.

(1) Any person who plans to deliver Cocoa or replace Cocoa tendered for delivery which has not previously been graded must send a declaration of submission in the form prescribed by Cocoa Rule 9.14 and a sampling order to the Exchange at least five (5) days prior to the delivery date specified on the delivery notice. If a Deliverer elects to submit a declaration of submission after the time limit prescribed herein, the Exchange shall not be responsible in the event the results cannot be issued by the delivery date in which case the delivery would be in default unless a mutually acceptable written agreement has been entered into as provided under Cocoa Rule 9.03.

(A) The Deliverer may elect to have the Cocoa graded either (a) before the delivery notice is tendered, provided that it is in Exchange-Segregated Lots, or (b) when the delivery notice is tendered for delivery. The Deliverer shall indicate such election on the declaration of submission.

(B) The Cocoa will be graded by a panel of three (3) licensed graders in accordance with both the instructions on that form and with such procedures as from time to time may be promulgated by the Board of Cocoa Graders.

(2) If the Cocoa which is to be delivered has been graded previously, but no valid Certificate of Grade is in effect with respect to the grade of Cocoa, the Deliverer may elect to have the Cocoa completely regarded or partially regarded, in accordance with the procedures outlined above in subparagraph (c)(i)(1) of this Rule.

(ii) The sample of cocoa, which will be taken by one (1) duly licensed master sampler as provided in Cocoa Rule 9.14(a)(i), shall be submitted to the Exchange for examination by licensed graders within two (2) Business Days following the receipt of the sampling order (or three (3) Business Days

in the case of cocoa stored in Hampton Roads) or within such longer period as allowed by the Exchange for good cause shown.

(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 direct interest, beneficial or prejudicial, in the cocoa to be graded.

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

(4) Samples of cocoa shall be submitted to the graders bearing only an identification number; the Exchange shall supply the other information required on the Certificate of Grade under Cocoa Rule 9.18(d)(i)(1) after the Cocoa has been graded.

(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 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 Cocoa Rule 9.18(d) shall be authenticated.

(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, no Certificate of Grade shall be issued, and 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 paragraphs (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 paragraphs (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 paragraph (c)(iv).

(v) The graders shall determine the Count of cocoa by multiplying by four (4) the number of beans in 250 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 and third 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 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 Deliverer 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 an initial delivery under a Certificate of Grade or an initial delivery under a recertification of grade, the Deliverer shall include one half of the grading fees paid to the Exchange in the bill which shall be presented to the Receiver and paid by the Receiver on the day of delivery as required by Cocoa 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 Board.

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

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

(1) The Certificate of Grade shall bear upon its face 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 and also shall state the quantity, mark and date of customs entry of each Chop, with the Grade thereof, shall bear upon its face the Exchange number and the lot numbers, the date of each and every delivery notice issued for the Cocoa graded and to be graded under said certificate and state the percentage of moldy and of insect-infested, including insect-damaged, beans as determined by each grader or by the panel.

(A) The Certificate of Grade shall state on its face the date of the determination of Grade.

(B) When the date of the Certificate of Grade falls in the month prior to the month of delivery, such Certificate of Grade shall be redated as of the first delivery date of the month of delivery, and the date so placed thereon by the Exchange shall be deemed the true date of the Certificate of Grade for all purposes.

(2) The Receiver and the Deliverer shall be entitled to a copy of the Certificate of Grade.

(A) A fractional Certificate of Grade shall be issued for any part or parts of a certificate in force. Such fractional certificates shall bear the date and the identification marks and numbers of the original certificate, and shall be issued by the Exchange, upon the payment of such fees as may from time to time be established by the Board, after being verified by comparison with the original certificate (which shall then be cancelled), and can be used together with a similar certificate or certificates in force or as a part of a new delivery.

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

(1) for purposes of delivery, the Certificate of Grade shall be valid, as regards Growth, Description, Condition, Count 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 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 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.

**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 Vice President of 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 the Vice President of 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 Cocoa and Coffee 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.

#### **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 the Vice President of 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 Vice President of 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 certificate 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 certificate 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, who shall cause them to be recorded on a proper form, and after the same has been duly signed by the licensed graders the certificate shall be signed and dated by the Exchange who shall affix thereto the corporate seal of the Exchange, but such certificate 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.

