



Submission No. 22-17
February 15, 2022

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: Amendment to ICE Futures U.S. Rule 7.08(b) - Warehouse and Tank Facility Operators
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 (the “Act”) and Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), ICE Futures U.S., Inc. (“IFUS” or “Exchange”) hereby certifies the amendments to Exchange Rule 7.08(a)(i), which are set forth in Exhibit A. On May 1, 2021, the Exchange amended the annual term for Exchange licenses issued to cocoa and coffee warehouse operators to run from June 1st through May 31st each year. Such licenses had previously run from May 1st to April 30th each year (see ICE Futures U.S. Submission 21-20). The Exchange is now making conforming amendments to Rule 7.08(b) to update the time period that a licensed warehouse operator must maintain insurance coverage. Currently, the Rule requires warehouse operators to maintain coverage through the expiration date of the old license term, April 30th. Rather than amend the Rule to coincide with the end of the new term on May 31st, the Exchange will obligate warehouse operators to maintain coverage “at all times during the term of the license.” In addition, the amendment will also apply to licensed cotton warehouse operators and FCOJ tank facility operators, which are also required to maintain coverage during the term of the Exchange license.

The Exchange certifies that the amendments to Rule 7.08(b), which will become effective on March 7, 2021, comply with the requirements of the Act and the rules and regulations promulgated thereunder. The Exchange is not aware of any opposing views with regard to the amendment to Rule 7.08 and further certifies that, concurrent with this filing, a copy of this submission was posted on the Exchange’s website at <https://www.theice.com/futures-us/regulation#rule-filings>

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

Sincerely,

Jason V. Fusco
Assistant General Counsel
Market Regulation

Enc.



EXHIBIT A

(In the text of the amendments below, additions are shown underscored and deletions are bracketed and lined through.)

Rule 7.08. Warehouse and Tank Facility Operators

(b) submit to the Exchange proof in a form acceptable to the Exchange of the following minimum insurance or bond coverage and maintain such coverage in effect at all times during the term of the license and/or as otherwise specified by the Exchange, as follows:

(i) for cocoa and coffee warehouse operators,

(A)(1) Outstanding performance bond coverage or an unconditional irrevocable letter of credit from a financial institution approved by the Exchange (an "Approved Financial Institution") in the amount of at least the following:

Amount Exchange Licensed Storage Space

\$125,000 Up to 100,000 Sq. Ft.

\$200,000 100,001 through 250,000 Sq. Ft.

\$300,000 250,001 through 500,000 Sq. Ft.

\$500,000 500,001 through 750,000 Sq. Ft.

\$750,000 750,001 through 1,000,000 Sq. Ft.

\$1,000,000 1,000,001 Sq. and above

(2) Any performance bond or irrevocable letter of credit submitted to satisfy the requirements of subparagraph (a)(i)(A)(1), above, must be issued or confirmed by an Approved Financial Institution, be in such form as may be prescribed by the Exchange from time to time [~~and shall not expire until the thirtieth (30th) day of April occurring next following the effective date of the granting or renewal of the license~~];

(B) Outstanding fidelity insurance coverage in the amount of at least one hundred thousand dollars (\$100,000); and

(C) Outstanding warehouse operator's legal liability insurance coverage which is in the amount of at least seven hundred fifty thousand dollars (\$750,000) for each location where one (1) or more



buildings containing a Licensed Store are situated and which provides for coverage for each Licensed Store.

(ii) for cotton warehouse operators,

(A) a performance bond or letter of credit with satisfactory sureties in the amount of at least \$1 for each certified bale that the operator can store capped at one million dollars (\$1,000,000) and subject to such conditions as shall be acceptable to the Exchange and satisfactory evidence of the existence of such bond and of its continuance in force during the term of the license; *provided, however*, that a cotton warehouse operator located outside of the U.S. may deposit with the Exchange a cash bond in place of such performance bond or letter of credit with respect to cotton warehouses located outside of the U.S., subject to such conditions as shall be acceptable to the Exchange;

(B) All Risk-Policies which insure the value of certificated bales against the loss or damage by sprinkler malfunction, fire, lightning, windstorm, cyclone, tornado, hurricane, flood including influx or rising water (whether wind driven or not) or inherent explosion and other risk (whether an act of God or force majeure), and which automatically attach as soon as such cotton is placed in the warehouse operator's custody and remains in effect so long as the cotton remains in the warehouse operator's legal custody;

(1) for the purposes of subparagraph (b)(ii)(B) of this Rule, the term "value of the certificated cotton" shall mean no less than the value determined in accordance with Rule 10.22 with the value date being the date the damage to the certificated bales occurred; provided, however, that if such damage occurs on a weekend or holiday, the value date shall be the preceding Business Day; and

(2) in the event that the amount of any loss or damage sustained by the owner of the certificated bale(s) is not payable, or is not payable in full, by the insurer by reason of any deductible set forth in any such policy or otherwise, the warehouse operator will promptly pay such amount.

(C) outstanding fidelity insurance coverage in the amount of at least one hundred thousand dollars (\$100,000).

