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THE CAPITAL MARKETS ACT

(Cap. 485A)

THE CAPITAL MARKETS (COFFEE EXCHANGE)
REGULATIONS, 2020

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THE CAPITAL MARKETS ACT

(Cap. 485A)

IN EXERCISE of the powers conferred by section 12(1)(ka) of the Capital Markets Act, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE CAPITAL MARKETS (COFFEE EXCHANGE)
REGULATIONS, 2020

PART 1 – PRELIMINARY

1. These Regulations may be cited as the Capital Markets (Coffee Exchange) Regulations, 2020. Citation.
2. In these Regulations, unless the context otherwise requires— Interpretation.

“Act” means the Capital Markets Act;

“auction” means the auction system under which clean coffee is offered for sale at a 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— Cap 485A.

 - (a) the office or facilities of a coffee buyer 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 a coffee exchange, payable by millers, roasters and buyers;

“Authority” means the Capital Markets Authority established under section 5 of the Act;

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

“broker” means a person cleared by the exchange and licensed by the Authority, who may be appointed by a coffee grower or an association of coffee growers in accordance with the Crops (Coffee) (General) Regulations, 2019 to sell their coffee on their behalf through the Exchange.;

“coffee buyer” means an incorporated company licensed under the Crops (Coffee) (General) Regulations, 2019 to buy clean coffee at the exchange for export, local sale or value addition or to import clean coffee for secondary processing in Kenya; L. N. 102/2019

“clean coffee” means coffee bean or dried seed of the coffee plant separated from non-food tissues of the coffee fruit where the silver skin is reduced to the maximum possible extent;

“clearing house” means an entity approved by the Authority, and recognized as a clearing institution on behalf of a coffee exchange, providing the services of clearing and settlement of transactions and guaranteeing settlement on behalf of the exchange;

“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 exchange” means a company incorporated under the Companies Act, 2015 and licensed by the Authority as an exchange for trading in clean coffee; No.17 of 2015.

“coffee miller” means a person licensed under the Crops (Coffee) (General) Regulations, 2019 to conduct the business of coffee milling;

“coffee roaster” means a person licensed by the respective county government to buy clean coffee under the Crops (Coffee) (General) Regulations, 2019 for value addition for local sale;

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

“coffee sample” means a small quantity of coffee, drawn out of a coffee lot to be a representative of that lot of coffee for purposes of display, testing, quality analysis, archiving, marketing or other legal purpose;

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

“collateral manager” means a person qualified under the Crops (Coffee) (General) Regulations, 2019 and appointed by the warehouseman 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;

“commodity” means clean coffee;

“direct settlement system” means a banking facility provided by commercial banks regulated by the Central Bank of Kenya for clearing and settlement of coffee proceeds;

“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 Agriculture Food Authority;

“grower” means any person who cultivates coffee in Kenya and may for purposes of licensing under the Crops (Coffee) (General) Regulations, 2019 and includes co-operative societies, unions, associations and estates;

“grower miller” means a grower licensed under the Crops (Coffee) (General), 2019 Regulations, who mills own parchment or No. 17 of 2015.

buni or its members' coffee and includes a co-operative society, unions, association, estate or any other legal entity comprised of growers;

“lot” means a saleable quantity of coffee specified in the sales catalogue designated 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;

“out-turn number” means a reference number assigned by a coffee miller to a coffee consignment delivered to a mill;

“prompt date” means a date specified in the sales catalogue and shall not be more than five working days from the date of the sale on which coffee sales proceeds are to be received by the grower through and from the buyer through the clearing house;

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

“settlement account” means an account in the direct settlement system into which all coffee sales proceeds sold at the exchange are paid;

“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 an exchange, by buyers or roasters as security for collecting offer samples at an exchange, this being such an amount as may be determined by that exchange from time to time;

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

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

“settlement bank” means a bank as defined under section 2 of the Banking Act, approved by the Authority to facilitate the maintenance of a segregated account and to establish and operate a direct system for settlement and payment of coffee sales proceeds to growers

“sweepings” means the balance of coffee samples in the exchange sample room and spillages collected from millers' milling activities for sale at the exchange and the proceeds paid to growers on pro-rata basis;

“sales catalogue” means a standard document prepared by a miller or a broker in consultation with the exchange for sale of clean coffee at the exchange;

“sale” means the offering of clean coffee for sale;

“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 an 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 an 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 an 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 an 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.

3. The purpose of these Regulations is to—

- (a) to give effect to section 12(1) of the Capital Markets Act;
- (b) provide for the establishment and regulation of coffee exchanges;
- (c) provide for the licensing of coffee brokers;
- (d) provide for the establishment and operationalization of direct settlement system for expedited and transparent payment of coffee sales proceeds;
- (e) provide for the promotion and maintenance of an efficient coffee exchange;
- (f) give directives, principles and conditions for trading of clean coffee at an exchange;
- (g) ensure the trading is conducted in a secure, stable and transparent manner in an environment of fair competition; and
- (h) provide for the protection of the interests of the grower, the buyer and other stakeholders at an exchange.

Object, purpose and application.

PART II— COFFEE EXCHANGE

4. (1) A person shall not carry on the business of a coffee exchange unless he has applied for approval and licensed as a coffee exchange by the Authority in such manner as the Authority may provide.

Regulation of coffee exchanges.

(2) An application under paragraph (1) shall be made in Form A as set out in the First Schedule and accompanied by—

- (a) the copies of memorandum and articles of association, certificate of incorporation, and rules governing the operations of the exchange, which—
 - (i) are in a form satisfactory to the Authority; and
 - (ii) restrict the applicant to the business of operating a coffee commodity market and services incidental thereto;
- (b) details of trading, clearing and settlement systems proposed to be adopted by the applicant;
- (c) the application fees set out in the Second Schedule;
- (d) satisfactory bank references;
- (e) a business feasibility plan evaluated by an entity with a proven track record and expertise; and
- (f) any such additional documents as the Authority may require.

(3) In order to be entitled to apply for a licence under regulation 3, an applicant shall, unless otherwise expressly exempted by the Authority, be required to—

- (a) be demutualized;
- (b) have a minimum authorized, issued and paid up equity share capital to support initial infrastructural investments and three years' operating capital;
- (c) satisfy requirements relating to ownership and governance structure specified in these Regulations;
- (d) have its directors and shareholders who hold or intend to hold share, determined as fit and proper persons as provided under section 24A of the Act;
- (e) satisfy the Authority on the exchange's financial capacity, functional expertise and infrastructure;
- (f) have in its employment, sufficient number of persons with adequate professional and other relevant competencies and experience; and
- (g) comply with any other conditions as may be specified by the Authority.

(4) The Authority may, if satisfied that the applicant has demonstrated that it is capable of complying with the requirements under this regulation and upon payment of the licensing fee set out in the First Schedule, grant the applicant a licence to operate as a coffee exchange.

5. (1) An applicant seeking approval to operate as a coffee exchange shall develop its rules, which shall provide for—

Rules and obligations of a

- (a) the clear demarcation of roles and responsibilities of the board, chief executive officer and the committees of the board; coffee exchange.
- (b) the appointment of directors and a fair representation of persons in the selection of members of the board and administration of its affairs including the professions relevant to coffee industry;
- (c) the powers of the chief executive officer including in emergency situations;
- (d) the qualifications for membership;
- (e) the exclusion from membership of persons who do not meet the minimum criteria on integrity;
- (f) the expulsion, suspension or disciplinary action against members for conduct inconsistent with just and equitable principles relating to trading in coffee, or for a contravention of the rules of the coffee exchange;
- (g) specify qualifications for applicants for membership and provisions for accepting applicants as trading participants, imposing conduct and other requirements on them;
- (h) provide for the governance of the conduct activity of participants, including their responsibility to act with integrity and in the interests of maintaining a proper market, paying such fees and charges as may be applicable and abiding by the rules of the clearing house;
- (i) prohibit market abuse practices;
- (j) provide mechanisms for effectively investigating breaches of the rules, enforcing the rules and providing for appeals;
- (k) make default provisions for the taking of proceedings or other action if a clearing member has failed, or appears to be unable, or likely to become unable, to meet his obligations for any unsettled or open market contracts to which he is a party;
- (l) specify qualifications for trading membership, imposing conduct and other requirements on them and, where appropriate, for the procedure for their removal as trading members;
- (m) the making of reports to the Authority by the exchange whenever it rejects any application for membership, where it suspends or expels a member or where it suspends trading;
- (n) procedures for developing warrants and receipts to be traded on the exchange;
- (o) the terms and conditions under which coffee or contracts may be traded;

- (p) an audit system relating to proprietary trading by members;
- (q) the standard coffee grades that may be traded by members and the terms and conditions governing trading by members;
- (r) fair and properly supervised trading practices;
- (s) measures to prevent market abuse in its coffee market;
- (t) preventing the excessive use of credit by way of initial or maintenance margin in respect of the purchase or carrying of any coffee;
- (u) the recording and publishing of details of trading, clearing and settlement;
- (v) dues, fees and other charges levied by the exchange and its other sources of revenue;
- (w) internal procedures to ensure the proper handling of complaints and to ensure that any appropriate remedial action on those complaints is promptly taken;
- (x) the resolution of disputes and provision for appeal;
- (y) the carrying on the business of the coffee exchange generally, including the development of a regional exchange, with due regard to the interests and protection of growers and investors; and
- (z) any other provisions specified by the Authority.

