THE CAPITAL MARKETS ACT,
(Cap 485A)

IN EXERCISE of the powers conferred by section 12(ka) of the Capital Markets Act, the Cabinet Secretary for the National Treasury, in consultation with the Authority, makes the following Rules—

THE NAIROBI COFFEE EXCHANGE RULES, 2018

PART 1 - PRELIMINARY

Citation.

1. These Rules may be cited as the Nairobi Coffee Exchange Rules, 2018.

Interpretation.

2. In these Rules, unless the context otherwise requires—

   “auction” means the auction system under which clean coffee is offered for sale at the Nairobi Coffee Exchange and includes the place at which, or a facility by means of which, whether electronic or otherwise, offers or invitations to sell, buy or exchange coffee contracts are regularly made on a centralized basis, but does not include—

   (a) the office or facilities of a coffee trader or service provider; or
   (b) or the office or facilities of a clearing house;

   “auction levy” means such fee per sixty-kilogram bag of coffee or other less volume of coffee sold at the Nairobi Coffee Exchange as set out in the First Schedule, payable by millers, roasters and traders;

   “Authority” means the Capital Markets Authority established under section 5 of the Capital Markets Act which shall licence and regulate the Nairobi Coffee Exchange;

   “bid” means an offer to pay a particular amount of money for a given lot of clean coffee being offered for sale at the Nairobi Coffee Exchange;

   “board” means the Board of Directors of the Exchange established under rule 4;

   “buying sample” means a 750 grams of the representative sample or such other sample weight as may be determined by the Nairobi Coffee Exchange, for every lot of clean coffee traded at the Nairobi Coffee Exchange and handed over to a trader upon purchase of coffee for verification;
“direct settlement system” means a clearing and settlement system for payment of clean coffee sales proceeds provided by appointed commercial banks and is managed by the Nairobi Coffee Exchange;

“clearing house” means a financial institution responsible for clearing and settling trading accounts, clearing trades, collecting and maintaining margin monies, regulating delivery, and reporting trading data, and includes a domestic commercial bank or other financial institution approved by the Capital Markets Authority and appointed by the Nairobi Coffee Exchange to establish and operate a direct system for settlement and payment of coffee proceeds to growers;

“clearing and settlement” means the procedure by which a clearing house acts as an intermediary between a buyer and seller for exchange traded transactions in order to reconcile orders between transacting parties and ensure the physical or financial settlement of the transaction;

“coffee miller” means a person licensed by the Agriculture and Food Authority to conduct the business of coffee milling and preparation of a sales catalogue and shall include a holder of a grower millers license;

"coffee sales proceeds" means monetary consideration received at the direct settlement system in exchange for clean coffee sold at the auction or, where applicable, through direct sales;

“coffee trader” means an incorporated company licensed by the Agriculture and Food Authority to buy clean coffee at the Nairobi Coffee Exchange, for export, local sale or value addition or to import clean coffee for secondary processing in Kenya;

“coffee roaster” means a person licensed by the respective county government to buy, roast and package clean coffee for local sale;

“coffee warrant” means an instrument prepared by the warehouseman and presented to the Nairobi Coffee Exchange of which the person named therein, or the last endorsee thereof, shall for all purposes be deemed to be the owner of the clean coffee to which it relates;

“coffee year” means a period of twelve months beginning 1st October of a year and ending 30th September the following year;

“collateral manager” means an institution approved by the Authority and appointed by the owner of the coffee or any other person who has an interest
in coffee stored in a warehouse, with the intention of monitoring or taking
custody of the coffee at a licensed warehouse;

“commodity” means clean coffee;

“co-operative society” means a society registered under the provisions of the
Co-operative Societies Act and licensed under the Coffee General
Regulations;

“display sample” means a 250 grams of the representative sample for every
lot of coffee sold at the Exchange exhibited in coffee trays provided in the
sample room of the Nairobi Coffee Exchange;

"electronic warehouse receipt" means an authorized, verifiable and
transferable warehouse receipt that has been generated, sent, received or
stored by electronic, optical or similar means, conferring legal title to the
depositor for commodities received in a licensed warehouse accredited by the
Nairobi Coffee Exchange;

“Exchange” means the Nairobi Coffee Exchange established under rule 4 of
these Rules and includes the Board of the Exchange;

“Chief Executive Officer” means such person as shall be appointed by the
Board to be the Chief Executive Officer of the Exchange and who shall also
be the Secretary to the Board;

“lot” means a saleable quantity of coffee specified in the sales
catalogue ready for bidding;

“marketing of coffee” means identification of competitive prices and
facilitation of transactions relating to sale of coffee;

“net warrant weight” means the net weight of coffee at the point of sale
per lot after allowing for all required samples;

“no bid” means a lot that has not attracted any bids at the auction;

“offer sample” means a 250 gram of the representative sample of any
coffee lot presented to a trader or a roaster prior to the auction for
quality analysis;

“out-turn number” means a reference number assigned by a coffee
miller to a coffee consignment delivered to a mill;
“out-turn statement” means a statement prepared by a miller upon sale of coffee;

"prompt date" means a date specified in the sales catalogue and shall not be more than seven calendar days from the date of the sale on which coffee sales proceeds are to be received by the grower through and from the trader through the clearing house;

“service provider” means a person who may have contractual dealings with the growers and shall include cooperative societies, millers, warehousemen, transporters and financiers;

“settlement account” means an account held by or on behalf of a grower in the direct settlement system into which the coffee sales proceeds are paid;

“reference sample” means a 250 grams of the representative sample for every lot of coffee sold at the Exchange and archived by the Exchange for a period of at least six months from the date of sale, for verification in case of a dispute;

“representative sample” means a sample not exceeding nine kilograms or as may be determined by the Exchange delivered by a miller to the Exchange sample room which represents a lot of coffee being offered at the auction;

“reserve price” means the price set as the minimum price before the auction by a miller in consultation with the grower;

“sample deposit fee” means an amount of money payable in advance to the Exchange, by traders or roasters as security for collecting offer samples at the Exchange, this being such an amount as may be determined by the Exchange from time to time;

“sample fee” means the price payable to the Exchange by a trader or a roaster for the offer sample collected at the sample room, based on the average price of coffee traded at the Exchange in the month that the sample was collected;

“sample room” means the physical space provided by the Exchange for reception, display and distribution of coffee samples;

“sweepings” means –
(a) the balance of coffee samples in the sample room not distributed as samples to the traders or roasters; and
(b) spillages collected from millers’ milling activities, which shall be handed over to the miller and shall share the proceeds to growers on pro-rata basis;

"sales catalogue" means a standard document prescribed by the Exchange and prepared by a miller for sale of clean coffee at the Exchange as set out in the Coffee General Regulations;

“sale” means the offering of clean coffee for sale but does not include sale of cherry, buni or parchment coffee;

“trading floor” means the physical and electronic space and all the facilities including items, equipment, records and assets provided by or belonging to or in use by the Exchange for purposes of coffee auction;

“warehouse” means any building, structure or other protected enclosure duly licensed by the relevant authority to be used for the storage or conditioning of coffee for the purposes of trading at the Exchange and is specifically designed to guarantee quantity, quality and safety of the coffee;

“warehouse inspector” means a person empowered by the relevant authority to inspect warehouses and coffee kept therein to ensure that the warehouse operator complies with the law and the conditions of the operator’s licence;

“warehouseman” means a person duly licensed by the Agriculture and Food Authority to engage in the business of operating a warehouse for receiving, storing, shipping or handling coffee for the purposes of trading at the Exchange; and

“warehouse receipt” means a receipt issued by a licensed warehouseman in respect of coffee stored or handled in a licensed warehouse for the purposes of trading at the Exchange, certifying that the specified coffee is of the stated quantity and quality and is located at the specified location, and includes an electronic warehouse receipt.

