

LONDON NOTICE No. 3056

ISSUE DATE: 7 July 2008
EFFECTIVE DATE: 8 July 2008

COCOA FUTURES CONTRACT (EXCHANGE CONTRACT NO. 401)

AMENDMENTS TO THE COCOA FUTURES CONTRACT IN RESPECT OF:-

- 1. ANY CLAIM TO REJECT A DELIVERY UNIT; OR**
- 2. ANY OTHER CLAIM RELATING TO A DELIVERY UNIT; AND**
- 3. THE TIME LIMITS APPLICABLE TO SUCH CLAIMS**

Executive Summary

The Board has agreed certain amendments to the Cocoa Futures Contract in respect of: (a) any claim to reject a Delivery Unit; or (b) any other claim relating to a Delivery Unit; and (c) the time limits applicable to such claims. The amendments shall apply to the July 2008 Delivery Month and all subsequent Delivery Months (i.e. to existing and new contracts made in the terms of the Cocoa Futures Contract).

This Notice requires the immediate attention of Members' staff involved with the process of delivery against the Cocoa Futures Contract (Exchange Contract No. 401). Members should ensure that clients are made aware of the amendments detailed in this Notice. Where client contracts are concerned, as with other aspects of the Contract, Clearing Members (as "Buyer" or "Seller" to the Clearing House) should ensure that the terms of their arrangements with their client (particularly with regard to the timings for the giving of notices, including those contained in these amendments) facilitate the performance of the Clearing Member's Contract with the Clearing House.

1. Introduction and Background

- 1.1 The Board has agreed certain amendments to the Cocoa Futures Contract in respect of: (a) any claim to reject a Delivery Unit; or (b) any other claim relating to a Delivery Unit; and (c) the time limits applicable to such claims. The amendments, which primarily affect Contract Terms 16 (Delivery) and 23 (Arbitration), shall apply to the July 2008 Delivery Month and all subsequent Delivery Months (i.e. to existing and new contracts made in the terms of the Cocoa Futures Contract).

Web site: www.euronext.com/derivatives

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- 1.2 The amendments, as summarised in Section 2 below, have been made pursuant to Rule 4.16 of the LIFFE Rules, entitled “Emergency Provisions”. The decision to make these amendments under Rule 4.16 was taken in light of the significant concern expressed by the market that, under the current Contract terms, participants involved in delivery under the Cocoa Futures Contract face an unacceptable degree of uncertainty about the procedures, including the time limits, applicable to claims in relation to goods tendered. The concerns expressed have led the Board to conclude that the amendments need to be made in respect of the July 2008 Delivery Month and all subsequent Delivery Months (i.e. to all existing and new contracts made in the terms of the Cocoa Futures Contract) in the interest of maintaining the orderly conduct of business on the market.

2. Amendments to the Cocoa Futures Contract

- 2.1 Members should refer to the Attachment to this Notice which sets out the detailed revisions to the Cocoa Futures Contract. In summary, the amendments may be outlined as follows:

- (a) Contract Term 1.02 (Interpretation) includes the definition of “Interest Rate”; and as a consequence the previous definition in term 15.10 has been deleted.
- (b) Contract Term 16.09 (Delivery) states how, to whom and by when a Buyer may claim that a Delivery Unit does not comply with the terms of the Contract. In the event of a failure to comply with these requirements within the prescribed time limits, any claim by the Buyer in respect of such Delivery Unit shall be deemed to have been waived and absolutely barred.
- (c) Term 23 (Arbitration) describes the procedure and time limits by which a claim that is potentially valid shall be processed. This includes:-
 - (i) the establishment of facts by the timely inspection of the goods, either by the Exchange or by a third party inspector appointed by the Exchange, and the issuance of a report which shall be conclusive and binding on the parties, with all costs initially being the responsibility of the Buyer;
 - (ii) In the event of a claim for rejection of the Delivery Unit, the process by which the Exchange shall determine in its absolute discretion whether the claim is upheld or not and, in the event of the claim being upheld the process by which the goods are returned to the Seller and the Buyer reimbursed; and
 - (iii) In the event of a claim for damages (which may be in addition to a claim for rejection), the process and time limits for either party to refer a claim to arbitration.
- (d) Amendment to the Administrative Procedures to reflect the new Contract terms.