(2) The rules established and adopted by the exchange under paragraph (1) shall be approved by the Authority before being applied by the exchange.

(3) The rules of a coffee exchange shall apply to the officers of the exchange, members and employees of the members of the exchange and the member shall be responsible to ensure their employees' compliance with the rules.

(4) The Authority may require a coffee exchange to comply with such additional requirements as may be imposed on a commodities exchange under any written law.

6. A coffee exchange shall—

- (a) provide and maintain a transparent and an efficient system for coffee trading;
- (b) ensure that it has employed qualified staff for the undertaking of its activities;
- (c) ensure that it has in place proper and adequate infrastructure in terms of office space, equipment and software to enable it undertake its activities;
- (d) ensure the proper training of its staff in activities related to its activities;
- (e) accord reasonable access to the auction of all persons licensed under the Crops (Coffee) (General) Regulations, 2019 to trade;

Systems, staffing
and record
keeping.

- (f) maintain a data base for records of coffee sales at the auction floor and other related trade activities;
- (g) comply with the regulatory requirements of the Authority;
- (h) comply with the directives of the Authority;
- (i) establish a linkage between the direct settlement system provider and licensed coffee warehouses to facilitate release of coffee to coffee buyers or roasters upon payment;
- (j) establish a direct link between its systems and software and the Authority; and
- (k) disseminate market information for every coffee auction and an analysis of performance on a daily, weekly and monthly basis.

PART III— COFFEE BROKERS

7. A person shall not carry on or purport to carry on business as a coffee broker unless that person is licensed by the Authority.

Obligation to seek a licence.

8. (1) A person who intends to operate as a coffee broker shall submit an application to the Authority for a licence to operate as such in Form B as set out in the First Schedule.

Licensing of coffee brokers.

(2) An application under paragraph (1) shall be accompanied by—

- (a) the fees as set out in the Second Schedule;
- (b) the documents, information and declarations specified under regulation 9; and
- (c) a letter from the coffee exchange stating that the applicant meets all the relevant requirements of that exchange and that the exchange will admit the applicant if licensed by the Authority.

9. (1) An applicant seeking a licence under regulation 8 shall be required to—

Consideration for grant of licence.

- (a) be a company limited by shares;
- (b) have a chief executive officer who is a fit and proper person as described under section 24A of the Act and who has experience of not less than five years in the business of buying, selling or dealing in coffee, commodities or other securities;
- (c) have the necessary infrastructure including office space, equipment and trained staff to effectively discharge its activities;
- (d) have as its directors and key personnel, persons who are fit and proper as described under section 24A of the Act; and
- (e) have a minimum net capital and minimum net worth as determined by the coffee exchange and approved by the Authority from time to time.

10. (1) The Authority may, in considering an application made under regulation 8, require an applicant to furnish such further information regarding any previous dealings in securities, commodities and any other related matter as the Authority may consider necessary.

Furnishing of information, clarifications etc.

(2) An applicant or its key personnel shall, if required by the Authority, appear before the Authority to make personal representations.

11. (1) The Authority, shall, within thirty days from the date of application, grant a licence to an applicant, if the Authority is satisfied that the applicant is eligible to be licensed as a coffee broker.

Grant of licence.

(2) The Authority shall duly inform the coffee exchange and the applicant of the grant of a licence under paragraph (1).

(3) A licence granted under paragraph (1) shall remain valid until suspended or revoked.

(4) The Authority shall not refuse to grant a licence without first giving the applicant an opportunity to be heard.

(5) Where the Authority, after hearing the applicant, refuses to grant the applicant a licence, the Authority shall communicate the decision to the applicant and the coffee exchange within fourteen days of the hearing, stating the grounds for refusal.

(6) An applicant aggrieved by the decision of the Authority under paragraph (5) may appeal against such refusal to the Capital Markets Tribunal within fifteen days of receipt of the decision of the Authority.

12. A coffee broker shall pay an annual licence fee as set out in the Second Schedule.

Annual licence fees.

13. (1) Where the Authority is satisfied that a coffee broker has—

Suspension of a licence.

- (a) failed to comply with the Act, these Regulation or any directions made or given thereunder;
- (b) failed to comply with any conditions subject to which the licence was granted under these Regulations;
- (c) contravened the rules of the coffee exchange;
- (d) failed to adhere to any requirement of the code of conduct laid down under these Regulations or other laws;
- (e) failed to comply with the directives of the Authority in respect of business conduct, dealings with clients and financial prudence;
- (f) failed to furnish any information relating to transactions of the coffee broker as may be required by the Authority;
- (g) failed to submit periodical returns as required by the Authority;
- (h) furnished the Authority or the exchange with wrong or false information;

- (i) failed to settle an investor complaint where such complaint has been adjudicated by the exchange, a committee of the exchange, the Authority, the Capital Markets Tribunal, or a court of law;
- (j) not co-operated in any enquiry or inspection conducted by the Authority;
- (k) indulged in market manipulation, price rigging or cornering activities at a coffee exchange;
- (l) experienced or is experiencing financial position deterioration to such an extent that the Authority is of the opinion that the continuance of the coffee broker in the business is no longer in the interest of investors;
- (m) been suspended by the exchange; or
- (n) failed to pay the annual fees; or it is necessary in the public interest to do so,

the Authority may, by an order in writing, suspend the licence of a coffee broker for such period as may be specified in the order or take such administrative action as it may consider necessary.

(2) The Authority shall, before issuing an order of suspension or other administrative action under paragraph (1), give a coffee broker an opportunity to be heard.

14. (1) The Authority may, by order in writing, revoke the licence of a coffee broker where it is satisfied that—

Revocation of a licence.

- (a) the reasons for suspension of a licence under regulation 13 continue during the period of such suspension;
- (b) a coffee broker whose licence has been suspended—
 - (i) is engaging or has engaged in insider trading, market manipulation or any other unfair practice or market abuse;
 - (ii) has been found guilty of fraud or convicted of a criminal offence;
 - (iii) has not complied with a directive of the Authority;
- (c) the membership of that coffee broker has been cancelled by a coffee exchange or another securities exchange; or
- (d) it is necessary for the protection of investors.

(2) The Authority shall, before issuing an order of revocation under paragraph (1), give the coffee broker an opportunity to be heard.

15. (1) A licence granted under regulation 11 shall automatically be revoked if the coffee broker—

Automatic revocation of a licence.

- (a) ceases to be a trading member of a coffee exchange;
- (b) is declared a defaulter by a securities exchange or a coffee exchange and is not re-admitted to membership within a period of six months from such declaration;

- (c) surrenders its membership in all coffee exchanges where it is a member;
- (d) is declared insolvent by a court of law;
- (e) voluntarily surrenders the licence to the Authority; or
- (f) is wound up by a court order.

16. A coffee broker aggrieved by the decision of the Authority to suspend or revoke its licence may, within fifteen days of being notified of the decision of the Authority, appeal to the Capital Markets Tribunal.

Appeal against suspension or revocation of licence.

17. Despite a suspension or revocation of a licence, a coffee broker shall be responsible for clearing all its outstanding obligations up to the date on which that coffee broker has been operating as such.

Coffee broker to clear liabilities.

18. A coffee broker shall, as a condition of continued admission as a coffee broker, provide to the Authority through the coffee exchange a certified copy of—

Continuing obligations.

- (a) the net capital balance;
- (b) net worth statements; and
- (c) a report of the auditor,

in a form that may be recommended by the Authority from time to time, on a quarterly basis within thirty days of the end of the quarter.

PART IV —COFFEE SAMPLING

19. (1) An exchange shall maintain a central sample room where samples of coffees to be offered for sale shall be held for distribution to buyers and roasters, and for display and archiving.

Central sample room.

(2) An exchange shall 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.

20. (1) Every buyer and roaster operating at an exchange shall be required to deposit such amount of money as determined by the exchange from time to time, as security for collecting offer samples at the exchange.

Sample deposit.

(2) An exchange shall operate a coffee sample deposit account in a bank to be determined by the exchange in which all the sample deposits paid by buyers 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 buyers and roasters;
- (b) refunds to buyers and roasters ceasing to trade; and
- (c) such interest earned or accruing from the sample deposit account.

(4) A buyers or roaster who fail to pay the raised sample fees invoices within the due dates shall be suspended by the exchange from further collection of samples until such top ups are made.

(5) Any refunds under paragraph (3) (b) shall be made without interest and net of any indebtedness by the buyer or roaster to the exchange.

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

21. An offer sample out of a lot of coffee presented for sale at an exchange shall be availed by the exchange to licensed buyers and roasters prior to the auction.

Offer sample.

22. Every buyer or roaster shall within fourteen days of receipt of an invoice from an exchange pay a sample fee in respect of all the selling samples collected.

Sample fee.

23. A buyer or roaster shall be given a fourteen days' notice to pay the outstanding sample fee and in default thereof, the fees shall be recovered from the sample deposit provided that all buyers and roasters shall maintain a minimum sample deposit balance of an amount to be determined by the exchange.

Recovery of sample fee.

24. An exchange shall deduct the sample fee invoiced from the forfeited sample deposit.

Deduction and remission of sample fee.

25. (1) A miller or an appointed broker shall deliver to the sample room, representative samples out of a lot of coffee being offered for sale at an exchange in such quantities as may be determined from time to time by the exchange.

