

 **ICE** FUTURES U.S.  
World Financial Center  
One North End Avenue  
New York, New York 10282

C.F.T.C.  
OFFICE OF THE SECRETARIAT  
2010 FEB 5 AM 10 01

**BY ELECTRONIC TRANSMISSION**

Submission No. 10-4  
February 4, 2010

Mr. David A. Stawick  
Secretary of the Commission  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

Re: **Amendments to Rules 9.00, 9.03 and 9.18 and Standing Resolution No. 7 -  
Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6**

Dear Mr. Stawick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commission Regulation 40.6, ICE Futures U.S., Inc. ("Exchange") submits, by written certification, amendments to Rules 9.00, 9.03 and 9.18, attached as Exhibit A; and Standing Resolution No. 7, attached as Exhibit B.

**Rules 9.00, 9.03 and 9.18**

The Rule amendments create Waste criteria for the Cocoa futures contract by providing for a definition of Waste, a methodology for measuring Waste in Exchange grading, par and maximum amounts of Waste allowed to be delivered, and a schedule of discounts for Waste in excess of par, as outlined below. The Rule provisions were developed by the Exchange's Cocoa Committee after extensive consultation with members of the trade, including both end users and physical cocoa traders, and are intended to reflect current commercial practice. Key features of the new provisions are:

**Definition of Waste** – Waste includes flat beans, pieces of shell, dust, dried cocoa pulp, dried cocoa placenta and all non-cocoa material.

**Measurement of Waste** – Waste to be determined by licensed Graders as the percentage of Waste by weight found in a 300-gram sample; such weight to be measured to the nearest one-tenth of a gram, and such percentage to be calculated to the nearest one-hundredth of a percent.

**Par Amount of Waste** – from 0% up to 1.00%.

**Maximum Amount of Waste Deliverable – 5.00%.**

**Penalty for Waste Above Par** – for Waste above par and up to 2.50% by weight, a straight-line penalty equal to the graded Waste percentage minus 1.0; for Waste above 2.50%, an additional and accelerated penalty equal to 1.5 times the sum of the graded Waste percentage minus 2.50. As an example, a lot with a graded Waste of 2.50% would accrue a penalty of 1.50%, calculated as 2.50 minus 1.00. A lot with a graded Waste of 3.5% would accrue a penalty of 3.00%, calculated as the sum of 1.5 plus 1.5 times (3.5 minus 2.5).

The new Waste specifications will make the Exchange's Cocoa futures contract conform more closely with commercial market practice. Over the past several years, commercial contracts have increasingly included a Waste criteria, and the absence of any such criteria in the Exchange's Contract has led to a disconnect between Exchange and commercial practice. The amendments will cure the disconnect, thereby increasing the effectiveness of the futures contract as a price discovery and risk management tool for the cocoa trade. The specific features of the proposed Waste specification were developed by the Cocoa Committee after extensive consultation with commercial market participants and Exchange licensed graders, to help ensure that they mirror commercial market practice and are capable of being applied in the Grading process.

The Exchange believes that the addition of the proposed Waste criteria will have an effect on the value of the futures contract and, therefore, will make the new amendments effective for the first delivery month with no open interest, i.e. December 2011. In addition, in order to ensure a smooth transition to the new criteria, grading for Waste will be performed on all lots submitted for full or partial grading starting with the second delivery month prior to the first delivery month for which the new provisions will be effective – i.e. if the new provisions are to be made effective for the December 2011 contract, grading for Waste will be performed on all lots submitted for grading for the July and September 2011 delivery months (for which grading will begin after the last delivery day of the May 2011 delivery month).

Standing Resolution No. 7

The amendment to Standing Resolution No. 7 authorizes the President to change the No Cancellation Ranges and Reasonability Limits contained in the Exchange's Error Policy as Section 4 of Appendix I of Chapter 27 of the Exchange's Rule Book.

The amendments were adopted by the Exchange's Board of Directors by Unanimous Written Consent on February 2, 2010 in accordance with Bylaw Section 4.7. The amendments to Rules 9.00, 9.03 and 9.18 will go into effect with the listing of the December 2011 Cocoa futures contract; and the amendments to Standing Resolution No. 7 will go into effect on February 8, 2010. The Exchange certifies that amendments comply with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder. No substantive opposing views were expressed by members or others with respect to the amendments.

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

Sincerely,

Jill S. Fassler  
Vice President  
Associate General Counsel

cc: Division of Market Oversight  
New York Regional Office

**EXHIBIT A**

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

**Rule 9.00. Definitions**

As used in the Cocoa Rules:

\* \* \*

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

\* \* \*

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

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

**Rule 9.03. Form of Contracts**

\* \* \*

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

FORM OF CONTRACT FOR DELIVERY OF COCOA

OFFICE OF .....

NEW YORK ..... 20 ..

**SOLD FOR**

**TO**

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

[REMAINDER OF RULE UNCHANGED]

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

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

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

\* \* \*

(v) Waste

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

For Waste From:

1.01% to 2.50% - a deduction equal to the percentage of Waste minus 1.0;

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

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

\* \* \*

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

\* \* \*

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

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

(vii) The fees for grading shall be such amounts as may from time to time be established by the Board. . . .

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

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

\* \* \*

(3) the Waste;

(~~3~~4) the quantity, mark and date of customs entry of each chop, with the grade thereof;

(~~4~~5) Exchange number and Lot number;

(~~5~~6) the date of each Delivery Notice issued for the Cocoa graded and to be graded under the Certificate; and

(~~6~~7) the percentage of moldy and of insect infested (including insect damaged) beans as determined by each grader or by the panel.

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

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

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

[REMAINDER OF RULE UNCHANGED]

## EXHIBIT B

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

### R-7 Delegation of Authority to President

WHEREAS, Bylaw Section 4.3 provides that the business of the Exchange shall be managed by or under the direction of the Board of Directors ("Board"); and

WHEREAS, Bylaw Section 9.1 authorizes the Board of Directors to appoint a President and other officers to carry out the business of the Exchange; and

WHEREAS, the Licensing Rules authorize the Board to grant Exchange licenses to chemists, graders, master samplers, warehouse or tank facility operators and weighmasters; and

WHEREAS, Article XVI of the Bylaws authorizes the Board to adopt Rules or make any amendments to the Rules that are not inconsistent with the Bylaws; and

WHEREAS, the adoption of certain Rules or amendments and the granting of licenses are administrative in nature;

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby delegates to the President the authority to:

\* \* \*

3. change the settlement period for Cocoa futures and options contracts by as much time as is necessary and for as long a period as is necessary in order to keep the settlement periods between the Exchange and LIFFE consistent with each other when the normal 5-hour time difference between New York and London is affected by the start or end of British Summer Time and/or Daylight Savings Time; ~~[and]~~

4. solely with respect to Exchange or domestic holidays, change the settlement period for any Commodity Contract; and

5. change the No Cancellation Ranges and Reasonability Limits for each futures and options contract listed electronically by the Exchange and set forth in Section 4 of Appendix I of Chapter 27.