

# CIRCULAR

17 JULY 2017

**CIRCULAR 17/102**

## **DISCIPLINARY NOTICE: SETTLEMENT OF DISCIPLINARY PROCEEDINGS AGAINST 4STOX N.V. ("FSL")**

### **CATEGORY**

Membership

### **ATTACHMENTS**

None

ICE Futures Europe ("the Exchange") has proceeded with disciplinary measures against 4STOX N.V. ("FSL") in relation to its failure to operate in accordance with certain aspects of the Exchange's Grading and Warehousekeeping procedures ("G&WPs"), in respect of the ICE Futures Robusta Coffee contract.

### **Background**

In May 2015, the Exchange's Commodity Operations Department conducted an unannounced visit to a warehouse ("the Tilbury Warehouse") in order to inspect sampling procedures controlled by 4STOX UK, a Division of FSL, as the Nominated Warehousekeeper. It should be noted that as principal warehousekeeper, FSL had outsourced logistical operations to another party during this time. The inspection uncovered a number of issues relating to sampling procedures. In their final report the Commodity Operations Department identified 384 lots of Robusta Coffee that needed to be resampled.

In light of the seriousness of the incidents, the Exchange has reviewed FSL's actions as well as FSL's mitigations and has received assurances of the management and oversight controls over this area.

### **Allegations**

In relation to the incidents described above, the Exchange alleged that FSL, as the principal nominated warehousekeeper, had breached the following G&WPs;

C.3 (e) and (f), which states that

A Warehousekeeper:

"(e) should ensure that all Goods stored for potential delivery against the ICE Futures London Cocoa Futures Contract, ICE Futures Euro Cocoa Futures Contracts or ICE Futures Robusta Coffee Futures Contract are properly segregated and identified, and that proper action has been taken to protect such Goods against potential risks to their security and integrity;

(f) should organise and control its internal affairs in a responsible manner, keeping proper records, and should have adequate arrangements to ensure that persons employed by the Warehousekeeper to

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perform duties relating to the storage of Goods are suitable, adequately trained and properly supervised and that well-defined procedures exist for all relevant duties;

D.3.4.9 (b), which states that

“In respect of each sample drawn from a parcel or lot stored in bags:

The sample bag shall be sealed with the Warehousekeeper's seal and also if supervised the Supervision Company's seal. The following minimum details shall be marked on the bag:

- (i) the Warehousekeeper responsible for drawing the sample;
- (ii) Warrant number;
- (iii) port;
- (iv) Origin;
- (v) date on which the Robusta Coffee was landed; and
- (vi) the bar code issued by or recorded on Guardian in respect of the sample”

D.3.4.10 (a), which states that

“In respect of each sample drawn from a lot stored in FIBCs: (a) a grading sample of 1.5 kg minimum weight shall be drawn which; shall be representative of the lot as a whole, and shall be taken by means of one of the following procedures:

**(iii) Sampling using a sampling iron**

Sample material of 12.5 kg minimum weight (the bulk sample) which is representative of the lot as a whole shall be derived from Robusta Coffee drawn once the FIBCs are filled with Robusta Coffee and before they are sealed. Samples may be drawn from each FIBC by use of a sampling iron which is of sufficient length to reach the centre of the FIBC. Sampling must be on one side of the FIBC with a minimum of five incremental samples being drawn, such that each facing corner is sampled with one taken from the middle of the bag. A minimum of 1.25kg per FIBC shall be drawn. The sampling holes shall be immediately repaired such that neither the contents nor the FIBC are compromised.”

The Exchange recommended to the Compliance officer in accordance with Rule E.3.7, that disciplinary proceedings be commenced with regard to the alleged breaches.

In accordance with Rule E.4.3A, FSL were given the opportunity to settle disciplinary proceedings at any stage with the Exchange. An agreement was reached and as per the same rule, any terms of settlement agreed between the Compliance officer and FSL were to be ratified by the Authorisation, Rules and Conduct Committee (“the ARC”). Following the ARC's ratification these terms shall now take effect.

### Details of settlement

The Exchange views that operating in accordance with the G&WPs at all times is of critical importance. Whilst the alleged breaches were in effect caused by an operation which had been outsourced by FSL, the Exchange retains the view that FSL should take full responsibility in this matter.

In agreeing settlement terms and considering the appropriate sanctions the Exchange took note of remedial action taken by FSL. The Exchange also considered the mitigating factors and the cooperation shown by FSL.

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As a result both parties agreed a settlement on the following terms:

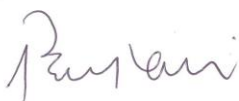
- FSL admits overall responsibility for the above mentioned breaches of the G&WPs.
- FSL is to pay a total fine of £50,000 as a penalty for said breaches. (This represents a discount for settlement and for the other mitigating factors referenced above.)

It is important to note that at the time of the investigation, as per Rule E.7 (a) (iii), the maximum fine which might have been imposed in relation to a matter recommended for disciplinary proceedings, as per Rule E.3.7; was limited to £25,000 for an individual and £50,000 for a member in respect of each offence.

However, in accordance with Circular 16/169 amendments were made to rule E.7 (a) (iii), whereby the maximum fine for a member was increased from £50,000 to £250,000. This came into effect on Wednesday 16 November 2016 and consequently this could be of relevance in consideration of an analogous matter today.

Please ensure that the appropriate members of staff within your organisation and customers are advised of the content of this Circular.

Signed:



Patrick Davis  
Company Secretary

### FOR MORE INFORMATION, PLEASE CONTACT:

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