Representative samples.

(2) The samples delivered by the millers or appointed brokers to the sample room shall be in accordance with the prevailing procedures as determined by the exchange from time to time.

26. (1) A reference sample of coffee shall be drawn from each lot and retained by an exchange for archival storage, for at least six months from the date of the sale for verification in case of a dispute:

Reference sample.

(2) Notwithstanding paragraph (1), where a dispute exceeds six months, an analysis of the sample shall be done by an expert and the quality report submitted to the exchange.

27. A buying sample of coffee shall be drawn from each lot of coffee purchased at the auction to be availed to the buyer or roaster who has purchased the lot for verification.

Buying sample.

28. A display sample shall be drawn for display in the sample room.

Display sample.

29. The exchange shall maintain records relating to—

Sample records.

(a) receipt of coffee samples from the millers;

(b) distribution of coffee samples to buyers, 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.

30. Proceeds of sale for sweepings shall be remitted to growers through the direct settlement system provider on a prorated basis and shall have unique codes.

Sale of sweepings to benefit growers.

31. (1) A miller or broker shall submit returns to an exchange and the Coffee Directorate on remission of monies received from samples and sweepings to the growers.

Submission of sample returns.

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

(3) An exchange shall prepare monthly reports on its performance and forward the same to the Coffee Directorate, buyers, roasters, millers, growers or growers' representatives and other interested parties.

32. (1) In the event of a dispute arising out of coffee traded at an exchange and at the request by a complainant made to the exchange or the licensing authority, a random representative sample shall be redrawn from the lot or consignment in dispute for comparison with the reference sample.

Resolution of disputes.

(2) The instructions to draw each sample shall be lodged at the exchange or the licensing authority 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 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 by the exchange or the licensing authority, it shall be referred to the Capital Markets Tribunal established under the Capital Markets Act.

PART V—TRADING AT THE AUCTION FLOOR

33. (1) Only licensed persons under these Regulations and other relevant laws shall participate on the trading floor of a coffee exchange.

Participation at the trading floor.

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

34. (1) The exchange shall, in consultation with millers or appointed brokers, as the case may be, set the volumes, lot sizes, dates and times for holding of coffee auctions.

Holding of auctions at the Exchange.

(2) Notwithstanding paragraph (1) provided that no suspension or cancellation of any auction shall be done without notification to the Authority.

35. (1) A sales catalogue shall be prepared by the grower miller or an appointed broker in accordance with the Third Schedule.

Sales catalogue.

(2) The exchange shall, in consultation with grower millers or appointed brokers as the case may be, determine the order of the sales

catalogues for every sale and the exchange shall ensure that reasonable access to the auction is given to all persons licensed to trade under the Crops (Coffee) (General) Regulations, 2019.

(3) A draft of the sales catalogue of each grower miller or broker shall be made available to buyers and roasters in accordance with the prevailing procedures of an exchange.

(4) The final sales catalogue shall be made available to the exchange by the grower miller or broker in accordance with the prevailing procedures of an exchange.

36. A miller shall disclose to the broker and the exchange, details of all bulked coffees and justify its basis.

Disclosure of bulked coffee.

37. Trading at the auction shall be in US Dollars or any other currency as may be determined by the exchange with the approval of the Authority.

Conditions of auction sales.

38. (1) The process of trading at the exchange shall be in accordance with these Regulations and shall comprise the following—

Process of trading at the exchange.

- (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) the coffee shall meet defined quality standards for commodity trading at the exchange at which the coffee will be offered for sale;
- (c) the warehouseman shall issue a coffee warrant as set out in the Fourth 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 a broker, the owner shall contact the broker 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 at which coffee will be offered for sale;
- (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 the sale of coffee is complete, successful bidders shall be invoiced by the miller or broker 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 provider 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.
- (2) The grower or the grower's agent shall set the reserve price for each lot in the sales catalogue.
- (3) An exchange shall not disclose the reserve price to a buyer, roaster or any other party whatsoever provided such reserve prices shall be disclosed to the Authority when requested.
- (4) In the event that the highest bid for any lot is equal to or higher than the reserve price it shall be confirmed.
- (5) Where the bid has not been confirmed, the miller or other agent of the grower shall disclose the reserve price at the trading floor.
- (6) Where the disclosure of the reserve price does not attract any competitive offers, the coffee shall be withdrawn and re-offered for sale at a subsequent auction.
- (7) A "No-Bid" lot shall be re-offered for sale at a subsequent auction.
- (8) All trading in coffee shall be concluded at the trading floor.

39. (1) A miller or broker may, by written communication to an exchange, made at least three 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.

Withdrawal of a lot.

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

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

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

Prompt date.

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

PART VI— SETTLEMENT OF SALES PROCEEDS

41. (1) A direct settlement system shall be established by a licensed commercial bank competitively selected by an exchange subject to approval from the Authority and managed by that exchange.

Direct settlement system.

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

(3) The proceeds of the sale of coffee at the auction shall be remitted by a coffee buyer 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 Regulations, supply through the coffee exchange all the necessary particulars of the grower to the appointed financial institution 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 through the coffee exchange lodge with the financial institution 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 grower or the grower's authorized representatives shall ensure that the information provided under paragraphs (4) and (5) above 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, through the coffee exchange, providing the settlement system.

(7) A coffee exchange shall indemnify the grower's authorized representatives in the event that it provides incorrect information different from the one submitted by grower's authorized representatives for onward transmission to the commercial bank providing the settlement system.

(8) The miller or broker shall generate invoices for coffee sold at an exchange and send a copy to the buyer or roaster and the exchange shall send the transaction file to the direct settlement system provider to validate the information supplied by the miller.

(9) The commercial bank operating the direct settlement system and the exchange where coffee is offered for sale, 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 and lodged with the direct settlement service provider through the coffee exchange.

(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 operations of the direct settlement system shall be in accordance with laws relating to banking and finance and any laws governing the exchange.

(15) The commercial bank operating a 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.

(16) The direct settlement system of payment of coffee proceeds shall be put in place by the exchange within a period not exceeding twelve months upon the commencement of these Regulations.

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

Settlement of
bank charges.

(2) A buyer or roaster who will not have settled his payments in full by the set deadline as per rules or operations of the exchange shall be considered a defaulter.

(3) In the event of default by a buyer or roaster to pay by the set deadline, 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 buyer or roaster shall be automatically suspended from participating on the trading floor until the buyer 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 USD.

(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 buyer, roaster or miller who fails to pay any outstanding obligations to the exchange or to a grower shall be suspended by the exchange with notice to the Authority.

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

(9) The exchange shall report any buyer, miller or roaster who has defaulted more than twice within a period of six months, to the relevant authority for suspension or cancelation of the license.

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

Dispute relating to coffee trade.

(2) The claim shall be based on samples drawn and sealed by a licensed certified 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 buyer or roaster shall make an immediate claim to the miller or appointed broker 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 refund.

(6) Incorrect information on the packaging material used for a specific lot shall give the right to a buyer 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 exchange or the licensing authority.

(8) In the event that an aggrieved party is dissatisfied with the decision of the exchange or the licensing authority, the party shall have the right of appeal to the Capital Markets Tribunal established under the Capital Markets Act.

44. (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 buyer or roaster at the time of release of coffee.

Disputes relating to coffee weight loss.

(2) The weight loss claim will be limited to a period of thirty days from the date of the sale and shall be presented by the buyer 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) Where the disputing parties fail to reach an amicable settlement, the dispute shall be referred to the exchange.

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

PART VII- GENERAL PROVISIONS

45. Prior to payment of the purchase price by the buyer, 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.

Assumption of risk.

46. (1) An exchange shall cause proper books of accounts to be kept with respect to—

Accounts and Audit.

(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 prepare an annual report containing audited financial statements within four months of the close of the financial year.

(3) A complete set of financial statements includes the following components—

(a) balance sheet;

(b) income statement;

(c) a statement showing either—

(i) all changes in equity; or

(ii) changes in equity other than those arising from capital transactions with owners and distributions to owners;

(d) cash flow statement; and

(e) accounting policies and explanatory notes.

47. An exchange shall comply with the minimum operating capital requirements covering twelve months of its operating costs.

Operating capital of an exchange.

48. (1) Any person aggrieved by an act or omission of an exchange may within thirty days after being notified of such act, omission or decision, appeal to the Authority.

Appeal.

(2) Where an applicant is dissatisfied with the decision of the Authority in sub regulation (1), the applicant may seek judicial recourse within thirty days of the decision.

49. (1) All licensed buyers, roasters and millers shall be required to declare held stocks to an exchange to facilitate scheduling of coffee auctions.

Declaration of stocks.

(2) Coffee offered and sold at an exchange shall not be re-offered at any other exchange.

50. (1) An 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.

Certificate of purchase.

(2) A person shall not alter any certificate or other document issued or prepared for the purposes of these Regulations.

(3) A licensed buyer 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.

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

Exemptions.

(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, aero planes or other international carriers.

52. A coffee exchange carrying on trading in coffee shall, within twelve months of commencement of these Regulations seek the approval and licence from the Authority in compliance with these Regulations.

Approval from the Authority.

53. A person carrying on trading at a coffee exchange prior to the commencement of these Regulations, shall be required to make an application to the Authority for licensing within twelve months after the commencement of these Regulations.

