



Submission No. 24-31
April 4, 2024

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

Re: New Appendix VII to Chapter 8 (Customs Status Requirements for Coffee “C”[®] Futures Contracts) - Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), ICE Futures U.S., Inc. (“IFUS” or “Exchange”) hereby self-certifies new Appendix VII to Chapter 8 (“Appendix”) of the Exchange’s rules, which sets forth customs status requirements for coffee delivered against the Coffee “C” futures contract. The new Appendix will prohibit the sampling and grading of any coffee that has cleared customs at a European Union (“EU”) delivery point, and further provides that any coffee which is certified for Exchange delivery which is or becomes customs cleared will automatically lose such certification. As discussed below, these new requirements are being adopted to preserve the current economics for coffee deliveries in the EU and to address tax compliance issues that are likely to result from the recently adopted EU Deforestation Regulations (“EUDR”).¹

I. RELEVANT BACKGROUND ON EXCHANGE COFFEE DELIVERIES IN THE EU

Delivery of arabica coffee against the Coffee “C” futures contract is effected by transfer of an electronic warehouse receipt for product stored in an Exchange licensed warehouse. Contrary to U.S. delivery points, coffee delivered in EU delivery points² are delivered in “customs-bonded” warehouses. The primary advantage of using customs bonded warehouses is that coffee may be stored, bought and sold at the relevant EU delivery point without the obligation to pay duties on the import of such goods or pay value added tax (“VAT”) resulting from transactions. This allows Exchange certified coffee to be bought and sold, and delivered and redelivered freely at the delivery point. While the Coffee “C” Rules are currently silent on the actual customs status of Exchange certified coffee, the commercial standard in EU locations is to store coffee in a customs-

¹ https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products_en

² The EU delivery points are the Port of Antwerp, the Port of Hamburg/Bremen and the Port of Barcelona.

ICE Futures U.S. Inc.

55 East 52nd Street
40th Floor
New York, NY 10055
Tel: +1 212.748.4000 | Fax: +1 212.748.4005
ice.com

ICE Futures US, Inc. a designated contract market under
the Commodity Exchange Act, as amended.

bonded status³. The Exchange believes that delivery of EU “customs cleared” coffee has rarely occurred in the past.

I. BACKGROUND ON EUDR

The EU has adopted a new regulation intended to reduce the impact of deforestation in origin countries for several agricultural commodities, including coffee.⁴ At a high level, the EUDR is intended to promote the consumption of “deforestation free” goods in the EU and includes new requirements for the import and commercial use of covered products in EU countries. Companies importing (and exporting covered) products to (and from) the EU must be able to prove that the products did not originate from recently deforested land or land that contributed to deforestation, as defined in the regulation. As explained below, the EUDR may incentivize participants to “import/customs clear” Exchange certified coffee.

The EUDR came into force on June 29, 2023 (“Entry into Force Date”). There is an 18-month period before compliance with the regulation become fully effective. During this 18-month period, companies are not required to provide proof that the products at issue are compliant with the regulation. However, beginning on December 30, 2024 (“Entry into Application Date”), companies must provide proof of compliance with the regulation for any product that was not produced prior to the Entry into Force Date. In this regard, it is important to note that any product produced after the June 30, 2023, Entry into Force Date but imported into the EU prior to the December 30, 2024, Entry into Application Date can continue to be used in and exported from the EU without requiring proof of compliance with the regulation. This implementation structure has the effect of creating three tranches of commercial coffee stock:

“Legacy” Stock - which is coffee produced prior to the June 30, 2023, Entry into Force Date for which EUDR information is not required and which remains freely importable into the EU after the December 30, 2024, effective date;

“Transition” Stock - which is coffee produced after the June 30, 2023, Entry into Force Date which remains freely importable into the EU without EUDR information until the December 30, 2024, Entry into Application Date, but which cannot be imported without EUDR information after that date; and

“New” Stock - which is coffee produced after June 30, 2023, Entry into Force Date and imported into the EU after December 30, 2024, Entry into Application Date for which EUDR information must be provided.

The EU has indicated that coffee which is stored in a customs-bonded warehouse at an EU delivery point, but which has not been customs cleared as of December 30, 2024, will not be

³ The commercial standard for certified coffee stored in US locations is a “customs cleared” status.