Object and purpose.

3. The purpose of these Rules is to give directives, principles and conditions for trading of clean coffee at the Exchange and to ensure the trading is conducted in a secure, stable and transparent manner in an environment of fair competition.

PART II - THE NAIROBI COFFEE EXCHANGE

4. (1) There is established an exchange to be known as the Nairobi Coffee Exchange.
(2) The Exchange shall be a body corporate with perpetual succession and a common seal and shall be capable in its corporate name of –
   (a) suing and being sued;
   (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of both movable and immovable property;
   (c) borrowing and lending money;
   (d) entering into contracts; and
   (e) doing or performing all such other things or acts necessary for the proper performance of its functions under these Rules which may lawfully be done by a body corporate.

(3) The Exchange shall have its head office in Nairobi or in such other location in Kenya as may be determined by the Board, and may have branches elsewhere, as necessary.

(4) The Exchange shall be licensed by the Capital Markets Authority in accordance with the provisions of the Capital Markets Act.

Notwithstanding the provisions of Rule 4 (herein above, the operations of the Exchange will be guided by these Rules

5. (1) The Exchange shall be managed by a Board of Directors comprising of—
   (a) a chairman appointed by the members of the Board in the first Board meeting which shall be chaired by an official from the Agriculture and Food Authority;
   (b) the Principal Secretaries of the Ministries for the time being responsible for—
       (i) agriculture;
       (ii) finance; and
       (iii) co-operatives;
   (c) persons nominated by the respective associations representing—
       (i) two coffee growers;
       (ii) one coffee miller;
       (iii) one coffee roaster; and
       (iv) one coffee trader;
(d) one person nominated by the Council of County Governors.

(2) The members under rule 1(c) and 1 (d) shall be appointed by the Cabinet Secretary responsible for matters related to agriculture.

(3) All members must meet the requirements of Chapter Six of the Constitution.

(4) The Cabinet Secretary shall, in making appointments under rule (1) (c), have regard to the principle of gender parity, age, regional and ethnic balance.

(5) A person shall qualify for appointment to the Board of Directors if that person meets the relevant requirements set out in the First Schedule.

(6) The term of all members appointed pursuant to sub-rule (1) (c) and (1) (d) shall be three years, and they shall be eligible for re-appointment for one more term.

6. (1) There shall be a Chief Executive Officer who shall be appointed by the Board and whose terms and conditions of service shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time upon the advice of the Salaries and Remuneration Commission.

(2) No person shall be appointed under this Rule unless such person has—

   (a) a university degree from a recognized university in a relevant discipline; and

   (b) at least five years' post qualification working experience.

(3) The Chief Executive Officer shall—

   (a) be the secretary to the Board; and

   (b) subject to the directions of the Board be responsible for the day to day management of the affairs and staff of the Board.

7. The Board may appoint such officers and other staff as are necessary for the proper discharge of its functions under these Rules, upon such terms and conditions of service as it may determine upon the advice of the Salaries and Remuneration Commission.

8. The Board may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of
any of the functions or duties of the Board under these Rules or under any other written law.

9. (1) No act or omission by any member of the Board or by any officer, employee, agent or servant of the Board shall, if the act or omission was done bona-fide for the purposes of executing a function, power or duty under the Rules render such member, officer, employee, agent or servant personally liable to any, action, claim or demand whatsoever.

(2) The provisions of sub-rule (1) shall not relieve the Board of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power conferred by these Rules or by failure, whether wholly or partially, of any works.

10. The Board shall, upon the advice of the body responsible for matters relating to remuneration, pay its members such allowances as may be determined.

11. A person shall cease to be a member of the Board, if that person—
(a) resigns from office by notice in writing to the chairperson of the Board;
(b) is absent from three consecutive meetings without the permission of the Board;
(c) is incapacitated by physical or mental illness;
(d) ceases to represent the interest in respect of which the person was nominated;
(e) is otherwise unable or unfit to discharge the functions the office;
(f) ceases to be a director, an employee or a duly nominated official of the company or society that nominated the person;
(g) commits an offence under any written law;
(h) is convicted of an offence punishable by imprisonment for at least six months;
(i) conducts himself or herself in a manner deemed by the Cabinet Secretary to be inconsistent with the business of the Board;
(j) is adjudged bankrupt or if the nominating association is placed under receivership;
(k) fails to declare an interest in a contract that may be in conflict with the interest of the Exchange; or
(l) dies.

12. (1) The conduct and regulation of the business and affairs of the Board shall be as set out in the Second Schedule under these Rules.
(2) Notwithstanding the provisions in the Schedule the Board may regulate its own procedure.

(3) The Board may co-opt any person to attend any of its meetings but that person shall not vote at such meeting.

Notification of vacancy.

13. The Board shall notify the Cabinet Secretary for the time being responsible for matters related to finance in writing of any vacancy occurring in the Board and the Cabinet Secretary shall require the respective nominating entity to nominate a replacement to serve for the remaining term.

Functions the Board.

14. (1) The functions of the Board shall be—

(a) in consultation with the Cabinet Secretary responsible for matters related to finance, formulate policies to govern trading at the Exchange;

(b) advise the national and county governments on trading in the Exchange;

(c) establish an auction system under which coffee is offered for sale and provide a platform for the trading of coffee;

(d) establish, promote, develop, support and carry on the business of a coffee exchange;

(e) carryout trading in coffee in Nairobi and other centres existing or to be established in Kenya;

(f) provide the procedure for registration of licensed persons as members of the Exchange, the nomination and appointment of authorized representatives and give guidelines for the day to day operations of the Exchange;

(g) determine such levies and fees payable at the Exchange;

(h) monitor and evaluate the performance of the Exchange;

(i) establish a mechanism for alternative dispute resolution for disputes arising from the trading of coffee at the Exchange;

(j) conduct market research and development for the better performance of the Exchange;

(k) monitor and enforce compliance with these Rules including the terms and conditions of transactions on the sale of coffee and any limitations on access to the Exchange;
(l) monitor trade to prevent manipulation, price distortion, disruptions of the delivery processes and any malpractices;

(m) provide a competitive, open, and efficient trading platform and mechanism for effectively carrying out transactions at the Exchange;

(n) ensure recording and safe storage of all identifying trade information in a manner that will prevent trade abuses and provide evidence of any violations of these Rules;

(o) ensure conflicts of interest in the decision making process of the Exchange are minimized;

(p) in consultation with the Authority, where necessary and appropriate—
   (i) suspend or curtail trading for any participant or sale transaction;
   (ii) liquidate or transfer outstanding obligations in any transaction; or
   (iii) require trading participants in any transaction to meet certain special deposit requirements; and

(q) resolve disputes referred to it by the committees.

Powers of the Board. 15. (1) The Board shall have all powers necessary for the proper performance of its functions under these Rules.