#### **Rule 9.21. Statement of Open Contracts**

After the close of trading on the last Business Day preceding first notice day, and throughout the period of the current month, every Member, who is also a member of the Clearing Organization, and who also shall have on his books open long and short contracts in any given current month, which have been cleared with the Clearing Organization, shall file with the Clearing Organization a statement of his gross open long contracts in said current month and a statement of his gross open short contracts in said current month and thereafter he shall be qualified to receive delivery notices against his gross long Position and may deliver to the Clearing Organization delivery notices against his gross short Position. The Member receiving from the Clearing Organization delivery notices shall automatically assume a sales position with the Clearing Organization to the amount that the contracts represented by the delivery notices

received by him from the Clearing Organization are in excess of his net long Position with the Clearing Organization. The Member delivering delivery notices to the Clearing Organization shall automatically assume a purchase position with the Clearing Organization equal to the amount that the contracts represented by the delivery notices delivered by him to the Clearing Organization are in excess of his net open short Position with the Clearing Organization.

**Rule 9.22. Application of Notices**

Every Member who shall carry long Exchange Futures Contracts for account of Customers, shall, for his own use as herein specified, list such contracts for delivery in the current month, together with all contracts in the current month carried for his own account, in chronological sequence—contracts of the same date following the sequence shown in the records of the Carrying Member—and any delivery notices received by the Carrying Member shall be applied to the outstanding long contracts in the sequence shown on the above mentioned list in the sequence of time notices are received, and if more than one notice should be received simultaneously the delivery notices bearing the smallest number shall be applied successively.

**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 Weighmaster's return 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 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 and;

(2) Securely fix to one 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) Execute a weighmaster's return, which shall include the following:

(A) The weighmaster's return 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 weighmaster's return will be deemed to include the following certification:

"I hereby certify that the cocoa specified in this return was weighed in accordance with every provision of the By-Laws and Rules of the New York Board of Trade., and that the weights stated herein were carefully determined and checked and, to the best of my knowledge and belief, are the true weights of the cocoa embraced in this return; also, that the date of this return is the date on which the weighing of said cocoa was completed."

(b) The weight of the cocoa determined in accordance with the rules set forth in paragraph (a) of this Rule, as evidenced of the weighmaster's return, 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 weighmaster's return 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 weighmaster's return on which the delivery is invoiced, hereinafter the weight return date; both dates exclusive, when redelivered or delivered within thirty (30) days of the weight return date, one percent (1%); when redelivered or delivered within thirty-one (31) and sixty (60) calendar days of the weight return 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 return 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 return date, both dates exclusive, when redelivered or delivered within thirty (30) calendar days of the weight return 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 return 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 return date, both dates exclusive, when redelivered or delivered within thirty (30) calendar days of the weight return 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 return date.

(IV) For the purpose 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 invoice and the Deliverer shall be in default in respect to the contract to which the 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 return was not weighed, or that a weight return 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 weighmaster's return 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 if authorized by the owner.

#### **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 Cocoa and Coffee Warehouse and Licensing 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 Cocoa and Coffee Warehouse and Licensing 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.

#### **Rule 9.25. Clearing Member Reports to Clearing Organization**

(a) All Members, who are members of the Clearing Organization, shall report to the Clearing Organization, not later than 9:00 A.M. of each Business Day, the number of purchases and sales executed on the prior Business Day and the number of Cocoa contracts which are open on the Member's books for each delivery month at the close of business on such prior Business Day, except that for the Business Day prior to the Last Notice Day of any delivery month, said Members shall report the number of purchases and sales in the delivery month executed that day and the number of Cocoa contracts which are open on the Member's books for such delivery month at the close of business on such day no later than 5:00 P.M. that same day.

(b) When the account of any Customer (other than an account carried on an omnibus basis) has a long and short Position in the same delivery month, only the net Position of the Customer in that delivery month will be reported to the Clearing Organization, as open interest.

(c) In the case where a long and short Position in the same delivery month is carried by a non-clearing member of the Exchange for a Customer, it shall be the responsibility of the Carrying Member to advise the Clearing Member that the long and short Position is for the account of the same Customer. In that event, the Clearing Member will not report that Position to the Clearing Organization, as open interest.

(d) One purpose of this Rule is to enable the Exchange to publish each Business Day the open position in Cocoa contracts for each month.

