



Submission No. 24-192
December 6, 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: Amendments to the Terms of the Sugar No. 16 Futures Contract (New Resolution No. 5) - Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6(a)

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commodity Futures Trading Commission (“CFTC” or “Commission”) Regulation 40.6(a), ICE Futures U.S., Inc. (“Exchange”) hereby self-certifies new Sugar No. 16 Resolution No. 5 (“Resolution”), which is set forth in Exhibit A. As discussed below, the new Resolution will require Deliverers to certify that sugar being delivered against the Sugar No. 16 futures contract (“No. 16”) was not the product of genetically modified organisms (“GMOs”), unless the Receiver waives such requirement.

Background

In recent years, consumer demand for non-GMO foods in the U.S. has grown significantly. Many consumers associate non-GMO foods with health and environmental benefits. As a result, manufacturers seek to market and label their products as “non-GMO” in the U.S.

The terms of the No. 16, a futures contract, which calls for domestic delivery of sugar, currently do not include any provisions regarding GMOs. As a result, an Exchange Deliverer is neither prohibited from delivering raw cane sugar that was grown from GMO seed nor required to specify whether or not the sugar delivered was grown from GMO cane.

Despite the foregoing, the Exchange believes that it is unlikely that GMO cane sugar has been delivered against the No. 16 futures contract in the past. While the vast majority of U.S. produced raw sugar made from beets is now GMO, it is the Exchange’s understanding that all commercial growing of cane in the U.S. remains non-GMO.¹ In addition, until recent seasons, there was no significant use of GMO cane in other origin countries that regularly export sugar into the United States. Brazil was the first exporting origin to begin to use GMO cane, which

¹ The No. 16 contract terms specify delivery of raw cane sugar and do not permit delivery of raw sugar made from beets.

currently represents a small share of the country's total production, and more recently Argentina is believed to have begun using GMO cane for some share of their production.²

Accordingly, despite the absence of any prohibition, U.S. manufacturers have had confidence that they would not receive sugar grown from GMO cane against the No. 16 contract and have been able to effectively use the contract for price discovery and risk management. However, a recent combination of tight domestic sugar supplies and the relative values of domestic and world sugar have led to a sustained increase in what are referred to as "high-tier"³ sugar imports. This has led to heightened concerns about the import of sugar from Brazil and other origins which could contain GMO cane sugar.

U.S. manufacturers have addressed these concerns in the cash-market by adopting terms in their bi-lateral commercial contracts requiring sellers to supply non-GMO sugar. Further, in the absence of any testing to determine whether or not sugar has been produced from GMO seed⁴, U.S. manufacturers have also added a requirement for sellers to provide a non-GMO certification in many instances, particularly for purchases of foreign origin cane sugar.

New Sugar Resolution No. 5

As a result of the factors and developments discussed above, commercial participants have expressed concerns about using the No. 16 to source raw cane sugar and using the No. 16 as a price discovery and risk management tool. To address these concerns, the Exchange's Domestic Sugar Committee ("Committee") appointed a Working Group to consider whether or not the No. 16 Rules should be amended to address GMO sugar. That Working Group developed the language of the proposed new Resolution, based upon a set of commercial sugar contract terms shared by commercial market participants.

The new Resolution will obligate the Deliverer provide a Non-GMO Certificate which contains the following language, unless the Receiver agrees to either forego receipt of a Non-GMO Certificate entirely or to accept a Non-GMO Certificate using different language:

We confirm that the bulk raw cane sugar being delivered is entirely from sugar cane varieties which have been developed by the traditional plant method of hybridization and selection. The sugar cane breeding program, sugar cane growing system and factory extraction process for the delivered raw cane sugar does not involve any process of genetic modification or trans-genesis.