(2) Without prejudice to the generality of the sub-rule (1), the Board shall have power to—
   (a) control, supervise and administer the assets of the Exchange in such manner as best promotes the purpose for which the Exchange is established;

   (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;

   (c) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;

   (d) open such banking accounts for the funds as the Board may deem necessary;
(e) invest any funds of the Board not immediately required for its purposes;

(f) establish such committees, secretariats and regional centres of the Exchange to deal with such specific matters as may be necessary;

(g) undertake any activity necessary for the fulfilment of any of the functions of the Board.

16. (1) The Chief Executive Officer shall be—

(a) responsible to the Board for the day-to-day management of the affairs of the Exchange;

(b) responsible for managing the operations of the sample room;

(c) the accounting officer;

(d) the head of the secretariat;

(e) the custodian of all records of the Board;

(f) the Secretary to the Board;

(g) responsible for the security, storage, dissemination and archiving of data generated by the Exchange; and

(h) submit to the Board weekly report or at such intervals as the Board may determine from time to time.

17. The Chief Executive Officer of the Exchange shall notify the Board in writing of any vacancies in the Exchange and the Board shall appoint a replacement to serve the remaining term.

18. In the exercise of its powers and performance of its functions, the Chief Executive Officer and the Exchange shall act in accordance with any general or special directions as may be given by the Board.

19. (1) The Board may constitute Committees to handle—

(a) Marketing and Logistics;

(b) Standards and Compliance;

(c) Finance and Human Resource;

(d) Information, Communication and Technology;
(e) Dispute Resolution; and

(f) Audit and Risk management.

20. Ownership of the Exchange is vested in the Board in trust for the Coffee Industry.

21. (1) The Exchange shall be financed from—

(a) auction levies;

(b) registration fees payable by members of the Exchange who shall comprise the coffee millers, traders, and roasters, and any other person licensed to operate at the Exchange;

(c) sample fees;

(d) interest earned from sample deposit fees;

(e) grants, gifts, donations, loans or other endowments given to the Exchange;

(f) such funds as may vest in or accrue to the Exchange in the course of the exercise of its powers or the performance of it functions under this Act; and

(g) monies from any other lawful source accruing to the Exchange.

(2) Provided that the amount chargeable as levies or fees shall be set by the Board with the approval of the Cabinet Secretary for the time being in charge of finance.

Coffee Sampling

22. (1) The Exchange shall maintain a central sample room where samples of coffees to be offered for sale shall be held for distribution to traders and roasters, and for display and archiving.

(2) The Exchange may maintain an on-line portal in which information on coffee samples, quality and quantity of coffee on offer at the Exchange will be accessible to intending buyers and interested persons.

23. (1) Every trader and roaster operating at the Exchange shall be required to deposit such amount of money as determined by the Board from time to time as security for collecting offer samples at the Exchange.

(2) The Exchange shall operate a coffee sample deposit account in a bank to be determined by the Board in which all the sample deposits paid by traders and roasters shall be deposited.
(3) Interest earned or accruing from such deposits shall form part of the earnings of the Exchange and provided further, that the only permitted drawings from this account shall be—

(a) sample fees netted off against samples collected by traders and roasters;

(b) refunds to traders and roasters ceasing to trade; and

(c) such interest earned or accruing from the sample deposit account.

(4) Traders and roasters who fail to top up for deducted sample fees from the sample deposit shall be suspended from further collection of samples until such top ups are made.

(5) Any refunds under sub-rule (3) (b) shall be made without interest and net of any indebtedness by the trader or roaster to the Exchange.

(6) No interest shall accrue to the benefit of the traders or roasters in respect of the sample deposit.

Offer sample.

24. An offer sample of 250 grams per lot of coffee presented for sale at the Exchange or such other amount as may be determined from time to time by the Board shall be availed by the Exchange to licensed traders and roasters prior to the auction.

Sample fee.

25. Every trader or roaster shall within fourteen (14) days of receipt of an invoice from the Exchange pay a sample fee in respect of all the selling samples collected.

Recovery of sample fee.

26. A trader or roaster shall be given a fourteen (14) days’ notice to pay the outstanding sample fee and in default thereof, the fees shall be recovered from the sample deposit provided that all traders and roasters shall maintain a minimum sample deposit balance of an amount to be determined by the Board.

Deduction and remission of sample fee.

27. (1) The Exchange shall deduct the sample fee invoiced from the forfeited sample deposit.

(2) Sample fees collected shall be remitted to the Exchange and shall form part of the revenues of the Exchange

Representative samples.

28. (1) Millers shall deliver to the sample room, representative samples of nine (9) kilograms per lot of coffee being offered for sale at the Exchange, or such other quantity as may be determined from time to time by the Board.
(2) The samples delivered by the millers to the Sample Room shall be in accordance with the prevailing procedures as determined by the Board from time to time.

Reference sample.

29. A sample of 250 grams referred to as “reference sample” shall be drawn from the representative sample from each lot and retained by the Exchange for archival storage, for at least six (6) months from the date of the sale for verification in case of a dispute.

Buying sample.

30. A sample of 750 grams referred to as “buying sample” shall be drawn from the representative sample from each lot of coffee purchased at the auction to be availed to the trader or roaster who has purchased the lot for verification.

Display sample.

31. A display sample of 250 grams shall be drawn for display in the sample Room.

Sample records.

32. The Chief Executive Officer shall maintain records relating to—

(a) receipt of coffee samples from the millers;

(b) distribution of coffee samples to traders, roasters and the Exchange; and

(c) release of sweepings to the millers or other agent of the growers on a lot prorated basis for sale.

Sale of sweepings to benefit growers.

33. Proceeds of sale for sweepings shall be remitted to growers by millers on a prorated basis and shall have unique codes.

Submission of sample returns.

34. (1) The miller shall submit returns to the Exchange and the Coffee Directorate on remission of monies received from samples and sweepings to the growers.

(2) The Exchange shall make weekly, monthly, biannual and annual auction returns to the Coffee Directorate.

(3) The Exchange shall prepare monthly reports on the performance of the Exchange and forward the same to the Coffee Directorate, traders, roasters and millers and other interested parties.

Resolution of disputes.

35. (1) In the event of a dispute arising out of coffee traded at the Exchange, and at the request of a complainant made to the Exchange, a random representative sample of 250 grams shall be redrawn from the lot or consignment in dispute for comparison with the reference sample.

(2) The instructions to draw each sample shall be lodged at the Exchange which shall in turn instruct the licensed warehouseman to allow
redrawing of samples by the aggrieved party and any interested party may witness the exercise.

(3) In the event of a marked difference between the reference sample and the redrawn sample, additional samples of 250 grams per bag shall be drawn from each bag in the lot and such individual sample together with the bag from which it has been drawn shall be referenced accordingly.

(4) In the event that the dispute is unresolved, it shall be referred to the relevant committee of the Board.

Trading at the Auction floor

36. (1) Only licensed persons under the Coffee General Regulations and other laws shall participate on the trading floor.

(2) The participants on the trading floor shall be required to pay to the Exchange the applicable auction levy.

37. The Exchange in consultation with millers shall set the volumes, dates and times for holding of coffee auctions, provided that no suspension or cancellation of any auction shall be done without the concurrence of the Board.

38. (1) A sales catalogue shall be prepared by the millers in accordance with the Coffee General Regulations.

(2) The Exchange shall determine the order of the sales catalogues for every sale and ensure that reasonable access to the auction is given to all persons licensed to trade under the Coffee General Regulations.