3. Further information

- 3.1 Full contract details are available at: www.nyx.com/commodities.
- 3.2 For further information in relation to this Notice, Members should contact:

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Cocoa Futures Contract (Exchange Contract No. 401)

Amendments to Contract Terms 1 (Interpretation), 15 (Conversion of Nominated Bulk Delivery Units and Final Allocation), 16 (Delivery) and 23 (Arbitration), and Administrative Procedure 12

Amendments to Contract Terms
(Additions are underlined, deletions are ~~struckthrough~~)

1. Interpretation

1.02...

“Interest Rate” means BBA LIBOR for one month deposits in sterling as at 11.00 hours on the Settlement Day for the relevant Delivery Month, provided that the Board may at its discretion resolve, prior to the commencement of the calendar month in which the Settlement Day for the relevant Delivery Month falls, that the Interest Rate shall be determined by other means. Any such determination by the Board shall be the subject of a Notice.

15. Conversion of Nominated Bulk Delivery Units and Final Allocation

~~15.10 (a) For the purposes of term 15.09(a) and subject to term 15.10(b), the term “Interest Rate” shall be BBA LIBOR for one month deposits in sterling as at 11.00 hours on the Settlement Day for the relevant Delivery Month.~~

~~(b) The Board may at its discretion resolve, prior to the commencement of the calendar month in which the Settlement Day for the relevant Delivery Month falls, that the Interest Rate shall be determined by means other than that specified in term 15.10(a). Any such determination by the Board shall be the subject of a General Notice.~~

~~15.11~~ 15.10 The Seller and the Buyer shall comply with any instructions and determination made by the Clearing House, the Exchange or the Board, as the case may be, under this term 15. In the case of any disagreement between the Clearing House and the Seller as to whether the Seller can comply with term 15.04 within such time as the Clearing House may specify, the determination of the Clearing House shall be final.

16. Delivery

~~16.09 A Buyer shall be deemed to have accepted a Delivery Unit delivered under term 16.02, by the time stipulated in the Administrative Procedures on the Business Day which:~~

~~(a) in respect of Delivery Unit other than a Delivery Unit to be converted from a Nominated Bulk Delivery Unit, is ten Business Days immediately after the Settlement Day; or~~

~~(b) in respect of each Converted Delivery Unit formed upon the conversion of a Nominated Bulk Delivery Unit, is seven Business Days immediately after the Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be, (each date being referred to as the "Acceptance Date") unless the Buyer has, not later than the time stipulated in the Administrative Procedures on the relevant Acceptance Date, notified the Exchange and the Clearing House in accordance with the Rules, of the Buyer's intention to refer a claim or dispute to arbitration. The Clearing House will promptly notify the Seller of the Buyer's notification.~~

16.09 A Buyer shall (for all purposes, including the making of any claim for damages) be deemed to have accepted a Delivery Unit delivered under term 16.02, by the time stipulated in the Administrative Procedures on the Business Day which:

- (a) in respect of each Delivery Unit other than a Delivery Unit to be converted from a Nominated Bulk Delivery Unit, is the tenth Business Day immediately after the Settlement Day; or
- (b) in respect of each Converted Delivery Unit formed upon the conversion of a Nominated Bulk Delivery Unit, is the seventh Business Day immediately after the Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be,

(each date being referred to as the "Acceptance Date") unless the Buyer has, not later than the time stipulated in the Administrative Procedures on the relevant Acceptance Date, given notice to the Exchange and the Clearing House in accordance with term 23 and in a form published by the Exchange by Notice from time to time that the Buyer claims that the Delivery Unit does not comply with the terms of the Contract, stating in what respects the Delivery Unit is said not to comply and whether the Buyer also claims to reject the Delivery Unit. The Clearing House will notify the Seller of the Buyer's notification. If the Buyer has not so notified the Exchange and the Clearing House by such time, then any claim by the Buyer of any nature whatsoever in respect of the Delivery Unit shall be deemed to have been waived and absolutely barred.

