



Submission No. 24-74
May 15, 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 VIII to Chapter 8 (European Union Deforestation Regulation Provisions) - 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 VIII to Chapter 8 (“Appendix”) of the Exchange’s rules, which sets forth new requirements for coffee delivered against the Coffee “C” futures contract. The new Appendix incorporates additional requirements for coffee delivered in the European Union against the futures contract.¹ As discussed below, these new requirements are being adopted to address the recently adopted EU Deforestation Regulations (“EUDR”).²

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.³ 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 demonstrate through the provision of due-diligence information (“DDI”) that the products: (i) did not originate

¹ The EU delivery points are the Port of Antwerp, the Port of Hamburg/Bremen and the Port of Barcelona.

² https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products_en

³ 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.

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

from recently deforested land or land that contributed to deforestation, as defined in the regulation through; and (ii) were produced in accordance with all relevant local legislation.

The EUDR came into force on June 29, 2023 (“Entry into Force Date”). There is an 18-month period before compliance with the regulation becomes 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 DDI showing 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 29, 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 proof of compliance with the regulation. This implementation structure has the effect of creating three tranches of coffee stock:

“Legacy” Stock - which is coffee produced prior to the June 29, 2023, Entry into Force Date for which EUDR DDI 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 29, 2023, Entry into Force Date which does not have DDI demonstrating compliance with EUDR requirements, but remains freely importable into the EU without such EUDR information until the December 30, 2024, Entry into Application Date; and

“New” Stock - which is coffee produced after June 29, 2023, Entry into Force Date and imported into the EU after December 30, 2024, Entry into Application Date which has DDI demonstrating compliance with EUDR requirements.

At a high level: (i) Legacy Stock is and will remain freely importable into the EU without DDI; (ii) Transition Stock will be freely importable into the EU until December 30, 2024, after which it will only be importable if it is accompanied by acceptable DDI; and (iii) New Stock is and will remain importable provided that there is acceptable DDI available showing compliance with EUDR requirements.

II. New ICE CoT Service to Help Market Participants Fulfill their Obligations to Satisfy DDI Requirements

In preparation for implementation of the EUDR, ICE Benchmark Administration Limited, an entity affiliated with the Exchange, has created a new platform called ICE CoT⁴, which is

⁴ ICE CoT (which stands for Commodity Traceability) is operated by an ICE entity that is a corporate affiliate of the Exchange.

intended to help traders and operators in the EU support compliant trading of coffee (and cocoa⁵). ICE CoT will allow market participants in the supply chain to upload farm-geolocation, farmer physical-flow (movement, merging and splitting of parcels), and processing data in respect of a product “parcel” of coffee into ICE CoT. This traceability data would be made available to subsequent owners, which can help them satisfy their DDI requirements of EUDR at the point of import into the EU.

ICE CoT is designed to run a series of validation checks on the farm-geolocation and farmer, and the physical-flow and processing data that is submitted, conducted in accordance with published methodologies, in order to provide comfort to market participants that the relevant products in the parcel were not made from commodities produced in areas of deforestation, or in protected forest areas, and that the data is reasonable and plausible. The starting point is ICE CoT receiving information from market participants that it will use to run the validation checks. Provided the validation checks in respect of a product are passed, ICE CoT would validate the parcel and store all associated traceability data alongside it.

III. NEW APPENDIX VIII TO CHAPTER 8 (EUROPEAN UNION DEFORESTATION REGULATON PROVISIONS)

The EUDR will create several issues relating to delivery coffee against the “C” contract in the three eligible EU ports (Antwerp, Hamburg/Bremen and Barcelona). After extensive consultation with the Exchange’s Coffee Committee and numerous commercial market participants, the Exchange has decided to adopt new Appendix VIII (European Union Deforestation Regulation Provisions) to Chapter 8 to address such issues and to help ensure that the contract remains an effective tool for price discovery and risk management for commercial participants.

First, new Appendix VIII will require all coffee that is submitted for sampling and grading, which is stored at an EU delivery point on and after December 31, 2024 to have EUDR DDI (defined in new Appendix VIII as “Validated DDI”) that is entered into an Exchange-approved system (defined in new Appendix VIII as “DDI System” and which is intended to be ICE CoT). This requirement is being adopted to help ensure that coffee which is delivered against the futures contract in the EU is compliant with the EUDR and importable for use and consumption.

In addition, the new Appendix will create new definitions of “Legacy Stock” and “Transition Stock” setting forth the rights and requirements for each. Legacy Stock is defined as coffee stored in an EU delivery point, whether certified or not, which has a Bill of Lading date issued before June 29, 2023. As importers will not be required to comply with EUDR requirements for Legacy Stock, it will continue to be deliverable against the “C” contract with no additional penalty applied for delivery against the futures contract both before and after December 30, 2024.