(3) A draft of the sales catalogue of each miller shall be made available to traders and roasters in accordance with the prevailing procedures as determined by the Exchange from time to time.

(4) The final sales catalogue shall be made available to the Exchange by the miller in accordance with the prevailing procedures as determined by the Exchange from time to time.

39. The miller shall disclose to the Exchange details of all bulked coffees and justify its basis.

40. (1) Trading at the auction shall be in US Dollars or any other currency as may be determined by the Board with the approval of the Authority.

(2) The process of trading at the Exchange shall be in accordance with these Rules and shall comprise the following—
(a) a miller shall deposit clean and graded coffee at a designated licensed warehouse, and where the clean coffee is a bulk, the respective coffee growers and the proportions of their coffee will be stated in writing;

(b) coffee shall meet defined quality standards for commodity trading at the Exchange;

(c) the warehouseman shall issue a coffee warrant as set out in the Third Schedule or transferable warehouse receipts as the case may be, stating the quantity and quality of the coffee deposited and ensure traceability of the coffee;

(d) the warehouseman shall guarantee delivery of the coffee described in the coffee warrant or warehouse receipt as the case may be, and in the event of loss or failure of delivery, the warehouseman shall be liable;

(e) a coffee warrant or warehouse receipt as the case may be, issued shall be transferred to a new holder who is entitled to take delivery of the coffee upon presentation of the coffee warrant or warehouse receipt at the warehouse;

(f) when the owner of coffee deposited in a warehouse decides to trade and is acting through an agent, the owner shall contact the miller or other agent and give authority to sell;

(g) for purposes of sale, the miller shall input the details of the coffee warrant or warehouse receipt as the case may be, into the central registry of the Exchange;

(h) the collateral manager, where applicable, shall confirm that the warehouse receipt as the case may be, is valid by inspecting and auditing underlying commodities in warehouse;

(i) upon verification, details in the central registry shall be confirmed into the central order book ready for trading;
(j) once auction is complete, successful bidders shall be invoiced by the miller and payments of the proceeds shall be effected through direct settlement system net of contract and any statutory charges;

(k) upon confirmation of payment by the direct settlement system and endorsement by the Exchange, title to coffee shall be transferred to the buyer by changing ownership details in the coffee warrant or warehouse receipt, as the case may be, at the central registry; and

(l) new owners will thereafter be at liberty to take delivery of the coffee.

(3) The grower or the grower’s agent shall set the reserve price for each lot in the sales catalogue.

(4) The Exchange shall not disclose the reserve price to a trader, roaster or any other party whatsoever provided such reserve prices shall be disclosed to the Board when requested.

(5) In the event that the highest bid for any lot is equal to or higher than the reserve price it shall be “confirmed”.

(6) Where the bid has not been confirmed, the miller or other agent of the grower shall disclose the reserve price at the trading floor.

(7) Where the disclosure of the reserve price does not attract any offers, the coffee shall be withdrawn and re-offered for sale at a subsequent auction.

(8) A “No-Bid” lot shall be re-offered for sale at a subsequent auction.

(9) All trading in coffee shall be concluded at the trading floor.

Withdrawal of a lot.

41. (1) A miller may, by written communication to the Exchange, made at least three (3) working days prior to the date of sale, withdraw a lot that was destined for sale and such written communication shall also state the reasons for withdrawal.

(2) The Chief Executive Officer shall communicate the withdrawal in writing to all traders and roasters at least two (2) working days prior to the date of sale.

(3) Samples of lots withdrawn shall not be compensated.
Prompt date.

(1) The prompt date shall be specified on the sales catalogue and shall be not more than five (5) working days following the date of the sale.

(2) All coffees shall be paid for within the prompt date against an invoice presented by the miller.

PART III - SETTLEMENT OF SALES PROCEEDS

(1) A direct settlement system shall be established in a licensed commercial bank or other financial institution competitively selected by the Exchange subject to approval from the Authority and managed by the Exchange.

(2) The requirements for the operation of the direct settlement system shall be as set out in the Fourth Schedule.

(3) The proceeds of the sale of coffee at the auction shall be remitted by a coffee trader or roaster through a direct settlement system for onward settlement to the service providers and net payment to the grower.

(4) A coffee grower or the grower’s authorized representatives, shall after the commencement of these Rules, supply all the necessary particulars of the grower to the appointed commercial bank providing the direct settlement system to the grower, for purposes of initiating the settlement system.

(5) The grower or the grower’s authorized representatives shall also lodge with the commercial bank providing the direct settlement system, any relevant contracts of service for which payment will be due from the grower, and any other document showing outstanding liabilities payable by the grower, for purposes of settlement through the system.

(6) The particulars supplied shall take the format prescribed in the Coffee General Regulations.

(7) The grower or the grower’s authorized representatives shall ensure that the information provided under sub rules (3) and (4) is correct and relevant and they shall be liable for any loss or other consequences resulting from any incorrect information given to the commercial bank providing the settlement system.

(8) The coffee millers shall generate invoices for coffee sold at the Exchange and send a copy to the trader or roaster and the Exchange shall send the transaction file to the direct settlement system to validate the information supplied by the miller.
(9) The commercial bank operating the direct settlement system and the Exchange shall maintain records of all trade transactions.

(10) The commercial bank in which the direct settlement system is housed shall make the operations of the direct settlement system electronically accessible to interested parties or their authorized representatives.

(11) The commercial bank operating the direct settlement system shall prepare monthly and annual reports on its operations for submission to the Exchange and the Exchange shall make the reports accessible to interested parties.

(12) For purposes of payment by the direct settlement system, a service provider shall supply authenticated documents in support of any claim not later than three months of that service provided that such claims are supported with prior agreements between the growers and such service providers.

(13) The commercial bank operating the direct settlement system shall be responsible for provision of clearing, delivery and settlement services of proceeds from coffee traded at the Exchange.

(14) The details of the operations of the direct settlement system shall be in the guidelines formulated by the Board.

(15) The direct settlement system shall be responsible for −

(a) settling trading accounts;

(b) collecting and maintaining margin monies;

(d) reporting trading data;

(e) maintaining a database for trading activities;

(f) receiving millers’ invoices for processing; and

(g) authenticating the millers’ invoices against the transaction file.

44. (1) Any bank charges incurred by the trader or roaster upon making payment shall be settled by the trader or roaster, whilst those incurred by the miller upon receipt of funds shall be deducted directly by the clearing house into which the sale proceeds have been paid.

(2) A trader or roaster who will not have settled his payments in full by the prompt date shall be considered a defaulter.
(3) In the event of default by a trader or roaster to pay by the prompt date, the bank shall immediately issue a notification of the outstanding payments and the interest rates chargeable to the defaulter with a copy to the miller and the Exchange and the trader or roaster shall be automatically suspended from participating on the trading floor until the trader or roaster pays the outstanding amounts in full and the interest.

(4) The interest on the outstanding payments shall accrue effective from the day following the prompt date at the prevailing commercial bank lending rate at the settlement bank in US Dollars.

(5) If the defaulter does not pay the outstanding amounts together with interest thereon within five working days from the prompt date, the defaulter shall be liable to pay a penalty and the coffee shall be re-offered for sale at a subsequent auction.