Transitional provisions.

FIRST SCHEDULE

(r 4(4))

FORMS

FORM A

(r. 4)

APPLICATION FORM FOR A LICENSE TO CONDUCT THE BUSINESS OF A
COFFEE EXCHANGE

Note-

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of application

1. Name of the Company.....Limited
2. Registered office.....
3. Date of incorporation.....
4. Address.....
5. E-mail.....
6. Location, address and telephone number of principal office.....
.....
7. Location, address and telephone number of branch offices.....
.....
8. Details of capital structure:
 - (a) Nominal/authorized capital (Kshs.).....
 - (b) Number of shares.....
 - (c) Paid-up capital (Kshs.).....

9. Shareholders (please attach list)

Name	Address and telephone number	Number of shares held

10. (a) Directors (please attach a list)

Name	Identity card/Passport number	Date of appointment	Date of Birth	Permanent address and telephone number	Academic or professional qualification	Number of shares held in the company

- (b) Secretary

Name.....

Address.....

Institute of Certified Secretaries of Kenya Registration No.....

(c) Chief Executive Officers and other key personnel

Name	Identity card or Passport number.	Date of appointment	Date of birth.	Permanent address and telephone number	Academic and professional qualifications	Number of shares held in the company.
------	-----------------------------------	---------------------	----------------	--	--	---------------------------------------

11. Particulars of other directorship (s) of the directors and secretary.....
.....
12. Particulars of shares held by the directors and secretary in other companies.....
.....
13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt or compounded with or made an assignment for the benefit of his creditors in Kenya or elsewhere? Yes/No. If “Yes”, give details.....
14. Has any director, secretary or key personnel of the applicant been a director of a company that has been:
 - (a) denied any license or approval under the Capital Markets Act or equivalent in any other jurisdiction: Yes/No
If Yes, give details.....
.....
 - (b) a director of a company providing banking, insurance, financial or investment advisory services whose license has been revoked by the appointing authority: Yes/No. If Yes, give details.....
.....
 - (c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/No. if Yes, give details.....
.....
15. Has any court ever found that the applicant, or a person associated with the applicant was involved in the violation of the Capital Markets Act or Regulations thereunder or equivalent law outside Kenya? Yes/No. If Yes, give details.....
.....
16. Is the applicant or a person associated with the applicant is subject to any proceedings that could result in a “yes” answer to question 15? Yes/No. If “yes” give details.....
.....

17. (1) is the applicant, any shareholder, director or secretary of the applicant a member or director of a member company of any securities exchange, derivatives exchange or commodity exchange? Yes/No. If “yes” give details.

- (2) have any of the above persons been-
- (a) refused admission as a commodity member of any securities organization? Yes/No. if Yes, give details.....

- (b) expelled from or suspended from trading on any securities organization? Yes/No if Yes, give details.....

- subjected to any other form of disciplinary action by any securities, derivatives or commodity exchange? Yes/No if Yes, give details.....

18. Business references:

Name	Address	Telephone number(s)	Occupation

19. Profile of the chief executive officer and key personnel in the applicant company

20. List of office facilities of the applicant.....

21. Any other additional information considered relevant to this applicant.....

We.....(Director).....
 (Director) and.....(Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this.....day of.....20....

Signed:

.....) Director
) Director
) Secretary

Note:

Please attach the documents and details referred to in regulation 4(2).

FORM B

(r. 8(1))

APPLICATION FOR A LICENSE TO CONDUCT THE BUSINESS OF A COFFEE BROKER

Note-

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of the application or renewal.

- 1. Name of company Limited
- 2. Registered office
- 3. Date of incorporation
- 4. Address
- 5. E-mail
- 6. Location, address and telephone number of principal office.....
- 7. Location, address and telephone number of branch offices
- 8. Details of capital structure:
 - (a) Nominal capital (Kshs.)
 - (b) Number of shares
 - (c) Paid-up capital (Kshs.)
- 9. Shareholders (please attach a list)
 - Name
 - Address & telephone number
 - Number of shares Held
- 10(a) Directors (please attach a list)
 - Name
 - Identity Card/ Passport number
 - Date of Appointment
 - Date of birth
 - Permanent address & telephone number
 - Academic
 - Or
 - Professional qualification
 - Number of shares held in the company
 - (b) Secretary
 - Name.....
 - Address

Institute of Certified Secretaries of Kenya Registration No.

(c) Chief executive and other key personnel

Name

Identity Card/ Passport number

Date of Appointment

Date of birth

Permanent address & telephone number

Academic

Or

Professional qualification

Number of shares held in the company

11. Particulars of other directorship(s) of the directors and secretary.

.....

12. Particulars of shares held by directors or secretary in other companies

.....

13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of his creditors, in Kenya or elsewhere? Yes/ No. If 'yes', give details

.....

14. Has any director, secretary or senior management of the applicant been a director of a company that has been:

(a) denied any license or approval under the Capital Markets Act or equivalent legislation in any other jurisdiction: Yes/No.

If Yes, give details.

.....

(b) a director of a company providing banking, insurance, financial or investment advisory services whose license has been revoked by the appropriate authority? Yes/No. If Yes, give details.

.....

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/ No. If yes, give details.

.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or Regulations thereunder, or equivalent law outside Kenya? Yes / No. If 'yes', give details.

.....

16. Is the applicant and/or a person associated with the applicant now the subject of any proceeding that could result in a 'yes' answer to the above question (15)? Yes/No. If 'yes,' give details.

.....

17(1) Is the applicant, or any shareholder, director or the secretary of the applicant, a member or director of a member company of any securities, derivatives or commodity exchange? Yes/ No.

If 'yes', give details.

.....

(2) Have any of the above persons been -

(a) refused membership of any securities organization? Yes / No. If 'yes', give details

.....

(b) expelled from or suspended from trading on or membership of any securities organization? Yes/No. If 'yes' give details

.....

(c) subjected to any other form of disciplinary action by any securities, derivatives or commodity exchange? Yes/No. If 'yes', give details.

.....

18. Business references:

Name

Address

Telephone number (s)

Occupation

19. One bank reference, where the applicant is a bank the reference shall be given by another bank independent of the applicant

20. Profile of the chief executive and key employees in the applicant company:

Name

Post Qualifications

Experience

21. List the office facilities of the applicant

.....

22. State the exact nature of the activity to be carried on which obliges the applicant to apply for a license from the Capital Markets Authority

.....

23. Any other additional information considered relevant to this application:

.....

We(Director), (Director)
and (Secretary) declare that all the information given in
this application and in the attached documents is true and correct.

Dated this day of 20

Signed:

.....) Director

.....) Director

.....) Secretary

Note:

Please attach the documents and details referred to in regulation 4(2).

SECOND SCHEDULE

(r.4, 8)

APPLICATION, LICENSING AND ANNUAL REGULATORY FEES FOR COFFEE EXCHANGES AND COFFEE BROKERS

Coffee Exchanges

Application fees Kshs. 10,000

Annual regulatory fees.....Kshs. 2,500,000/-

Coffee Brokers

Application fees.....Kshs. 10,000/-

Annual regulatory fees.....Kshs. 50,000/-

THIRD SCHEDULE

(r.35(1))

SALES CATALOGUE

1. The sales catalogue shall be prepared by a grower miller, or an appointed broker in consultation with a commercial miller, in accordance with the Coffee General Regulations and these Regulations, and forwarded to the Exchange.
2. The details to be included in the sales catalogue shall include-
 - (a) The name of the grower;
 - (b) The name of the miller;
 - (c) Name of broker, if any;
 - (d) Sale number;
 - (e) Day, date and time of the auction;
 - (f) The place of the auction shall be at the exchange;
 - (g) Total number of bags of coffee to be offered for sale;
 - (h) Name of the warehouse where the coffee is stored;

- (i) The prompt date being the date on or before which proceeds are payable to the direct settlement system provider managed by the exchange;
 - (j) Terms and conditions of sale;
 - (k) The date on which rent charges in respect of purchased coffee shall be due from the buyers to warehousemen at which the coffee is stored;
 - (l) The net weights as per warehouse weights (and unless otherwise stated coffee shall be packed in bags of 60 kg net, tare weight 1.1 Kgs but bids shall be on the basis of 50 Kgs), the bags used shall conform to the international coffee packaging standards;
 - (m) Lot numbers arranged serially per miller or appointed broker for all coffee offered for sale;
 - (n) The out-turn Number shown against each lot number and the registered distinguishing mark of the grower miller (whether Bulk, E/Bulk, P/Bulk, T/Bulk; Spillage, or sweepings) and out-turn Number arising from operations of grower/miller;
 - (o) Grade of the coffee;
 - (p) Number of bags in the lot (a saleable lot shall not be less than ten bags);
 - (q) Net weight of coffee in kilograms respectively;
 - (r) Adequate space for inserting big prices by buyers.
3. The sales catalogue shall be prepared weekly or as frequently as the Authority may determine in consultation with a grower or his agent.
4. The saleable lots in the special auction dedicated to local roasters may comprise less than ten bags.