⁵ The ICE Futures U.S. Cocoa futures contract does not have delivery points inside the EU. ICE CoT will support delivery of cocoa against the ICE Futures Europe futures contract and will also support the import of non-Exchange certified cash/commercial stocks.

Transition Stock is defined as coffee stored in an EU delivery point which has a Bill of Lading issued on or after June 29, 2023, which has been submitted for Exchange sampling and grading prior to December 31, 2024 and which does not have a Valid DDI in the DDI System.

Transition Stocks that are certified prior to 12/31/2024 will remain eligible for Exchange delivery after the 12/31/2024 entry into application date. However, such Transition Stocks will not be eligible for import into the EU after the Entry into Application Date.⁶ No new Transitions Stock will be certified for Exchange delivery after 12/31/2024.

Finally, the new Appendix will create a discount/penalty provision to incentivize market participants to take certified Transition Stocks that are not eligible for import into the EU off Exchange. Starting with the March 2025 expiry, delivery of Transition Stocks will incur a Transition Stocks Discount that accrues at 25 points per calendar month starting in January 2025, and at an additional 50 points per month starting in January 2026.

The Exchange's Board of Directors adopted the new Appendix VIII by unanimous vote.⁷ It will become effective on June 3, 2024, for all contract months. 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](#). Further, we note that new Appendix VIII will align the Coffee "C" futures contract with the Robusta futures contract as ICE Future Europe is planning to adopt similar amendments.

IV. CERTIFICATIONS

The Exchange is not aware of any opposing views to the amendments and certifies that new Appendix VIII 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. Specifically, the new requirements will help ensure that coffee which is delivered against the futures contract in the EU is importable for use and consumption as intended, mirroring normal cash channels. 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

⁶ While Transition Stocks will not be importable in the EU after December 31, 2024, such stock will remain deliverable against the Coffee "C" futures contract. The Exchange notes that certified coffee that is deliverable against the futures contract is stored in a customs bonded warehouse licensed by the Exchange and must be in a pre-customs cleared state (see ICE Futures U.S. Submission No. 24-31).

⁷ New Appendix VIII was adopted by the Board of Directors pursuant to Exchange Rule 6.01, which expressly authorizes the Board to place rules into effect which change the amount of money to be paid, or the quality of merchandise to be received, under an Exchange Futures Contract with open interest in certain circumstances.

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 written in a cursive style with a large initial "J" and 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.)

EXHIBIT A

APPENDIX VIII EUROPEAN UNION DEFORESTATION REGULATION PROVISIONS

The following provisions of this Appendix shall apply to all coffee that is submitted for Exchange grading that is stored in an Exchange Licensed Warehouse in the Port of Antwerp, the Port of Barcelona, or the Port of Bremen Hamburg, and shall not apply to coffee that is stored in any other delivery point.

Definitions:

DDI System - means such due diligence information system as is specified by the Exchange from time to time.

Legacy Stocks - shall mean Arabica coffee, whether certified or not, which has a bill of lading issued before June 29, 2023.

Transition Stocks - shall mean all coffee that has a bill of lading that is issued on or after June 29, 2023 and which has been submitted for Exchange sampling and grading prior to December 31, 2024, and for which Validated DDI is not available in the DDI System.

Validated DDI - shall mean such due diligence information as specified by the Exchange from time to time, validated to the extent so specified.

1. Required Provision of Validated DDI

All coffee that does not meet the definition of Legacy Stock in this Rule that is submitted for Exchange sampling and grading on and after 12/31/24 and that is stored in the Ports of Antwerp, Barcelona or Bremen/Hamburg must have Validated DDI provided in the DDI System, and the Deliverer is required to make available to the Receiver, the Exchange and the Clearing House the Validated DDI through the DDI system.

2. Transition Stocks Discount

Commencing with the March 2025 contract month, the Exchange Delivery Invoice for all Transition Stocks shall include the following Transition Stocks Discount:

- (1) For contract months in calendar year 2025, a discount of 25 points per calendar month calculated beginning January 2025; and

- (2) For contract months in calendar year 2026 and later, a discount of 300 points plus 50 points per calendar month beginning January 2026.
- (3) For the avoidance of doubt, this Transition Stocks Discount shall not apply to Legacy Stocks, to coffee that is submitted for Exchange Sampling and Grading on and after 12/31/24, or to delivery of any coffee in delivery points other than the Ports of Antwerp, Barcelona and Bremen/Hamburg.