(6) In the event that after reselling the coffee, any shortfall in value from the original bid occurs, the miller shall notify the Authority and the Exchange of the shortfall, all accrued interest and any other related expenses and losses for the purpose of recovery of the entire amounts from the defaulter or from the performance bond of the defaulter.

(7) A trader, roaster or miller who fails to pay any outstanding obligations to the Exchange or to a grower shall be suspended by the Exchange in consultation with the Board with notice to the Authority.

(8) The Exchange shall lift a suspension upon settlement of outstanding obligations.

(9) The Exchange shall report any trader or roaster who has defaulted more than twice within a period of six months, to the Authority for suspension or cancelation of the license.

45. (1) Where a dispute arises in regard to coffee quality, a claim may be brought within sixty days of sale.

(2) The claim shall be based on samples drawn and sealed by a licensed warehouse in the original storage location.

(3) In the event of a quality difference between the offer and buying samples, and the actual coffee lot, the trader or roaster shall make an immediate claim to the miller within three working days and reference may be made to the reference samples.
(4) Where the actual coffee lot does not conform to the buying sample, the parties may, by mutual consent, negotiate a settlement which may include compensation for opportunity cost of funds involved payable by the person who is responsible for the coffee quality difference.

(5) The parties shall be at liberty by mutual consent to agree to a settlement that may also include sorting, bulking, price adjustment or full refund.

(6) Incorrect information on the packaging material used for a specific lot shall give the right to a trader or roaster to charge the miller for all the costs of re-bagging.

(7) In the event that the dispute remains unresolved, it shall be referred to the relevant committee of the Exchange.

(8) In the event that an aggrieved party is dissatisfied with the decision of the said committee, the party shall refer the matter to the Board for resolution, failing which the Exchange shall put in motion the arbitration process.

Disputes relating to coffee weight loss.

46. (1) A licensed warehouseman shall be responsible for any weight loss which shall be the difference between the weight indicated in the coffee warrant or the warehouse receipt as the case may be, and the weight indicated in the weight note provided to the trader or roaster at the time of release of coffee.

(2) The weight loss claim will be limited to a period of thirty days from the date of sale and shall be presented by the trader or roaster to a licensed warehouseman except when such a claim on weight loss is within the acceptable tolerance levels as determined by the Exchange from time to time.

(3) Failing amicable settlement, any dispute shall be referred to the relevant committee of the Exchange.

(4) In the event that an aggrieved party is dissatisfied with the decision of the said committee, the party shall refer the matter to the Board for resolution, failing which the Exchange shall put in motion the arbitration process.

PART IV - GENERAL PROVISIONS

47. Prior to payment of the purchase price by the trader, the property in the coffee shall remain in the grower and it shall be upon the warehouseman to ensure that the coffee is insured at all times prior to receipt of payment and release of the coffee.
Fiscal year.

48. The fiscal year of the Exchange shall run from 1st October of one year to the 30th September of the following year, and all dues, budgets and other fiscal matters shall be operated and managed upon that basis.

Accounts and Audit.

49. (1) The Exchange shall cause proper books of accounts to be kept with respect to—
   (a) all sums received and expended by the Exchange and matters in respect to which the receipt and expenditure took place;
   (b) all sales and purchase of goods by the Exchange; and
   (c) the assets and liabilities of the Exchange.

   (2) The Exchange shall with the approval of the Board open and operate all the necessary bank accounts in the name of the Nairobi Coffee Exchange, as determined from time to time.

   (3) All funds of the Exchange shall be used solely for purposes of running the operations of the Exchange as determined by the Exchange in consultation with the Board.

   (4) Officers authorized by the Board shall be signatories to the Exchange account(s).

   (5) A full financial audit of the operations of the Exchange shall be conducted on an annual basis by an independent auditing firm recommended by the Board and in consultation with the Board not later than four months after the end of every fiscal year.

   (6) The result of such audit shall be made available to the Board and the Exchange promptly, but not later than one month after the audit.

Appeal.

50. (1) Any person aggrieved by an act or omission of the Exchange may within thirty days after being notified of such act, omission or decision, appeal to the ministry responsible for matters relating to agriculture.

   (2) Notwithstanding sub-rule (1) any disputes not resolved by the ministry shall be referred to the Authority for alternative dispute resolution with judicial recourse as the final resort.

Dealing in and movement of coffee.

51. Any person contracted to produce and market specialty coffee shall give access to persons authorized by the Agriculture and Food Authority to inspect the farms, processing facilities, warehouses and vessels transporting coffee and shall, when required to do so, produce
for the purpose of inspection, any document or information related to production, processing and export of the coffee.

**Declaration of stocks.**

52. (1) All licensed traders, roasters and millers shall be required to declare held stocks to the Exchange to facilitate scheduling of coffee auctions.

(2) Coffee offered and sold at the Exchange shall not be re-offered at the Exchange.

**Misrepresentation of blended coffee.**

53. No person shall blend any or various grades or classes of coffee produced in Kenya with any other coffees produced outside Kenya and any coffee so blended shall not be represented by any person to have Kenya as its origin.

**Certificate of purchase.**

54. (1) The Exchange shall, after every sale of coffee, issue to the purchaser a certificate of purchase in such form, and containing such details of the coffee purchased, as the Authority may prescribe.

(2) No person shall alter any certificate or other document issued or prepared for the purposes of these Rules.

(3) A licensed trader or other person exporting any coffee shall, within fourteen days of the export of that coffee, submit to the Exchange a copy of the relevant certificate of origin or certificate of re-export, as the case may be, stamped by the Commissioner of Customs and Excise, together with a non-negotiable bill of lading relating to the coffee.

**Exemptions**

55. Nothing in these Rules shall apply to the export or dispatch of any coffee when the coffee concerned—

(a) consists only of a sample or a parcel not exceeding twenty kilograms in weight; or

(b) is fully ground or processed coffee for consumption on ships, aeroplanes or other international carriers.

**Revocation of L.N. 111/2012.**

56. The (Nairobi) Coffee (Exchange Trading) Rules, 2012 are revoked.

**Transitional provisions.**

57. (1) The Nairobi Coffee Exchange Management Committee existing before the coming into operation of these Rules shall continue its operations until the formation of Board of the Exchange after the coming into operation of these Rules.

(2) Persons licensed to trade at the Exchange shall continue trading until they are licensed under the Coffee General Regulations 2018.
FIRST SCHEDULE

QUALIFICATION OF NOMINEES  \((r5(5))\)

1. A Growers’ Representative shall be qualified for appointment to the Exchange Committee if—

(1) The Nominating Co-operatives Society has—

(a) a valid Pulping Station License;
(b) continuously sold at least 90,000 kilogramss of clean coffee (1,500 bags of 60kgs) at the Exchange per crop (coffee) year for the immediately preceding 3 years;
(c) current Audited Books of Accounts; and
(d) not been licensed for commercial milling.

(1) The representative has-

(a) a minimum of Post-Secondary Education from a recognized institution;
(b) been duly appointed by the society’s management committee, provided that the official has a minimum average production of two thousand kilograms of cherry, per crop (coffee) year for the immediately preceding three years;
(c) a Certificate of Good Conduct from the Directorate of Criminal Investigation and the Ethics and Anti-Corruption Commission;
(d) a Certificate of Compliance from Kenya Revenue Authority (KRA); and
(e) unquestionable integrity.