FOURTH SCHEDULE

COFFEE WARRANT

(r.38(1)(c))

NAME OF WAREHOUSEMAN

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

Coffee season and out-turn no.	Mark and code	Grade	Number of bags	Net weight of pockets (kgs)	Total net weight (kgs)

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	Legal Manager-Regional Co Secretary
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, it's servant or agents or other persons for whose acts the Company might apart from this clause be liable:
 - (i) Vermin;
 - (ii) Frail, unsuitable, insufficient or defective packing;
 - (iii) Strikes, combinations or lock-outs of any person in the employ of the Company or in the service of others;
 - (iv) Improper, insufficient, indistinct or erroneous marking or addressing of goods or packages;
 - (v) Fire;
 - (vi) Civil commotion;
 - (vii) Earthquake
 - (viii) 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-:
- (a) The Company accepts no financial liability under any circumstances for the even mix of the bulk, but undertakes to re-bulk free of charge provide that:
 - (i) The person first entitled under the warrant shall lodge the claim within seven days of receiving the warrant; and
 - (ii) 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 Regulations 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-----

FIFTH SCHEDULE

(r. 41(2))

PART A —CRITERIA FOR SELECTION OF DIRECT SETTLEMENT SYSTEM PROVIDER

1. Request for expression of interest by the exchange.
2. Licensed commercial Banks.
3. Past experience in the management of centralized processing and settlement system for commodities.
4. Demonstrate capacity to expedite settlement and direct payment of coffee proceeds to coffee growers and service providers
5. Demonstrate the network to reach out to all coffee growing and other areas.
6. Demonstrate an ICT infrastructure for information gathering, processing, dissemination and archiving.
7. Past experience in handling proceeds of agricultural commodities.
8. Demonstrate understanding and willingness to comply with government regulations.
9. Be approved by the Authority.
10. Be connected to the national payments system.

PART B —REQUIREMENTS FOR COMMENCEMENT OF DIRECT SETTLEMENT SYSTEM ARRANGEMENTS AND 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 Regulations and other relevant law.
2. In considering an application made under paragraph 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—
 - (a) The mode of operation of the direct settlement system has been approved by the Exchange;
 - (b) The systems provider has systems to open and maintain separate accounts in the name of each coffee grower whose coffee is traded;
 - (c) 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;

- (d) The direct settlement system has adequate mechanisms for the purposes of reviewing, monitoring and evaluating its internal accounting controls and systems;
- (e) The direct settlement system provider has a system to reconcile records of every depositor on a daily basis;
- (f) Automatic data processing systems of the direct settlement system are protected against unauthorized access, alteration, destruction, disclosure or dissemination of records and data;
- (g) 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;
- (h) 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, the exchange, licensed Warehouses;
- (i) 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;
- (j) 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;
- (k) 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, the exchange, licensed Warehouses;
- (l) 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
- (m) 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;
- (n) The direct settlement system provider has adequate mechanisms for the purposes of reviewing, monitoring and evaluating its controls, systems, procedures and safeguards; and
- (o) 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.

PART C— RECORDS TO BE MAINTAINED BY A COFFEE EXCHANGE AND
INFORMATION SHARING ARRANGEMENTS WITH A DIRECT SETTLEMENT
SYSTEM PROVIDER

1. The exchange shall maintain and avail to the direct settlement system provider the following records and documents relating to coffee sold at a coffee exchange—

- (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 buyers or roasters.

2. The coffee exchange shall, when required to do so, disclose to the Authority the place where the records and documents are maintained.

3. The coffee exchange shall preserve records and documents for a minimum period of 10 (ten) years.

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

A coffee exchange 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 a Coffee Exchange in relation to the direct settlement system provider, the Clearing House or Designated Warehouses, for any of the following purposes—

- (a) to ensure that the books of account are being maintained by the Exchange and its members in the manner specified in these Regulations;
- (b) to look into the complaints received from millers, buyers and roasters;
- (c) to ascertain whether the systems, procedures and safeguards being followed by the Exchange, 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 Exchange in relation to the direct settlement system provider are being conducted in a manner which are in the interest of the coffee growers, millers, buyers, roasters and the public.

2. The Authority shall give the Exchange and its members, 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, buyers 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 D — APPLICATION BY A COMMERCIAL BANK FOR SELECTION BY THE EXCHANGE TO PROVIDE DIRECT SETTLEMENT FUNCTIONS FOR COFFEE SALES PROCEEDS

1. A Bank shall submit an application to the exchange with the approval of the Authority for appointment as a direct settlement system provider for receipt and disbursement 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 the said requirements.

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

The Bank shall make an application for appointment through a selection process established by the exchange (and further approval by the Authority) which must include the following—

- (a) the particulars of the applicant's proposed affiliation with the exchange; The particulars include:
 - (i) Name and Registered Address/Physical Location/Head Office of the bank;
 - (ii) Names of the Board of Directors of the bank;
 - (iii) Copy of the banking/regulator license and confirmation of current licensing status;
 - (iv) Number of branches including their location;
 - (v) Credit rating of the bank;
 - (vi) Names and Designation of key contact personnel of the bank;
 - (vii) Details of the banks Auditors;
 - (viii) Undertaking to comply with the rules of the Exchange and applicable regulations;
 - (ix) Commitment to pay exchange membership fee;
 - (x) Evidence of adequate risk management framework;
 - (xi) KYC (know your customer)/AML (anti-money laundering) management processes;
 - (xii) Plans to deploy ICT systems to support the exchange; and
 - (xiii) Evidence of technical staff capacity to run Direct Settlement System.
- (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 demonstration of how the Bank is able to satisfy each of the requirements for a direct settlement system specified under the Regulations;
- (d) 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 Regulations. 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;

- (e) descriptions of system test procedures, tests conducted or test results, that will enable the applicant to comply with the requirements specified in these Regulations ; and
 - (f) 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.
3. Except as provided for under these Regulations, 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.
4. The Exchange may grant temporary appointment to the Bank on an expedited basis to give room for the bank to meet full criteria. The temporary appointment under this sub-rule may be subject to conditions and an expiry date as the Exchange may stipulate.
5. An applicant Bank shall apply for permanent selection status when conditions of its selection are met and before the expiry of the temporary selection
6. 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.
7. 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—
- (a) 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.
 - (b) The Bank, or any director, officer, agent, or employee of such Bank, is violating or has violated any of the provisions of these Regulations or any of the directives, or orders of the Exchange or the Authority.
8. In the event of a denial of selection or suspension or revocation in accordance with these Regulations, 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.
9. The testimony and evidence taken or submitted before the Exchange or the Authority, duly filed as per these Regulations as part of the record, shall be considered by the High Court as evidence in the case.
10. The High Court may affirm or set aside the order of the Authority and the Exchange 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.

11. 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.
12. 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.
12. 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.
14. 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.
15. Where the exchange does not approve any proposed amendment or business rule, the notice to the Bank shall identify or specify it.
16. 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.
17. 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.
18. A Bank shall comply with a notice given to it under these Regulations once the stipulated period expires.
19. 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 Regulations 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 Regulations or any of the orders of the exchange, the exchange 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 Regulations 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.

20. The Authority shall give the Bank, director, officer, agent or employee thereof, notice of not less than fifteen working days, of its intention to take any of the actions under these Regulations and the notice shall specify the grounds for the action taken.

21. 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.

22. A Bank shall (through the exchange) 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—

- (a) The Bank shall submit a report to the exchange showing transactions matched and approved for settlement by it; and
- (b) Each selected Bank which receives funds belonging to growers, shall monthly submit to the exchange 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.

23. The Bank shall prepare and avail to the grower through the exchange, a comprehensive sales statement to account for each coffee lot sold through the exchange and paid for through the Bank.

Dated the 18th March, 2020.

UKUR YATANI,
Cabinet Secretary, National Treasury and Planning.

LEGAL NOTICE NO. 41

THE CAPITAL MARKETS ACT

(Cap. 485A)

THE CAPITAL MARKETS (COMMODITY MARKETS)
REGULATIONS, 2020

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THE CAPITAL MARKETS ACT

(Cap. 485A)

IN EXERCISE of the powers conferred by section 12(1) (ka) of the Capital Markets Act, the Cabinet Secretary for the National Treasury makes the following Regulations—

THE CAPITAL MARKETS (COMMODITY MARKETS)
REGULATIONS, 2020

PART I—PRELIMINARY

1. These Regulations may be cited as the Capital Markets (Commodity Markets) Regulations, 2020. Citation.
2. In these Regulations, unless the context otherwise requires— Interpretation.
 - “Act” means the Capital Markets Act; Cap.485A
 - “Authority” means the Capital Markets Authority established under section 5 of the Act;
 - “board” means the board of directors of a commodity exchange or a commodity broker;
 - “bucketing” means directly or indirectly taking the opposite side of a client’s order into a commodity broker’s own account or into an account in which a commodity broker has an interest, without open and competitive execution of the order on the trading platform of a commodity exchange;
 - “clearing house” means an entity, approved by the Authority, recognized as a clearing institution on behalf of a commodity exchange, providing the services of clearing and settlement of transactions and guaranteeing settlement on behalf of the commodity exchange;
 - “client” means a person on whose account a commodity broker carries on trading in any spot commodity contract, but does not include directors, key personnel, representatives and related companies of the commodity broker;
 - “commodity” has the meaning assigned to it under section 2 of the Act;
 - “commodity broker” means a company cleared by the exchange and licenced by the Authority to carry on the business of purchase or sale of commodities contracts as an agent for investors or on its own account;
 - “commodity exchange” means an exchange licenced by the Authority to undertake spot commodity trading, and includes any clearing or settlement or transfer services connected with the transaction;
 - “commodity market” has the meaning assigned to it under section 2 of the Act;

“Fund” means the Investor Compensation Fund established under section 18 of the Act.