⁴ The list of covered products also includes Cocoa, but since the IFUS Cocoa futures contract does not include any EU delivery points there is no current plan to amend the Cocoa contract Rules to address EUDR.

considered to have been imported into the EU for purposes of the regulation, and therefore could not be brought into the EU without having the required EUDR information available. This creates a new incentive for owners of coffee to import any “Transition Stock” for which EUDR information is not available prior to the December 30, 2024 deadline, which may impact the delivery economics articulated in above **Section I**.

Exchange delivery of “imported” coffee would potentially create VAT liability and compliance issues for parties each time that coffee is delivered and redelivered against the Coffee “C” futures contract (and/or bought or sold commercially). VAT is a consumption tax imposed on goods each time such goods are sold and resold within the relevant EU member state.

II. NEW APPENDIX VII TO CHAPTER 8 (CUSTOMS STATUS REQUIREMENTS FOR COFFEE “C” FUTURES CONTRACTS)

After extensive consultation with the Exchange’s Coffee Committee and numerous commercial market participants, the Exchange has decided to adopt new Appendix VII (Customs Status Requirements) to Chapter 8, which provides that: (i) all coffee stored at an EU delivery point that is submitted for Exchange sampling and grading must be in a non-customs cleared state, and (ii) that any certified coffee in an EU delivery point that becomes customs cleared will immediately lose its delivery certificate.

The provisions in the Appendix are being adopted to preserve the current economics of coffee deliveries and to avoid VAT liability and compliance issues for market participants. We note that ICE Futures Europe (“IFEU”) is also implementing requirements which are intended to ensure that any product delivered against the IFEU robusta coffee futures contract is in a non-customs cleared state to avoid VAT tax issues resulting from the treatment of Transition Stock under the EUDR. Accordingly, this amendment would also harmonize the delivery requirements for coffee futures contracts across the two exchanges, which would benefit commercials who trade both the arabica and robusta contracts.

New Appendix VII will become effective on April 19, 2024, for all contract months. In this regard, we note that a survey of Exchange licensed warehouse operators in EU delivery points disclosed only a de minimis volume of current certified stocks that has been customs cleared.⁵ In addition, we note that market participants were advised of potential changes to the terms and conditions of the Coffee “C” Futures Contract through three separate Exchange notices issued on [February 16, 2023](#), [September 19, 2023](#) and [October 26, 2023](#).

⁵ The Exchange estimates that approximately 1,000 bags of certified coffee (equivalent to a maximum of 4 lots) is currently customs cleared at EU delivery points.

III. CERTIFICATIONS

The Exchange is not aware of any opposing views to the amendments and certifies that new Appendix VII to the Coffee Rules complies with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder. Specifically, the amendments comply with designated contract market core principle 3 (Contracts not Subject to Manipulation). The new requirements are consistent with the guidance set forth in Appendix C to Part 38 of the Commission's regulations, which states that delivery procedures should seek to minimize or eliminate any impediments to making or taking delivery by both deliverers and takers of delivery to help ensure convergence of cash and futures at the expiration of a futures delivery month. As described above, new Appendix VII seeks to eliminate impediments to delivery that could be created by VAT.

The Exchange further certifies that, concurrent with this filing, a copy of this submission was posted on the Exchange's website and may be accessed at (<https://www.theice.com/futures-us/regulation#rule-filings>). If you have any questions or need further information, please contact Tim Barry at 212-748-4096 or tim.barry@ice.com or the undersigned at 212-748-4021 or jason.fusco@ice.com.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jason V. Fusco". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jason V. Fusco
General Counsel
ICE Futures U.S., Inc.

Exhibit A

(In the text below, deletions are overstruck and additions are underscored.)

APPENDIX VII - Customs Status Requirements

In addition to all other provisions in these Rules, all coffee that is submitted for Exchange grading pursuant to Appendix II that is stored in an Exchange Licensed Warehouse in the Port of Antwerp, the Port of Barcelona, or the Port of Bremen/Hamburg must not have cleared customs in the respective country, and any coffee that has been issued a Certificate of Grade in any of these delivery points that is or becomes customs cleared shall immediately lose its Certificate of Grade and may not be used to make delivery against the Coffee “C” Futures Contract.