(3) The Nominating Coffee Estate—

(a) is a small or medium grower with twenty hectares or less under coffee with an average production of seven hundred and fifty kilograms per hectare of clean coffee, per crop (coffee) year and has sold the same through the Exchange for the immediately preceding three years.

(b) is a large grower with above twenty hectares under coffee with an average production of one thousand kilograms per hectare of clean coffee, per crop (coffee) year and has sold the same through the Exchange for the immediately preceding three years.
(c) is not related to a director or a shareholder or associated with a company conducting the business of a trader, commercial miller or licensed Warehouseman.

(4) The representative—

(a) has a minimum of Post-Secondary Education from a recognized institution;

(b) is the owner, partner or director;

(c) has a Certificate of Good Conduct from the Directorate of Criminal Investigation and the Ethics and Anti-Corruption Commission;

(d) has a Certificate of Compliance from Kenya Revenue Authority (KRA);

(e) is of unquestionable integrity.

1. A Trader’s Representative is qualified for appointment to the Exchange Committee if—

(1) The Nominating Company:

(a) is a small/medium trader which has purchased between 0.1 and 2% of the total coffee sold at the Exchange, per crop (coffee) year, for the immediately preceding 3 years;

(b) is a large trader which has purchased more than 2% of the total coffee sold at the Exchange, per crop (coffee) year, for the immediately preceding 3 years;

(c) is not related to a director or a shareholder or associated with a company conducting the business of a Grower, Commercial Marketing Agent, and Commercial Miller or licensed Warehouseman.

(2) The representative—

(a) has a minimum of a Diploma Certificate from a recognized institution;

(b) is a director or an employee of a trader;

(c) has a Certificate of Good Conduct from the Directorate of Criminal Investigation and the Ethics and Anti-Corruption Commission;

(d) has a Certificate of Compliance from Kenya Revenue Authority (KRA);

(e) is of unquestionable integrity.

3. A Miller or a Licensed Warehouseman is qualified for appointment to the Exchange Committee if:

(1) The Nominating Company—
(a) has handled at least 5% of the total volumes sold at the Exchange, per crop (coffee) year for the immediately preceding 3 years, directly or indirectly.

(b) is not related to a director or a shareholder or associated with a company conducting the business of a Grower or trader

(2) The representative—

(a) has a minimum of a Diploma Certificate from a recognized institution;

(b) is a director or an employee of a represented Commercial Miller/ licensed Warehouseman;

(c) has a Certificate of Good Conduct from the Directorate of Criminal Investigation and the Ethics and Anti-Corruption Commission;

(d) has a Certificate of Compliance from Kenya Revenue Authority (KRA);

(e) is of unquestionable integrity.

SECOND SCHEDULE  (r12(1))

CONDUCT OF MEETINGS AND AFFAIRS OF THE BOARD

1. The Chairman shall convene and chair all meetings of the Board apart from meeting of the Board which shall be chaired by an official from the Agriculture and Food Authority for purposes of appointment of the Chairman.

2. In the absence of the Chairman from any meeting, the members will nominate an acting chair to preside over the meeting.

3. The quorum for conduct of the business of the Board shall be two-thirds of the members;

4. The chairman of a meeting shall have a deliberative vote, and, in case of equality of votes, also a casting vote.

5. The Board shall meet at least once in every three months.

6. The chairman may, in his discretion, at any time convene a special meeting of the Board and shall upon receipt of a written request signed by not less than three members of the Board, convene a special meeting of the Board within two weeks after such request.
7. If the chairman declines to convene a special meeting of the Board, within a period of two weeks, upon written and signed request of any three members of the Board, the three members may convene such meeting within a period of one week.

8. The minutes of each meeting shall be kept by the Secretary and shall be confirmed by the Exchange Committee and signed by the Chairman or the person presiding at the next succeeding meeting.

9. A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

10. A disclosure of interest made under paragraph 9 shall be recorded in the minutes of the meeting at which it is made.

11. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

THIRD SCHEDULE

COFFEE WARRANT (r.40(2)(c))

NAME OF WAREHOUSEMAN

Entered by …………………………… on the account of the lot of coffee DULY Deliverable to………… or assigns by endorsement hereon.

<table>
<thead>
<tr>
<th>Coffee season and outturn no.</th>
<th>Mark and code</th>
<th>Grade</th>
<th>Number of bags</th>
<th>Nett weight of pockets (kgs)</th>
<th>Total nett weight (kgs)</th>
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</table>

This Coffee is lying at …………………………… warehouse awaiting instruction and collection.
This warrant is valid only if signed by any two of category A or any one of category A and one of category B signing jointly

Category A                                           Category B
Chief Finance Officer                                Finance Manager
Head of supply Chain Secretary                      Legal Manager-Regional Co
Head of Middle Office                                 Sea Exports Manager

NAME OF WAREHOUSE………………………….

-SIGNATURES-

Rent Commences: .......................................................... ..........................................................

Rates:

Warehouse handling: .........................

Storage:.................................

Warrant fee: ..............................

CONDITIONS

1. A warrant is issued in respect of each consignment.

2. All deficiencies or losses on or damage to goods must whenever possible be notified in writing to…………………………………………… (“the Company”) prior to removal of the goods from the Company premises so as to afford an opportunity for checking by the Company, and in all cases where such notification is not possible, such deficiencies, losses or damage must be notified to the Company in writing within two days of the removal from the premises of the Company of the goods concerned if this condition be not complied with, the Company will in no case accept liabilities whatsoever for such deficiencies, losses or damages however caused.

3. Every warrant is transferable by endorsement and entitles the person named herein, or the last endorsee therefore named in the endorsement, to the goods specified therein, and the goods so specified shall for all purposes be deemed to be his property.

4. Upon lodging a warrant duly endorsed, the person there under entitled to the goods may transfer or obtain possession of the goods subject to the payment of all charges.

5. The contents of one warrant may be divided into others for smaller quantities at the will of the person entitled to the goods subject to the payment of all appropriate charges.
6. If a warrant is lost, written notice must at once be given to the Company. In such a case, before delivery of goods can be made, the loss of the warrant must be advertised in the Official Gazette and a copy of such publication containing the advertisement together with a guarantee signed by the applicant and countersigned by a bank approved by the Company to identify the Company against losses, claims, or damages, must be lodge with the Company in no circumstances will duplicate warrants be issued.

7. The Company takes all reasonable measures to protect goods against loss or damage but does not accept liabilities for—

(a) Loss or damage, arising otherwise than through the Company’s negligence
(b) Loss, damage or deficiency cause by or contributed to any of the following causes; Whether such loss, damage or deficiency be also in part caused by or contributed to by a neglect, wrongful act or default of the Company, its servant or agents or other persons for whose acts the Company might apart from this clause be liable:
   1) Vermin;
   2) Frail, unsuitable, insufficient or defective packing;
   3) Strikes, combinations or lock-outs of any person in the employ of the Company or in the service of others;
   4) Improper, insufficient, indistinct or erroneous marking or addressing of goods or packages;
   5) Fire;
   6) Civil commotion;
   7) The President’s enemies;
   8) Earthquake
   9) Loss of weight or damage in consequence of atmospheric conditions of humidity due to heat, damp or drought, or howsoever caused.