...

23. Arbitration

~~23.01 Subject to term 23.02 and to the Rules, any dispute arising from or in relation to a Contract shall be referred to arbitration under the Rules. The arbitration shall be held in accordance with the Rules in force at the time of such reference.~~

~~23.02 No dispute arising from or in relation to any cash settlement price fixed by the Board under these terms shall be referred to arbitration under the Rules~~

23.01 Subject to term 16.09 and this term 23 and to the Rules, any dispute arising from or in relation to a Contract shall be referred to arbitration under the Rules. The arbitration shall be held in accordance with the Rules in force at the time of such reference.

23.02 No dispute arising from or in relation to any cash settlement price fixed by the Board under these terms shall be referred to arbitration under the Rules.

23.03 (a) Where the Buyer has duly given notice by the time on the Acceptance Date specified in Term 16.09 that the Buyer claims that the Delivery Unit does not comply with the terms of the Contract, stating in what respects the Delivery Unit is said not to comply and whether the Buyer also claims to reject the Delivery Unit, then the Delivery Unit shall be subject to an inspection.

(b) The Exchange shall on or before the second Business Day after receipt of such notice notify the Buyer, the Seller and the Clearing House of whether such inspection shall be carried out by Exchange staff, or by a third party inspector ("Inspector") to be appointed by the Exchange. Where an Inspector is appointed, then the Exchange may, in its absolute discretion, attend as an observer at any inspection carried out by the Inspector. The Buyer shall indemnify the Exchange in respect of the costs of the Inspector, and shall be responsible for the costs of the Exchange relating to the inspection, without prejudice to the right of the Buyer to claim such costs hereunder. The Exchange shall inform the Inspector (if such is appointed) of the respects in which the Buyer claims that the Delivery Unit is not in conformity with the terms of the Contract.

(c) The Exchange or the Inspector (as the case may be) shall inspect the Delivery Unit, carrying out such inspections, sampling and analyses as they consider appropriate (but shall not be required to break up the Delivery Unit, or inspect every bag within the Delivery Unit, for the purposes of any inspection) and shall on or before the Business Day which is the 22nd Business Day immediately after the Acceptance Date issue a report to the Buyer, the Seller, the Clearing House and, in the case of a report by an Inspector, the Exchange stating the facts relevant to the question of whether the Delivery Unit is in compliance with the terms of the Contract in the respects stated by the Buyer. The period of 22 Business Days may be extended by the Exchange provided that it is satisfied, in its absolute discretion, that exceptional circumstances have prevented or will prevent the completion of the report within the time stipulated. The report of the Exchange or the Inspector shall be conclusive and binding on the Buyer, the Seller, the Clearing House and the Exchange in respect of the facts stated in it, save in the case of fraud or manifest error.

(d) Where the Buyer has claimed to reject the Delivery Unit, then on or before the fifth Business Day after the issuance of the report made by the Exchange or the Inspector (as the case may be), the Exchange shall determine in its absolute discretion, on the basis of such report, whether the Buyer's claim to reject the Delivery Unit is upheld. The Buyer's claim to reject the Delivery Unit based on a breach of a condition of the Contract on the part of the Seller shall not be upheld if the Exchange determines that the breach of that condition is so slight that it would be unreasonable for the Buyer to reject the Delivery Unit. The Exchange may in its absolute discretion consult experts or legal advisers in reaching its determination. The costs of such experts or legal advisers and the costs of the Exchange and/or the Inspector relating to the inspection, shall be borne by the Buyer and the Seller in the first instance in

such proportions as the Exchange may direct, without prejudice to the right of either party to claim such costs in arbitration under the Rules. The determination of the Exchange shall be binding on the Buyer, the Seller and the Clearing House and they shall comply with it forthwith, without prejudice to the rights of the parties to refer any claim for loss, damage or costs to arbitration under the Rules.