The Committee vote to recommend adoption of new Resolution No. 5 passed by a vote of 6 in favor, 1 opposed and with 2 abstentions. The Committee Member opposed to adopting the Resolution expressed concerns that prohibiting delivery of GMO cane sugar could negatively impact the deliverable supply of sugar and negatively impact any origin country that produces GMO cane which is not able to segregate raw sugar produced from GMO cane from raw sugar produced from non-GMO cane. The Committee Members in favor of adopting the new Resolution did not dispute the potential impact to supply, but opined that unless provisions

² The No. 16 terms allow for delivery of raw cane sugar produced in the U.S. or in a foreign growth, with the Deliverer being responsible for any duty and import fee for foreign sugar.

³ "High tier" sugar is sugar not eligible for import under a lower priced tariff, for which the importer must pay a higher tariff rate.

⁴ any material containing genetically modified tissue is removed in the milling process)

barring delivery of GMO sugar were added, the No. 16 contract would continue to see declines in trading volumes and open interest, and would likely cease to be usable as a price discovery and risk shifting tool for U.S. commercial market participants who are the core users of the contract.

The current position limit for the No. 16 contract is 1,000 lots on and after the third-to-last trading day of the expiring futures contract. Additionally, the position accountability level is 1,000 lots in any single month or all months combined. These levels are significantly below the 25% of the estimated deliverable supply for U.S. grown raw cane sugar, which the Exchange currently estimates to be at least 6,300 lots.⁵ Accordingly, the Exchange does not plan to change position limit or accountability levels at this time, but will continue to monitor the growth of GMO and non-GMO cane sugar and reassess levels as needed.

The Exchange's Board of Directors approved the new Resolution by unanimous vote.

Certifications

The Exchange certifies that new Resolution No. 5 complies with the requirements of the Act and the rules and regulations promulgated thereunder. The new Resolution will become effective on December 23, 2024 and will apply to the first contract without open interest, the November 2026 expiration. The Exchange has reviewed the designated contract market core principles ("Core Principles") as set forth in the Act and has determined that the amendments comply with the following relevant Core Principles:

COMPLIANCE WITH RULES: Trading of Sugar No. 16 futures contracts is subject to all relevant Exchange rules, which are enforced by the Market Regulation Department.

CONTRACTS NOT READILY SUBJECT TO MANIPULATION: The Exchange's Sugar No. 16 is not readily subject to manipulation as it is based on an established and liquid underlying cash market in compliance with CFTC Regulation 38.200. Consistent with Appendix C to Part 38 of the Commission's Regulations, the new Resolution better aligns the Sugar No. 16 futures contract with commercial market practice. Finally, we note that trading of the contracts will be monitored by the Exchange's Market Regulation Department.

AVAILABILITY OF GENERAL INFORMATION: The Exchange will issue a notice and post new Resolution No. 5 on the website to ensure that market participants are aware of the new requirement.

The Exchange 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.ice.com/futures-us/regulation>.

⁵ A spreadsheet calculating monthly deliverable supply for the past three years accompanies this filing as Appendix A and has been redacted in accordance with Commission Regulation 40.9.

If you have any questions or need further information, please contact me at 212-748-4021 or at jason.fusco@theice.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason V. Fusco". The signature is written in a cursive style with a large, sweeping initial "J".

Jason V. Fusco
General Counsel

Enc.

EXHIBIT A

(in the text of the amendment below, additions are underscored.)

Sugar No. 16 Resolution No. 5 - GMO Provisions

In addition to the Delivery Documents required to be presented to the Receiver pursuant to Rule 29.06 the Deliverer shall also provide a Non-GMO Certificate which contains the following language, unless the Receiver agrees to either forego receipt of a Non-GMO Certificate entirely or to accept a Non-GMO Certificate using different language:

“We confirm that the bulk raw cane sugar being delivered is entirely from sugar cane varieties which have been developed by the traditional plant method of hybridization and selection. The sugar cane breeding program, sugar cane growing system and factory extraction process for the delivered raw cane sugar does not involve any process of genetic modification or trans-genesis.”