8. This warrant, if referring to coffee bulked in the;
   (a) The Company accepts no financial liability under any circumstances for the even mix of the bulk, but undertakes to rebulk free of charge provide that:
      1) The person first entitled under the warrant shall lodge the claim within seven days of receiving the warrant; and
      2) The person first entitled under warrant shall satisfy the Company that rebuilding is necessary or advisable, the Company being prepared to accept the advice of an Arbitrator.
   (b) The Company guarantees that the component coffees of the bulk are exactly those instructed by mark and quantity.
   (c) The Company does not accept liability in respect of any divergence of the bulk from the expected resultant quality by reason of a variation in quality of one or more components of the bulk. The bonus of proof of the use of coffee other than the stipulated components shall rest upon the instructing dealer and in the event of such proof the Company agrees to submit
to the normal quality arbitration under the Arbitration Rules of the Kenya Coffee Traders Association as shall be amended from time to time.

9. This warrant is subject to the condition that the Company shall have a general as well as a particular lien on the goods specified therein in respect of any monies owing to the Company by the person first or subsequently entitled under the warrant.

10. The acceptance of this warrant in the first place and subsequent presentation of this Warrant implies implicit acceptance of the conditions enumerated above.

Deliver to----------------------------------------------------------on payment of all charges

Signed-------------------------------------------------------------Date---------20-------

Deliver to----------------------------------------------------------on payment of all charges

Signed-------------------------------------------------------------Date---------20-------

Deliver to----------------------------------------------------------on payment of all charges

Signed-------------------------------------------------------------Date---------20-------

FOURTH SCHEDULE

PART A —CRITERIA FOR SELECTION OF DIRECT SETTLEMENT SYSTEM PROVIDER

1. Request for expression of interest by the Exchange
2. Licensed commercial Banks and other authorized financial institutions
3. Past experience in the management of centralized processing and settlement system for commodities;
4. Demonstrate the network to reach out to all coffee growing and other areas.
5. Demonstrate an ICT infrastructure for information gathering, processing, dissemination and archiving.
6. Past experience in handling of agricultural commodities; and
7. Demonstrate understanding and willingness to comply with government regulations.
8. Be approved by the Authority
PART B—REQUIREMENTS FOR COMMENCEMENT OF DIRECT SETTLEMENT SYSTEM OPERATIONS

1. The Authority may, on application made to it by the Exchange, approve in writing the commencement of the direct settlement system operations if it is satisfied that the direct settlement system provider has adequate systems and safeguards for the issuance and transference of coffee warrants or Electronic Warehouse Receipts as the case may be and to prevent manipulation of records and transactions and it complies with the requirements specified in these Rules and other relevant law.

2. In considering an application made under Rule 1 above, the Authority shall take into account all matters which are relevant for the efficient and orderly functioning of the direct settlement system and in particular whether the:

1. The mode of operation of the direct settlement system has been approved by the Board of Directors of the Exchange;

2. The systems provider has systems to open and maintain separate accounts in the name of each coffee grower whose coffee is traded;

3. Any changes in Depositors’ account are supported by electronic instructions or any other mode of instructions received from the Clearing House and the designated Warehouses;

4. The direct settlement system has adequate mechanisms for the purposes of reviewing, monitoring and evaluating its internal accounting controls and systems;

5. The direct settlement system provider has a system to reconcile records of every Depositor on a daily basis;

6. Automatic data processing systems of the direct settlement system are protected against unauthorized access, alteration, destruction, disclosure or dissemination of records and data;

7. Network through which electronic means of communications are established between the direct settlement system provider, the Clearing House, licensed Warehouses is secure against unauthorized entry or access;

8. The direct settlement system provider has established standard transmission and encryption formats for electronic communications of data between the direct settlement system, the Clearing House, licensed Warehouses;

9. The direct settlement system provider has established adequate procedures and facilities to ensure that its records are protected against loss or destruction and arrangements have
been made for maintaining back up facilities at a location different from that of the direct settlement system;

10. physical or electronic access to the premises, facilities, automatic data processing systems, data storage sites and facilities including back up sites and access to the electronic data communication network connecting the direct settlement system, the Clearing House, licensed Warehouses is controlled, monitored and recorded;

11. The direct settlement system has an operations manual explaining all aspects of its functioning, including the interface and method of transmission of information between the direct settlement system provider, the Clearing House, licensed Warehouses;

12. The direct settlement system has, either through the Exchange or otherwise, made adequate arrangements including insurance for indemnifying the Depositors for any loss that may be caused to such Depositors by the wrongful act, negligence or default of the direct settlement system provider or any of its employee and agents;

13. The direct settlement system provider has a mechanism in place to ensure that the interest of Depositors are adequately protected and to register the transfer of coffee warrants or Electronic Warehouse Receipts as the case may be, in the name of the transferee only after the system provider is satisfied that payment for such transfer has been made;

14. The direct settlement system provider has adequate mechanisms for the purposes of reviewing, monitoring and evaluating its controls, systems, procedures and safeguards; and

15. The direct settlement system provider has adequate mechanisms to ensure that the integrity of the automatic data processing systems is maintained at all times and all precautions necessary to ensure that the records are not lost, destroyed or tampered with and in the event of loss or destruction, ensure that sufficient back up of records is available at all times at a different place.

3. Records to be maintained by the direct settlement system provider

1. The direct settlement system provider shall maintain the following records and documents—

   (a) records of every coffee warrant or warehouse receipt received, or created and the Delivery Notices issued and any cancellations thereof;

   (b) names of transferors, transferees, and the dates of transfer of the coffee warrant or warehouse receipts as the case may be;

   (c) records of requests received from and sent to the designated warehouses and clearing house; and

   (d) details of the traders or roasters.
2. The direct settlement system provider shall when required to do so, disclose to the Authority the place where the records and documents are maintained.

3. The direct settlement system provider shall preserve records and documents for a minimum period of 10 (ten) years.

4. **External monitoring, review and evaluation of systems and controls and reports to the Authority**

The direct settlement system provider shall cause an inspection of its controls, systems, procedures and safeguards to be carried out annually and forward a copy of the report to the Authority.

5. **Inspection**

1. The Authority may undertake inspection of the books of accounts, records, documents and infrastructure, systems and procedures, or may investigate the affairs of the direct settlement system provider, the Clearing House or Designated Exchange Warehouses, for any of the following purposes—

   (a) to ensure that the books of account are being maintained by the direct settlement system provider in the manner specified in these Rules;

   (b) to look into the complaints received from millers, traders and roasters;

   (c) to ascertain whether the systems, procedures and safeguards being followed by the direct settlement system provider, Clearing House and Designated Warehouses, or their agents are adequate to enable the direct settlement system to carry out its purpose; and

   (d) to ensure that the affairs of the direct settlement system provider are being conducted in a manner which are in the interest of the coffee growers, millers, traders, roasters and the public.

2. The Authority shall give the direct settlement system provider, Clearing House and Designated Warehouses, as the case may be, not less than 10 (ten) days’ notice before ordering or conducting an inspection or investigation.

3. Notwithstanding anything contained in paragraph 2 of this Article, where the Authority is satisfied that in the interest of growers, millers, traders and roasters no such notice should
be given, it may, by an order in writing direct that such inspection be taken up without such notice.