“key personnel” has the meaning assigned to it under section 2 of the Act;

“market participant” includes commodity brokers, clearing house of a commodity exchange or a client of a commodity broker;

“member” means any person, with the approval of the Authority, has been admitted to membership of a commodity exchange and includes a commodity broker and settlement bank of a commodity exchange;

“settlement bank” means a bank as defined under section 2 of the Banking Act, approved by the Authority to facilitate the maintenance of a segregated account and settlement of transactions executed on a commodity exchange; Cap. 488

“settlement price” means the daily settlement price at the close of trading;

“spot commodity contract” means delivery verses payment contract traded on a commodity exchange for settlement within five working days from the date of the transaction at the exchange;

“trading system” includes any system or platform provided by a commodity exchange, which makes available to the members of the commodity exchange, and disseminates information regarding trades effected, volumes and such other notifications as may be placed thereon by a commodity exchange;

“warehouse receipt” has the meaning assigned to it under the Warehouse Receipt System Act, 2019; No.8 of 2019.

“warehouse receipt system” has the meaning assigned to it under the Warehouse Receipt System Act; and

“warehouse operator” has the meaning assigned to it under the Warehouse Receipt System Act.

PART II—LICENSING OF COMMODITY EXCHANGES

3. (1) A person shall not carry on business as a commodity exchange or hold himself out as providing or maintaining a commodities exchange unless such a person has obtained a commodity exchange license from the Authority. Licensing of commodity exchanges.

(2) A securities exchange or derivatives exchange intending to operate a commodities exchange shall set up a separate legal entity to conduct such business of a commodity exchange.

4. (1) A person who intends to establish a commodity exchange shall apply to the Authority for licensing in Form A set out in the First Schedule. Application for licence.

(2) An application for licensing under paragraph (1) shall be accompanied by—

- (a) copies of memorandum and articles of association;
- (b) rules governing the operations of the commodities exchange;
- (c) details of trading, clearing and settlement systems proposed to be adopted by the applicant;
- (d) the application fees set out in the Second Schedule;
- (e) satisfactory bank references;
- (f) a business feasibility planevaluated by an entity with a proven track record and expertise in commodity markets or commodity market development, establishment or management; and
- (g) any additional documents as the Authority may require.

5. In considering an application for a licence to operate a commodity exchange an applicant shall be required to—

Considerations in granting a licence.

- (a) be a company limited by shares;
- (b) be demutualized;
- (c) ensure that the clearing and other arrangements made, its clearing house and its members are such as to provide a reasonable assurance that all obligations arising out of contracts entered on the proposed commodity exchange will be met;
- (d) have a minimum authorized, issued and paid up equity share capital to support initial infrastructural investments and three years' operating capital;
- (e) satisfy all requirements relating to ownership and governance structure specified in these Regulations;
- (f) have its directors and shareholders determined as fit and proper persons as provided under section 24A of the Act;
- (g) satisfy the minimum liquid net-worth requirements specified in these Regulations;
- (h) have a minimum amount of money, as may be determined by the Authority from time to time by notice, in the settlement guarantee fund before the commencement of trading;
- (i) satisfy requirements relating to financial capacity, functional expertise and infrastructure to—
 - (i) establish and operate a fair and efficient commodity exchange;
 - (ii) meet contingencies or disasters including events such as technical complications occurring with automated systems, and

- (iii) provide adequate security arrangements on risk identification and mitigation, data protection and fail-safes on critical infrastructure;
- (j) have in its employment, sufficient number of persons with adequate professional and other relevant competencies and experience;
- (k) have measures in place to actively enforce compliance by its members with its rules and for the prevention of manipulation and excessive speculation;
- (l) have adequate provision to record and publish details of trading, including volume and open interest; and
- (m) comply with any other requirements as may be specified by the Authority.

6. (1) An applicant seeking to operate a commodity exchange shall develop rules to be approved by the board and the Authority prior to the application.

Rules of the commodity exchange.

- (2) The rules under paragraph (1) shall contain provisions on—
 - (a) the clear demarcation of roles and responsibilities of the board, chief executive officer and the committees of the board;
 - (b) the code of conduct and ethics for directors and key personnel;
 - (c) the powers of the chief executive officer including in emergency situations;
 - (d) the granting of membership to the commodity exchange including the procedures for admission as a member of a commodity exchange and requirements for membership inclusive of fees;
 - (e) powers to levy fees and impose penalties for breach of its rules;
 - (f) the granting of trading rights and non-transferable memberships of the commodity exchange;
 - (g) requirements and management of margin deposit by commodity brokers so as to provide reasonable assurance that all obligations arising out of the commodity contracts trading will be met;
 - (h) general obligations of the trading participants who are members of the commodity exchange, including requirements on minimum net worth, maintenance of accounting records and compliance to the Laws of Kenya and the rules of the commodity exchange;
 - (i) the termination of membership to a commodity exchange;

- (j) specifications on the minimum parameters to be disclosed in respect of spot commodity contracts to be listed, with prior approval from the Authority;
- (k) procedures for fixing of position limits and trading limits;
- (l) the clearing and settlement of all trades in spot commodity contracts by the appointed clearing house, whether the clearing house is a department of the commodities exchange or its subsidiary or is independent;
- (m) the performance of novation, netting and guarantee settlement of trades;
- (n) complete segregation of business accounts of trading participants from that of their clients and between different clients;
- (o) trading including validation of order on the commodity exchange;
- (p) the suspension of trading of any spot commodity contract for the protection of investors or for the conduct of orderly and fair trading;
- (q) investigation into trading practices and financial transactions of commodity brokers and their clients;
- (r) the clearing house and designated settlement banks of the commodity exchange;
- (s) commodity categories including provisions on commodity category due diligence and demand and supply assessments;
- (t) the operation of warehousing facilities on commodities;
- (u) the declaration, management and delivery of various commodities traded on a commodity exchange;
- (v) detailed provisions on direct market access by clients of the commodity exchange;
- (w) detailed provisions on give-up and take-up transactions, position transfers, assignments, transaction separations, open or close transaction designations and adjustments, and average pricing including transaction mergers and de-mergers;
- (x) the methodology for determining the daily and final settlement prices with provisions for adjustments in contract prices to compensate for allowable adjustments in quality and quantity;
- (y) the closing out of spot commodity contracts in case of non-compliance with the rules of the commodity exchange;
- (z) the mandatory maintenance of a settlement guarantee fund including provisions for pay in, pay out and topping up;

- (aa) the declaration of an event of default and disposal of a defaulter's assets under lien or pledge;
- (bb) the exclusion from membership to a commodity market of persons who are not fit and proper as provided for under the Act;
- (cc) the expulsion, suspension or disciplining of members of a commodity market for conduct inconsistent with just and equitable principles in the transaction of business, or for a contravention of the business rules of the proposed commodity market;
- (dd) the trading days and business hours of the commodity exchange;
- (ee) the resolution of disputes and provision for appeal to the Authority by trading participants and investors;
- (ff) generally, for the carrying on the business of the proposed commodity market with due regard to the interests and protection of the public; and
- (gg) any other provisions specified by the Authority or the commodities exchange.

7. (1) The Authority shall, if satisfied that the applicant has met all the requirements for licensing as a commodities exchange and upon payment of the licensing fees set out in the Second Schedule, grant the applicant a licence to operate as a commodity exchange.

Grant of a licence.

(2) A licence granted shall remain valid unless suspended or revoked by the Authority as specified in regulation 8.

(3) A commodity exchange shall pay an application fee and an annual regulatory fee as set out in the Second Schedule or as may be imposed by the Authority from time to time.

8. The Authority may suspend, restrict or revoke a commodity exchange licence in accordance with section 26 and 26A of the Act.

Suspension, restriction or revocation of a licence.

9. (1) A commodity exchange shall have a duty to ensure that—

Obligations of a commodity exchange.

- (a) an orderly, fair and transparent market in spot commodity contracts traded at the exchange is maintained at all times;
- (b) adequate market information is readily available to all participants, investors, media and other relevant stakeholders in a commodity market;
- (c) risks associated with the operations of the market and the commodity exchange are managed prudently; and
- (d) the exchange complies with these Regulations.

(2) A commodity exchange shall operate its facilities in accordance with its rules as approved by the Authority.

- (3) A commodity exchange shall—
- (a) regulate the operations, standards of practice and business conduct of its members, their employees, representatives and associates, in accordance with the exchange's rules;
 - (b) keep such records as are necessary for the proper recording of each transaction in the commodity exchange;
 - (c) preserve confidentiality of all information in its possession concerning its members and their clients, except such information as may be disclosed by the commodity exchange when required to do so, in writing, by its clearing house, the Authority, an order of a Court of law in Kenya and the provisions of any Law of Kenya;
 - (d) publish its rules, fees and charges;
 - (e) identify and manage conflicts of interest;
 - (f) ensure that only licenced warehouses and warehouse operators are used in connection with trading in a commodity market; and
 - (g) provide a robust mechanism for clearing and settlement.