(e) All Members carrying contracts for the account of others must act with diligence in reporting and correcting errors in their Positions as reported to the Clearing Organization, by Clearing Members or to Clearing Members by Carrying Members.

(f) Clearing Members making corrections in their Positions with the Clearing Organization subsequent to the publishing of the daily open positions by the Exchange shall promptly file with the Exchange a statement of the details of such correction, the manner in which the error occurred and, if a Carrying Member be the cause of the error, his name should be supplied.

(g) Positions reported pursuant to this Rule will be used as a basis for issuance and assignment of Delivery Notices by the Clearing Organization.

#### **Rule 9.26. Breaks**

In the event that any Clearing Member or Person placing an order directly with a Floor Broker shall claim a "break" with respect to any Trade, or shall claim that a Floor Broker shall have failed to execute an order on a day when in the exercise of due diligence he could have done so, such Clearing Member or such Person shall have waived any Claims against the Floor Broker responsible unless such Clearing Member or such Person shall have advised such Floor Broker thereof not later than fifteen (15) minutes prior to the opening on the Business Day following the day on which such "break" is claimed to have occurred or such order should have been executed; provided that no such Claim shall be waived if the Floor Broker became aware of the failure to execute such order by fifteen (15) minutes prior to the opening on such following Business Day and failed to report the same to such Clearing Member or such

Person. The term "break" with respect to any Trade shall mean the failure of such Trade to clear, correctly (either because of failure to clear, duplication of clearance or discrepancy in month, price or quantity).

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

(a)(i) Any dispute between Members, except as to Grade or external condition, in which one (1) Member claims that the other Member has failed to meet his obligations as Deliverer or Receiver under a Cocoa 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 Member becomes aware of such failure, said Member shall be deemed to have waived his 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 Member against whom the Claim is being asserted and one (1) copy of said notice to any other 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 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.

(vi) 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 pursuant to the Rules of the Clearing Organization, by 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 part, 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 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 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 Exchange Futures Contract on the New York Board of Trade® 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 Striking 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 Exchange Futures Contract on the New York Board of Trade 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 Striking 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. Striking Prices**

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

(b) The Striking Prices of Options shall be at levels (the "prescribed levels") set at intervals (the "prescribed intervals") of \$50 commencing at \$50 up to \$5,000 per metric ton, and \$100 at \$5,000 per metric ton and above.

(c) Except as the Board of President may from time to time prescribe otherwise, Cocoa Options shall be listed for trading with particular Striking 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) Striking Prices each for Puts and Calls at the prescribed \$50 or \$100 level. The first (1<sup>st</sup>) such Striking Price will be set at the prescribed \$50 or \$100 level which is equal to the Settlement Price for the Underlying Futures Contract on the previous trading day, or if such Settlement Price is not equal to any such prescribed level, then at the next such prescribed \$50 or \$100 level above such Settlement Price. The other twelve (12) Striking Prices shall be at each of the six (6) prescribed \$50 or \$100 levels next above and the six (6) prescribed \$50 or \$100 levels next below the first (1<sup>st</sup>) Striking Price. At the time Cocoa Options for any Serial Option Month are first (1<sup>st</sup>) listed for trading pursuant to Rule 9.41, they shall be listed with all the Striking Prices of the next Regular Option Month with an expiration subsequent to the Serial Option.

(ii) Whenever the Striking Prices of the listed Options for any Regular or Serial Option Month do not include the first (1<sup>st</sup>) prescribed \$50 or \$100 level above the Settlement Price for the Underlying Futures Contract on the previous trading day, or either of the six (6) prescribed \$50 or \$100 levels above or below such a level, they shall be listed for trading on the following day.

(iii) Any listing of Striking 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 Striking Price which is at the first (1<sup>st</sup>) \$50 or \$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 \$50 or \$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 Striking 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.

**Rule 9.44. Premium Quotations**

Premiums shall be quoted in dollars per metric ton. The minimum fluctuation in Premiums shall be \$1 per metric ton, except that Trades may occur at a price of \$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 Striking 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 a notice of exercise 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 Striking Price specified in such Option; provided, however, that any such contract entered into upon assignment of a notice of exercise 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) All Cocoa Options shall expire at 9:00 PM on the Last Trading Day.

(b) 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.