PART C — APPLICATION BY A COMMERCIAL BANK OR OTHER FINANCIAL INSTITUTION FOR SELECTION BY THE EXCHANGE TO PROVIDE CENTRALIZED SETTLEMENT FUNCTIONS FOR COFFEE SALES PROCEEDS

A Bank/financial institution (both hereinafter referred to as a bank) shall submit an application [FORM OF APPLICATION FOR SELECTION] to the Exchange with the approval of the Authority for selection as a direct settlement system provider for payment of coffee proceeds, which must include in the application a showing that it complies with the requirements and conditions set forth by the Exchange and also demonstrate that it will continue to comply with said requirements.

8. Application Procedure for selection as a direct settlement system provider:

The Bank shall make an application for selection to the Exchange for approval by the Authority which must include the following—

(a) the particulars of the applicant’s proposed affiliation with the Exchange;

(b) a representation by the Bank that it will operate in accordance with the definition of a direct settlement system relating to settlement of coffee transactions at the Exchange as set out by the Exchange;

(c) a copy of these Rules;

(d) a demonstration of how the Bank is able to satisfy each of the requirements for a direct settlement system specified under the Rules;

(e) any agreements entered into or to be entered into with the Exchange or otherwise, that will enable the Bank to comply with the requirements specified under Rules. The agreements must identify the services that the Bank will provide as a direct settlement system provider. If a submitted agreement is a draft, the application must include evidence that will demonstrate that such services will be provided as soon as Exchange operations require;

(f) descriptions of system test procedures, tests conducted or test results, that will enable the applicant to comply with the requirements specified in these Rules; and
(g) where the applicant with sufficient particularity identifies information in the application it deems confidential, a request for confidential treatment and with evidence to support such request.

9.

1. Except as provided for under these Rules, the Exchange shall consider the application for recognition as a Bank within 7 (seven) working days of the filing of the application. The Exchange may in consultation with the Authority approve or deny an application or if deemed appropriate, select the applicant Bank subject to conditions to be specified. If the Exchange notifies the applicant Bank the application is incomplete and specifies the deficiencies in the application, the process date will be stayed until the application is resubmitted in a complete form.

2. The Exchange may grant temporary recognition to the Bank on an expedited basis. The temporary recognition under this sub-rule may be subject to conditions and an expiry date as the Exchange may stipulate.

3. An applicant Bank shall apply for permanent selection status when conditions of its selection are met and before the expiry of the temporary selection

10.

If the Exchange denies an application by a Bank, it shall specify the grounds for the denial. In the event of a refusal to select a Bank, any person that has made an application for selection shall be afforded an opportunity for a hearing on the record before the Authority, with the right to appeal an adverse decision after such hearing to the High Court

11.

The Exchange in consultation with the Authority is authorized to suspend for a period not to exceed 30 days or to revoke the selection of a Bank on a showing that:

1. The Bank is not enforcing or has not enforced its operations, standards, procedures and rules made a condition of its selection as a direct settlement system provider.

2. The Bank, or any director, officer, agent, or employee of such Bank, is violating or has violated any of the provisions of these Rules or any of the directives, or orders of the Exchange or the Authority.
12. Opportunity for hearing and right of appeal

1. In the event of a denial of selection or suspension or revocation in accordance with these Rules, any person that has made an application for selection as a direct settlement system provider whose selection has been suspended or revoked shall be afforded an opportunity for a hearing on the record before the Authority, with the right to appeal an adverse decision after such hearing to the High Court.

2. The testimony and evidence taken or submitted before the Exchange or the Authority, duly filed as per these Rules as part of the record, shall be considered by the High Court as evidence in the case.

3. The High Court may affirm or set aside the order of the Authority or may direct it to modify its order. However, no such order of the Authority shall be modified or set aside by the High Court unless it is shown by the applicant Bank that the order of the Authority is unsupported by the weight of the evidence or was issued without the appropriate notice and a reasonable opportunity for a hearing.

13. Withdrawal of application

An application may be withdrawn by filing with the Exchange such a request. Withdrawal of an application for registration shall not affect any action taken or to be taken by the Exchange or the Authority based upon action, activities, or events occurring during the time the application was pending with the Exchange or the Authority.

14. If an applicant Bank or financial institution proposes to make:

(a) any amendment to its constitution which has an impact on its function as a provider of a direct settlement system;

(b) any business rules that have an impact on its function as a direct settlement system provider; or

(c) any amendments to its existing business rules having impact on its function as a direct settlement system provider, the Bank shall, as soon as practicable, give a written notice to the Exchange and the Authority:

2. The notice shall—

   (a) set out the text of the proposed amendment;

   (b) state the date on which the amendment are proposed to be put into force; and

   (c) contain an explanation of the purpose of the proposed amendment.
3. The Exchange shall, within 30 (thirty) days or such longer period as may be agreed between the Exchange and the Bank after the receipt, notify the Bank in writing of its decision on the proposed amendment or the proposed business rules, as the case may be.

4. Where the Exchange does not approve any proposed amendment or business rule, the notice to the Bank shall identify or specify it.

5. In addition to the power conferred upon the Exchange, the Exchange may in consultation with the Authority and by notice in writing to the Bank, amend the Bank’s constitution or any of its business rules relating to the clearing and settlement system for payment of coffee proceeds.

6. A notice by the Exchange to the Bank

   (a) may contain provisions as to the manner in which the amendments made by the Exchange shall take effect; and

   (b) shall state when the amendments shall take effect, specifying a period for the Bank to make a response.

7. A Bank shall comply with a notice given to it under these Rules once the stipulated period expires.

15.

1. Where it is shown that a Bank, any director, officer, agent, or employee of a Bank has failed to comply with, observe, enforce or give effect to these Rules and conditions of its selection, or that the Bank, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of these Rules or any of the orders of the Authority, the Authority may take one or more of the following actions:

   (a) direct the Bank to suspend the business of such Bank as it relates to the Exchange.

   A direction under this Rule shall only be after a written notice, specifying the grounds for the action, served upon the Board or the CEO of the Bank not less than 7 (seven) working days before such proposed action and a hearing on the record;

   (b) require the Bank, any director, officer, agent, or employee of the Bank to act in a particular manner to enforce or comply with, as the case may be, with these Rules or other directives of the Authority;

   (c) reprimand the Bank or individual concerned; and

   (d) require the Bank, director, officer, agent or employee concerned to take such steps as the Authority may direct to remedy or mitigate the effect of such breach.
The Authority shall give the Bank, director, officer, agent or employee thereof, notice of not less than 15 (fifteen) working days, of its intention to take any of the actions under these Rules and the notice shall specify the grounds for the action taken.

**16. Request to terminate Selection**

A recognized Bank may terminate its recognition by filing such a request with the Exchange. Termination of selection shall not affect any action taken or to be taken by the Exchange based upon action, activities, or events occurring during the time the application was pending with the Exchange or the Authority.

**17.** A Bank shall receive from growers or the growers’ authorized representatives all the relevant particulars of the growers and the growers’ service providers, maintain these records and submit the same to the Exchange and the Authority regularly as follows:

1. The Bank shall monthly submit a report to the Exchange and the Authority showing transactions matched and approved for settlement by it; and

2. Each selected Bank which receives funds belonging to growers, shall monthly submit a report showing separately for each grower or service provider, the dates when such funds were received, the identity of the depositor, the dates such funds were debited, withdrawn or disposed of otherwise, together with the facts and circumstances of such debit, withdrawal or disposition, including the authorization thereof.

Made on the …………………………………………………………….,2018.

**HENRY ROTICH,**

*Cabinet Secretary, National Treasury.*