(4) A commodity exchange shall immediately notify the Authority where it becomes aware that—

- (a) a member is unable to comply with any rule of the exchange or any rules relating to financial resources; or
- (b) a financial irregularity or other matter which, in the opinion of the exchange, may indicate that the financial standing or integrity of a member is in question, or that a member may not be able to meet its legal obligations.

10. (1) A commodity exchange shall have a board responsible for the overall leadership, governance and strategic direction of the commodities exchange.

Board of the commodities exchange.

(2) The board of a commodities exchange shall comprise of the—

- (a) chairperson;
- (b) chief executive of the commodity exchange; and
- (c) executive and non-executive directors with at least one third of the members of the board being independent directors.

(3) The non-executive and independent directors shall be persons who have knowledge and experience in commodity exchanges, and corporate governance and shall represent the interests of investors and the public interest.

11. (1) The Authority shall approve the names of the proposed directors and key personnel where such directors and key personnel have met the fit and proper requirements as prescribed under section 24A of the Act.

Conditions for appointment of directors and key personnel.

(2) An independent director shall serve for a fixed term of three years and shall be eligible for re-appointment, at the option of a commodity exchange, for one further term.

12. (1) A commodity exchange shall determine the qualification, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the appointment of the chief executive officer.

Appointment of a chief executive officer.

(2) A person shall not be appointed as the chief executive officer of a commodity exchange where the person is—

- (a) a significant shareholder or an associate of a shareholder of any commodity exchange; or
- (b) a significant shareholder or an associate of a market participant.

(3) The tenure under any contract of appointment of the chief executive officer of a commodity exchange shall not be less than three years and not exceeding five years and may be renewable once.

(4) A commodity exchange may change its chief executive officer upon prior written notice to the Authority.

(5) The Authority may recommend to the board of the commodity exchange the termination of the appointment of a chief executive officer of a commodity exchange if the Authority considers the chief executive officer has not met the fit and proper requirements as set out in section 24A of the Act.

13. (1) The board of a commodity exchange shall establish relevant committees to deal with the following functions of the commodities exchange—

Committees of the board and audit committee.

- (a) audit;
- (b) nomination;
- (c) risk management;
- (d) finance; and
- (e) information technology.

(2) Notwithstanding paragraph (1), the Board may establish other committees to deal with any other relevant functions of the commodities exchange.

(3) The committees of the board shall have written terms of reference which set out their authority and duties.

14. (1) The audit committee established by the board shall consist of the following—

Audit committee and internal audit function

- (a) at least one third of its members who shall be independent directors;
- (b) the chairperson of the audit committee is an independent director;

(c) at least one of the members of the audit committee holds professional qualification in audit or accounting.

(2) The board shall establish an internal audit function which reports directly to the audit committee.

(3) The internal audit function shall be responsible for providing assurance to the board on the adequacy of the commodity exchange's internal controls and processes.

15. (1) The board of a commodity exchange shall establish an advisory committee mandated to advise the board on non-regulatory and operational matters including product innovation and design, technology, charges and levies.

Advisory committee.

(2) The advisory committee shall comprise persons with technical expertise on commodity markets matters or capital markets.

(3) The chairperson of the board and the chief executive officer shall attend every meeting of the advisory committee.

(4) The advisory committee shall meet at least four times a year, but a period of three months shall not lapse between the date of one meeting and the next meeting.

(5) The recommendations of the advisory committee shall be tabled at the meeting of the board of the commodity exchange for consideration and by the board.

16. (1) A commodity exchange shall establish a risk management committee comprising directors and independent external experts.

Risk management committee.

(2) The risk management committee shall—

- (a) report to the board;
- (b) formulate a detailed risk management policy which shall be approved by the board;
- (c) monitor the implementation of the risk management policy;
- (d) keep the Authority and the board informed on the implementation of policy and any deviation; and
- (e) perform any other responsibilities as may be assigned by the board.

(3) The head of risk management function shall—

- (a) be responsible for implementation of the risk management policy; and
- (b) report to the risk management committee and to the chief executive officer of the commodity exchange.

17. The board of a commodity exchange shall appoint a compliance officer in accordance with regulation 30 of the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011.

Appointment of a compliance officer.

18. A commodity exchange shall comply with the disclosure requirements and corporate governance norms and conduct of business requirements applicable to market intermediaries, issued by the Authority and as amended from time to time.

Disclosure and corporate governance norms.

19. (1) A commodity exchange shall maintain, at all times, liquid net worth amounts of a type acceptable to the Authority, which shall be adequate in relation to the nature, size and complexity of the business of that commodity exchange to ensure that there are no significant risks that liabilities may not be met as they fall due.

Net worth requirements.

(2) The minimum liquid net worth capital requirement for a commodity exchange shall be—

- (a) an amount equal to one half of the estimated gross operating costs of the commodity exchange for the next twelve-month period; or
- (b) such other liquid net worth amount as may be prescribed by the Authority.

(3) A commodities exchange shall establish systems and controls to enable the commodity exchange to determine and monitor the sufficiency of its liquid net worth.

(4) A commodity exchange shall, on a quarterly basis within thirty days after the end of every quarter, submit to the Authority an audited liquid net worth certificate from an auditor.

20. Any fines imposed by the commodity exchange on its members shall be credited to the Fund.

Penalties levied by a commodity exchange.

21. A Commodity exchange seeking to operate a self-regulatory organization shall, for the purpose of section 18B of the Act, have—

Self-regulatory organization.

- (a) a procedure and appropriate system of exercising self-regulation over its commodity market members;
- (b) a code of conduct for its commodity market members;
- (c) adequate trading surveillance and compliance capacity; and
- (d) a procedure for dispute resolution.

(2) A commodity exchange shall, as a condition for a licence, implement a system of self-regulation with respect to its members and shall ensure the day to day management of trading, clearing, settlement, delivery and all other activities of its members is in accordance with—

- (a) the rules of the commodity exchange, and any amendments thereto, approved by the Authority; and
- (b) laws, regulations and guidelines relating to spot commodity contracts issued by the Authority.

22. A commodity exchange shall have members, comprising of—

Categories of membership.

- (a) commodity brokers;

(b) warehouse operators;

(c) settlement banks; and

any other category of membership as may be approved by the Authority.

PART III—COMMODITY CLEARING HOUSE AND COMMODITY BROKERS

23. (1) A person intending to establish and operate a clearing house for a commodities exchange shall—

Establishment of a clearing house.

(a) be a company or such other body corporate as approved by the Authority;

(b) satisfy the commodity exchange as to its technical, financial and human resources, including fit and proper requirements set out in the Act; and

(c) be approved by the Authority as a clearing house.

(2) The Authority shall, in writing, approve an application to act as a clearing house, if it is satisfied that—

(a) the applicant will ensure that that there are orderly, fair and expeditious clearing arrangements for transactions in spot commodity contracts;

(b) the rules of the commodity exchange make satisfactory provision relating to guaranteeing to its members of the performance of spot commodity contracts made in a commodity market;

(c) the interests of the public will be served by granting the application; and

(d) all conditions imposed by the Authority on the applicant clearing house have been met.

(3) A clearing house shall be exclusively engaged in its clearing business except only in respect of such other matters as are ancillary or incidental thereto as may be expressly permitted by the Authority.

(4) Where the Authority proposes to impose a condition under this regulation, the Authority shall give reasons for its decision and shall give the applicant an opportunity to be heard before a final decision is made.

24. (1) A clearing house shall ensure that—

Duties of a clearing house.

(a) there is orderly, fair and expeditious clearing and settlement arrangements for any transactions in spot commodity contracts through its facilities; and

(b) the risks associated with its business and operations are managed prudently.

(2) In discharging its duty, a clearing house shall—

(a) act in the interest of the public; and

-
- (b) ensure that where the interest of the public conflicts with its interest, the interest of the public prevails.
 - (3) A clearing house shall—
 - (a) operate its facilities in accordance with the established commodity exchange rules relating to clearing and settlement;
 - (b) formulate and implement appropriate procedures to ensure that commodity brokers comply with commodity exchange rules;
 - (c) preserve confidentiality on all information in its possession concerning its commodity brokers and their clients, subject to disclosure of such information when required in writing to do so by the Authority, a commodity exchange or if it is ordered by court to do so; and
 - (d) have efficient procedures and arrangements to address investor complaints.
 - (4) A clearing house shall immediately notify the Authority if it becomes aware –
 - (a) that any of its agents are unable to comply with any rule of the clearing house or a commodity exchange; and
 - (b) of a financial irregularity or any other matter which in the opinion of the clearing house may indicate that—
 - (i) the financial standing or integrity of a commodity broker or warehouse operator is in question; or
 - (ii) a commodity broker or warehouse operator may not be able to meet its legal obligations.
 - (5) A clearing house shall provide and maintain at all times—
 - (a) adequate and properly equipped premises;
 - (b) competent personnel;
 - (c) automated systems with adequate capacity and facilities to meet contingencies or emergencies,
 - (d) security arrangements; and
 - (e) technical support for the conduct of its business.
25. A person shall not carry on or purport to carry on business as a commodity broker unless the person—
- (a) is licenced as a commodity broker by the Authority; and
 - (b) conducts its business in accordance with the rules and practices of a commodity exchange on which the trading takes place.
26. (1) A person who intends to carry on the business of a commodity broker shall apply to the Authority for a licence to operate as such in Form B as set out in the First Schedule.