(c) The Purchaser of a Cocoa Option may exercise such Option on any Business Day by giving notice of exercise 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. A notice of exercise 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. A notice of exercise which is given with respect to an Option which is not accepted by the Clearing Organization shall be deemed withdrawn by the Purchaser.

(d) Notices of exercise shall be in such form or forms as the Exchange may from time to time prescribe.

(e) If a notice of exercise 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.

(f) The Clearing Organization shall assign notices of exercise (with respect to Cocoa Options which have been accepted by it) by 8:30 AM on the trading day following the day of receipt, to Grantors holding open positions in the Option Month of any such Option after the close of trading on the day of receipt by the Clearing Organization. Any such assignment shall be based upon the gross open position of such Grantors.

(g) 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 Striking 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 the Last Trading Day, the Clearing Member carrying such Option gives the Clearing Organization written instructions that any such Option is to expire unexercised.

#### **Rule 9.50. Clearing Member Reports to Clearing Organization**

(a) All Members, who are members of the Clearing Organization, shall report to the Clearing Organization, not later than 7:00 P.M. on each Business Day, the total number of open long Options and the total member of open short Options, in each Options series, carried by the Clearing Member as of the close of business on the Business Day.

(b) When the account of any Customer (other than an account carried on an omnibus basis) has a long and short Position in the same Option Series, only the net Position of the Customer in that Option Series will be reported to the Clearing Organization, as open interest.

(c) In the case where a long and short Position in the same Option series is carried by a non-clearing member of the Exchange for a Customer, it shall be the responsibility of the Carrying Member to advise the Clearing Member that the long and short Position is for the account of the same Customer. In that event, the Clearing Member will not report that position to the Clearing Organization, as open interest.

(d) All Members carrying contracts for the account of others must act with diligence in reporting and correcting errors in their Positions as reported to the Clearing Organization, by Clearing Members or to Clearing Members by Carrying Members.

(e) Clearing Members making corrections in their Positions with the Clearing Organization subsequent to the publishing of the daily open positions by the Exchange shall promptly file with the Exchange a statement of the details of such correction, the manner in which the error occurred and, if a Carrying Member be the cause of the error, his name should be supplied.

## Cocoa Resolutions

### No. 1. Prearranged Trade—Interpretation

Resolved, that

"A prearranged Trade is one (1) arranged (before its announced execution) between two (2) or more Members in a manner designed to prevent other Members from having a fair and reasonable opportunity of sharing in it, or otherwise conceived in violation of the spirit of fair, free and open trading.

This interpretation, however, shall not extend to such Trades as may by special circumstances attaching to them require preliminary negotiations, when such preliminary negotiations can be justified as reasonably necessary to the accomplishment of fair and orderly marketing, and provided such Trades are executed at the ring in compliance with the Rules."

### No. 2. Resolution Pursuant to Trading Rule 3.13—Cross Trades

WHEREAS, a Member has requested an interpretation as to whether the following Transaction is subject to the requirements of the Cross Trade Rule:

A Floor Broker directly or indirectly related to a Principal executes an order for an unaffiliated Customer by trading at open outcry with another Floor Broker who is not directly or indirectly related to such Principal, but is executing an order for a proprietary account of that Principal.

NOW THEREFORE BE IT RESOLVED, that it is the interpretation of this Board that the above Transaction is not subject to the requirements of the Cross Trade Rule, provided, that the following conditions are met: that there is no prearrangement, that neither Floor Broker knows the nature or identity of the account for which the other is trading, and that the first Floor Broker neither knows nor through a previous course of conduct or otherwise, should have any reason to know that the unaffiliated Floor Broker is or could be expected to be acting for a proprietary account of the Principal.

### No. 3. Resolution Re Publication of Open Position (Rule 9.26)

RESOLVED, that the Exchange shall publish each Business Day the number of contracts for the future delivery of Cocoa open as of the close of trading on the preceding Business Day, in accordance with the following procedure:

(i) As soon as reasonably possible after 11:00 A. M., the Exchange shall publish a report of the open positions as of the close on the previous trading day, reflecting any corrections in reports submitted to the Clearing Organization before that time pursuant to Cocoa Rule 9.26.