(e) Any party wishing to refer a claim for loss, damage or costs to arbitration (whether or not the Buyer has claimed to reject the Delivery Unit) must, on or before the tenth Business Day after the issuance of the report made by the Exchange or the Inspector (as the case may be), notify the Exchange and the Clearing House in accordance with the Rules of its intention to refer a claim or dispute to arbitration. If a party has not so notified the Exchange and the Clearing House by such time, then any claim by such party of any nature whatsoever in respect of the Delivery Unit shall be deemed to have been waived and absolutely barred.

(f) No claim of any nature whatsoever may be brought by the Buyer in respect of the Delivery Unit until a report by the Exchange or an Inspector (as the case may be) has been made, and a copy of it delivered to the Buyer, the Seller, the Clearing House and, in the case of a report by an Inspector, the Exchange.

(g) If the Buyer has claimed to reject the Delivery Unit, and the Exchange has upheld such claim, then:-

(i) the Seller shall repay to the Clearing House the final Invoicing Amount in respect of the Delivery Unit by 10.00 hours on the day which is the fifth Business Day after the Exchange has made the determination referred to in sub-paragraph (d) above (the "Repayment Day"), together with interest thereon at the Interest Rate plus 2% per annum for the period from the day following the Settlement Day up to and including the Repayment Day;

(ii) the Buyer shall re-deliver to the Clearing House the Warrant in respect of the Delivery Unit by 12.00 hours on the Repayment Day;

(iii) the Clearing House shall repay to the Buyer the final Invoicing Amount in respect of the Delivery Unit after 12.00 hours on the Repayment Day, together with interest thereon at the Interest Rate plus 2% per annum for the period from the day following the Settlement Day up to and including the Repayment Day;

(iv) the Seller shall collect from the Clearing House the Warrant in respect of the Delivery Unit after 12.00 hours on the Repayment Day;

(v) the Seller shall reimburse the Buyer in respect of any costs of the Inspector or of the Exchange relating to the inspection, any

reasonable Rent and Fumigation Charges, and any other reasonable costs or fees in respect of work done by the Warehousekeeper in relation to the inspection of the Delivery Unit by the Inspector or by the Exchange which have been incurred by the Buyer in respect of the Delivery Unit, on or before the fifth Business Day after receipt of an invoice from the Buyer accompanied by supporting documents evidencing the amounts incurred by the Buyer; and

(vi) the Buyer, pursuant to term 23.03 (e), shall be entitled to claim damages from the Seller by reference to the market price of Cocoa complying with the requirements of the Contract, but in no event shall either party be liable to the other in respect of any indirect or consequential losses or expenses.

(h) Risk and property in respect of a Delivery Unit which the Exchange has determined that the Buyer is entitled to reject will pass:

(i) from the Buyer to the Clearing House as Seller, upon the later of:

(1) the re-delivery by the Buyer of the Warrant in respect of such Delivery Unit to the Clearing House; and

(2) the payment by the Seller of the final Invoicing Amount in respect of such Delivery Unit in same day or immediately available, freely transferable, cleared funds; and

(ii) from the Clearing House as Buyer to the Seller, upon the later of:

(1) the payment by the Clearing House of the final Invoicing Amount in respect of such Delivery Unit to the Buyer in respect of such Delivery Unit in same day or immediately available, freely transferable, cleared funds; and

(2) take up of the Warrant in respect of such Delivery Unit by the Seller.

23.04 The Exchange shall act in good faith in the performance of its functions under this term 23 but subject thereto, and without prejudice to the provisions of Rule 1.4.3, the Exchange shall have no liability to any person in respect of any act or omission in connection with the performance of such functions.

Cocoa Futures Contract (Exchange Contract No. 401)

Amendments to the Administrative Procedures
(Additions are underlined, deletions are ~~struck through~~)

12. The ~~tenth~~ seventh Business Day after, ~~as the case may be~~, the Settlement Day, or the seventh Business Day after the Conversion Settlement Day or the Extended Conversion Settlement Day

By 17.00 hours

Subject to term 16.09, the Buyer shall be deemed to have accepted each Delivery Unit delivered to the Buyer on the Settlement Day, Conversion Settlement Day or the Extended Conversion Settlement Day, as the case may be.

Issue Date: 7 July 2008