(iii) for FCOJ tank facility operators,

(A) Property Insurance

(1) All-Risk policies which insure the full value of the FCOJ stored at the tank facility for the benefit of the holder of an EWR issued by the tank facility operator against the perils covered in an All Risk Policy;

(2) said All Risk Policies shall be in effect at each licensed tank facility for which it is licensed and continue in full force and effect with respect to the interests of the holders of EWRs for the term of each such policy and shall be renewed or replaced for such period that any of said EWRs are outstanding, and that the Exchange is named in such policies as either an insured party or loss payee with regard to FCOJ for which EWRs have been issued;

(3) the amount of insurance coverage provided in each such All Risk Policies will at all times be in an amount adequate to fully cover the interests of the holders of EWRs, either by maintaining overall limits adequate to cover all insured property at each licensed tank facility, or by providing a specific separate policy limit with respect to the interests of holders of EWRs which limit is sufficient to fully cover such interests;



(4) in the event that any loss or damage is paid in full or in part to the licensed facility by the insurer, such payment, in preference to any and all other claims, shall be assigned first to any and all claims for FCOJ for which an EWR has been issued;

(5) in the event that any loss or damage sustained by a holder of an EWR is not payable, or is not payable in full, by the insurer, by reason of any deductible set forth in any such policy, or otherwise, the facility operator will promptly pay such amount; and

(6) if requested by any holder of an EWR issued by the tank facility operator, furnish evidence of the All-Risk Policies in effect;

(B) legal liability insurance in the amount of seven hundred fifty thousand dollars (\$750,000) for each location and fidelity insurance in the amount of one hundred thousand (\$100,000) in such form and in such amount as shall be approved by the Exchange; and

(C) Performance Bond: Letter of Credit. Limitation of Issuance of EWRs

(1) a performance bond with a principal amount of one million dollars (\$1,000,000); or

(2) a letter of credit, in favor of the Exchange which is unconditional and irrevocable and available to be drawn upon by the Exchange by clean sight drafts, in the amount of one million dollars (\$1,000,000).

(3) any performance bond or irrevocable letter of credit submitted to satisfy the requirements of subparagraphs (a)(i)(C)(1) or (2), above, must be issued in such form as may be prescribed by the Exchange from time to time, and shall not expire until the thirty-first (31st) day of December occurring next following the effective date of the granting or renewal of the license.

(D) Alternate Compliance

(1) In the event that the Exchange licensed tank facility operator is not also the owner of the facility, the Licensee may notify the Exchange that in fulfilling its insurance and financial requirement standards under these Rules it is relying on an unlimited guarantee in a form satisfactory to the Exchange from the owner of the tank facility and/or insurance purchased by the owner of the tank facility; provided, however, that nothing in this alternative compliance arrangement shall be deemed to lessen the duties of a Licensee under the Rules.

(2) Any licensed tank facility in meeting Working Capital, net worth and letter of credit (but not performance bond) requirements may provide substituted compliance by an Affiliate of the licensed tank facility provided that such Affiliate executes and delivers an unconditional guarantee in such form and with such safeguards as are satisfactory to the Exchange.

(c) with respect to an application to store Cocoa, hold a valid Cocoa Merchants' Association of America, Inc. (CMA) Warehouse Compliance Certificate for each store to be licensed;

(d) with respect to an application to store Cotton,

(i) applicant shall be licensed as a Cotton warehouse operator by the USDA or the state in which the Licensed Store is located, and

(ii) have operational rail sidings or, in the absence of such, must agree at the option of a Receiver in a delivery to move cotton in a delivery to the nearest operational rail siding at the warehouse operator's expense;

(e) with respect to an application to store FCOJ,



(i) the tank facility must have the capacity and equipment for the storage and delivery of FCOJ in a manner and under the conditions acceptable to the USDA and the demonstrated ability to make daily tank deliveries, as defined in FCOJ Resolution No. 1(I), equivalent to at least eight (8) FCOJ Futures Contracts;

(ii) be equipped to handle FCOJ under continuous inspection of the USDA, or Quality Assurance Program inspection of the USDA, or Florida Quality Systems Certification Program inspection and shall provide an on-site laboratory that is accepted by the USDA for purposes of USDA performance of grading and testing of product in accordance with FCOJ Resolution No. 1(III);

(iii) have and shall continue to maintain:

(A) a working capital of two million dollars (\$2,000,000); or

(B) a letter of credit in the amount of one million dollars (\$1,000,000), which letter of credit shall meet the requirements of subparagraph (b)(iii)(C) of this Rule and shall be in addition to any letter of credit maintained pursuant to subparagraph (b)(iii)(C) of this Rule;

(C) for the purposes of this Rule, the term “Working Capital” means the excess of current assets over current liabilities.

(f) bear all expenses incurred by the Exchange for any inspection of a store or tank facility and any investigation of the suitability of a store for the proper handling and storage of the Commodity to be stored or already stored for which a license is requested or has been issued; and

(g) meet such other requirements as are prescribed in the Rules or as may be established from time to time by the Exchange.