### No. 4. Cocoa Grading Fees

WHEREAS, Cocoa Rule 9.18 authorizes the Board to establish fees, payable by the Deliverer 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, Deliverers shall pay the Exchange the following fees, which shall be distributed by the Exchange to such graders as indicated below:

- (i) \$90 per Lot of one (1) or two (2) Chops, of which each such grader shall receive \$15;
- (ii) \$102 per Lot of three (3) Chops, of which each such grader shall receive \$18;
- (iii) \$114 per Lot of four (4) Chops, of which each such grader shall receive \$21; and
- (iv) \$126 per Lot of five (5) or six (6) Chops, of which each such grader shall receive \$24;

RESOLVED, that the term "Lot" as used in this Resolution shall mean the entire quantity of Cocoa beans tendered in fulfillment of an Exchange Futures Contract; provided, however, that if only a portion

of a Lot shall be graded the fee to be paid to the Exchange shall be the corresponding portion of the fee adjusted to the next higher even dollar amount (the "adjusted fee") and that portion of the fee to be distributed to each appropriate licensed grader shall be one-third of:

- (i) 50% of the adjusted per Lot fee in the case of one (1) or two (2) Chops;
- (ii) 53% of the adjusted per Lot fee in the case of three (3) Chops;
- (iii) 55% of the adjusted per Lot fee in the case of four (4) Chops;
- (iv) 57% of the adjusted per Lot fee in the case of five (5) or six (6) Chops; and

BE IT FURTHER RESOLVED, that where a declaration of submission 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

- (i) 50% of the per Lot fee in the case of one or two (2) Chops;
- (ii) 47% of the per Lot fee in the case of three (3) Chops;
- (iii) 45% of the per Lot fee in the case of four (4) Chops; and
- (iv) 43% of the per Lot fee in the case of five (5) or six (6) Chops.

The remainder of the fee(s) shall be returned to the Deliverer. Where the Exchange receives a request to cancel the submission for grading and the grading has already occurred, no portion of the fee(s) shall be returned to the Deliverer.

#### **No. 5. 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:

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 federal, state and local laws including any pertinent fire regulations and have sufficient floor load limits.

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 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 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 build-up of pest problems, 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 shall be secured in containers with tightly fitting covers.

B. Uncut vegetation (higher than four inches within property line up to a 30 feet perimeter)

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 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 24 inches from the ceiling and a minimum of 18 inches below any sprinkler head.

4. Cocoa should be stored a minimum of 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 5 pallets high or 100 bags high, whichever is less. The equipment aisles should have at least 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 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, or otherwise no longer identified as Exchange Cocoa:

Category of Document	Time Period
Delivery Orders	1 year
Sampling Orders	2 years
Receiving Reports	2 years
Stock Record Cards	2 years
Negotiable Warehouse Receipts	2 years
Non-Negotiable Warehouse Receipts	2 years
Documents reflecting any movement of Exchange cocoa into or from a licensed store	2 years
Weight Returns	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.



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. When cocoa is sampled for the purpose of grading by Exchange licensed graders, a copy of the Sampling Order 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 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.

c. The warehouse shall retain a copy of the sampling order which shall be retained in accordance with this resolution.

7. Once an Exchange Lot number has been assigned to cocoa, it shall become part of the permanent record of that cocoa and shall be noted on the warehouse record cards, warehouse tags, etc.

8. 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.

9. 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

10. 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.

11. 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.

12. 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.

13. 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.

## **IX. 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.

### **No. 6. Rebagging of Cocoa—Interpretation**

WHEREAS, Cocoa 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, Cocoa Rule 9.11 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. 7 Grading Procedure When Cocoa Does Not Meet Count Requirement (Rule 9.18)**

WHEREAS, Cocoa Rule 9.18 states that Cocoa exceeding the maximum Count of its class is deliverable at the next lower class and Count requirement; and

WHEREAS, the Board of Governors wishes to clarify Exchange grading procedures when a Lot of cocoa does not meet the Count requirement for the class stated in the declaration of submission;

NOW, THEREFORE BE IT RESOLVED; when a Lot of Cocoa does not meet the Count requirement for the class set forth in its declaration of submission 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 declaration of submission 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.

### **No. 8 Cocoa Sampling Fee**

WHEREAS, Cocoa 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 Cocoa Rule 9.14(a)(ii), the sampler be paid twenty-five (25) percent of the normal sampling fee.