Licensing of commodity brokers.

Application for a licence.

(2) The application under paragraph (1) shall be accompanied by—

- (a) the fees as set out in the Second Schedule;
- (b) the relevant documents in support of the information and declarations; and
- (c) a letter from a commodity exchange stating that the application meets all the relevant requirements of that commodity exchange and that the commodity exchange will admit the applicant if licensed by the Authority.

27. (1) An applicant seeking a licence to operate as a commodity broker shall be required to—

Consideration for grant of license.

- (a) be a company limited by shares;
- (b) have a chief executive officer who is a fit and proper person as described under section 24A of the Act and who has experience of not less than five years in the business of buying, selling or dealing in commodities, spot commodity contracts, derivatives contracts or other securities;
- (c) have the necessary infrastructure including office space, equipment and trained staff to effectively discharge its activities;
- (d) have as its directors and key personnel, persons who are fit and proper as described under section 24A of the Act; and
- (e) have a minimum net capital and minimum net worth as determined by a commodity exchange and approved by the Authority from time to time.

(2) Where an applicant is a market intermediary of another licensed exchange under the Act, the applicant shall provide an undertaking that it shall allocate a set percentage of the net capital balance to support its activities at the commodity exchange.

(3) The net capital required, shall—

- (a) not be less than the minimum required net capital balance at a commodity exchange;
- (b) be kept segregated; and
- (c) be maintained at all times.

28. (1) The Authority may, in considering an application made for a commodity broker licence, require an applicant to furnish such further information regarding any previous dealings in securities, derivatives, commodities and any other related matter as the Authority may consider necessary.

Furnishing of information and clarifications

(2). An applicant or its key personnel shall, if required by the Authority, appear before the Authority to make personal representations.

29. (1) The Authority, shall, within thirty days from the date of receipt of an application that meets all the requirements, grant a licence

Grant of license.

to the applicant.

(2) The Authority shall within seven days of its decision, inform a commodity exchange and the applicant of the grant of a licence.

(3) A licence granted shall remain valid unless it is suspended or revoked.

(4) The Authority shall not refuse to grant a licence without first giving the applicant an opportunity of being heard.

(5) Where the Authority, after hearing the applicant, refuses to grant the applicant a licence, the Authority shall, in writing, communicate the decision to the applicant and the commodity exchange within fourteen days of the hearing, stating the grounds for refusal.

(6) An applicant aggrieved by the decision of the Authority to refuse the grant of a licence may appeal against such refusal to the Capital Markets Tribunal within fifteen days of receipt of the decision of the Authority.

30. A commodity broker shall pay an annual regulatory fee as set out in the Second Schedule.

Annual regulatory fee.

31. The Authority may suspend, restrict or revoke a commodity exchange license in accordance with section 26 and 26A of the Act.

Suspension, restriction or revocation

32. In the event of a suspension or revocation of a commodity broker's licence, a commodity broker shall be responsible for clearing all of its outstanding obligations up to the date on which that commodity broker had been operating.

Commodity broker to clear its liabilities.

33. (1) A commodity broker shall, as a condition of continued admission to a commodity exchange, provide to the Authority, through a commodity exchange, a certified copy of—

Continuing obligations

- (a) the net capital balance;
- (b) net worth statements; and
- (c) a report of the auditor.

(2) The certified copies of the documents provided in paragraph (1) above shall be submitted to the Authority quarterly within thirty days of the end of the quarter in a form the manner provided by the Authority.

PART IV—TRADING AND CONDUCT OF BUSINESS

34. (1) Every trade on a commodity exchange shall take place on—

Trading system and platform.

- (a) the trading system of the commodity exchange;
- (b) an electronic platform provided by a commodity exchange; or
- (c) such other facility a commodity exchange provides, subject to the approval of the Authority.

(2) The trading system deployed under paragraph (1) shall—

- (a) be integrated with a clearing and settlement system;
- (b) have an online screen-based trading system for providing direct market access up to the client level via the internet;
- (c) be integrated with the electronic central registry of the warehouse operators prescribed under the Warehouse Receipt System Act, 2019; and
- (d) have an effective risk management framework.

35. Transactions to be conducted in a commodity exchange shall include dealings in spot commodity contracts.

Transactions on a commodity exchange.

36. (1) The commodity exchange shall submit spot commodity contract specification to the Authority for approval prior to becoming eligible for listing on a commodity exchange.

Approval of spot commodity contract specifications.

(2) Where, after the approval of the spot commodity contract specification, the Authority finds the application or operationalization of the approved spot commodity contract deficient in any material respect or that the commodity exchange has failed to comply with any conditions or requirements or that the continued listing of the spot commodity contract would not be in the public interest, the Authority may—

- (a) direct the relevant commodity exchange to correct the deficiency;
- (b) direct the relevant commodity exchange to comply with the condition or requirement given by the Authority within the specified time;
- (c) amend the specification of any spot commodity contract; or
- (d) revoke the spot commodity contract.

(3) The Authority may require an application for approval of a spot commodity contract to be accompanied by an expert opinion regarding any of the information contained in the contract.

(4) An application for approval of a spot commodity contract specification shall not be rejected and an approval of a spot commodity contract shall not be revoked unless the relevant commodity exchange has been given an opportunity to be heard by the Authority.

37. (1) In order to diminish, eliminate or prevent excessive speculation in any commodity under a spot commodity contract, a commodity exchange, with the approval of the Authority, may, by

Fixing of position and trading limits in contracts.

notice in writing, establish and fix such limits as it considers necessary on the amount of trading which may be done or positions which may be held by any person, generally or specifically, under a spot commodity contract on or subject to rules of a commodity exchange.

(2) A commodity exchange shall, in deciding on whether a person has exceeded the limits fixed under paragraph (1) consider the positions held and trading done by any persons, directly or indirectly, controlled by such a person shall be included with the positions held and trading done by that person.

(3) The limits on positions and trading, described under this regulation shall apply to positions held by, and trading done by, two or more persons acting pursuant to an express or implied agreement or understanding, as if the positions were held by, or the trading done by, a single person.

38. All approved contracts transacted on a commodity exchange shall be cleared and settled by the clearing house of a commodity exchange, and whenever required, closed out in accordance with the rules of a commodity exchange or as directed by the Authority.

Clearing and settlement through the clearing house.

39. (1) The Warehouse Receipt System Act shall apply to the warehouse receipt of a commodity that is the subject of a spot commodity contract.

Application of Warehouse Receipt System Act.

(2) The Authority or the commodity exchange subject to the Approval of the Authority may impose additional requirements on warehouses or warehouse operators where necessary to maintain market integrity and efficiency or in the protection of investor interests.

40. The Capital Markets (Conduct of Business) (Market Intermediaries) Regulations and the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations shall apply to commodity brokers with necessary modifications as may be set out by the Authority.

Standards of conduct.
L.N. No. 144 of 2011.
L.N. No. 145 of 2011.

41. A commodity broker shall not knowingly use money, securities, property, proceeds or funds received from, advanced to or held for any customer to margin, guarantee or secure the trades or contracts or to secure or extend the credit of any client other than the client for whom such money, securities, property, proceeds or funds are held.

Commodity broker not to use funds.

42. Every commodity broker who has acted as an agent in connection with a liquidating trade in a spot commodity contract shall promptly send to their client a statement of purchase and sale setting forth the—

Statement of purchase and sale.

- (a) dates of the initial transaction and liquidating trade;
- (b) commodity and quantity bought and sold;
- (c) commodity exchange upon which the contracts were traded;
- (d) delivery period;

- (e) prices on the initial transaction and on the liquidating trade;
- (f) gross profit or loss on the transactions;
- (g) commission; and
- (h) net profit or loss on the transactions.

43. (1) Every commodity broker shall furnish each prospective client prior to the opening of an account with a written statement in a form approved by the Authority which will—

Statement, terms and conditions to be furnished to prospective client.

- (a) explain the nature of, and risks inherent in trading in contracts and obligations assumed by the client upon entering a contract;
- (b) advise the client to request and study the terms and conditions of the contract;
- (c) set out the terms and conditions of any relevant contracts;
- (d) furnish details concerning commissions and other charges levied by the commodity broker and the commodity exchange.

(2) Every commodity broker shall upon request by a prospective client avail copies of all current terms and conditions of any spot commodities contract.

(3) Where there is any unexpired or unexercised open spot commodity contract outstanding in a client's account, the relevant commodity broker for that specific transaction shall promptly deliver to such a client, a written monthly statement, setting forth—

- (a) the opening cash balance for the month in the client's account;
- (b) all deposits, credits, withdrawals and debits to the client's account;
- (c) the cash balance in the client's account;
- (d) each unexpired and unexercised spot commodity contract;
- (e) the agreed price of each unexpired or unexercised spot commodity contract;
- (f) each open spot commodity contract; and
- (g) the price at which each open spot commodity contract was entered into.

44. A commodity broker shall not open a spot commodity contract account for a client unless the commodity broker furnishes the client with a separate written risk disclosure document which shall be in the form provided by a commodity exchange and receives from the client an acknowledgement signed and dated by the client that the client has received and understood the nature and contents of the risk disclosure document.

Risk disclosure statements.

45. (1) A commodity broker shall maintain strict segregation between its own funds and each individual client's funds without any

Segregation of clients' funds.

commingling.

(2) A commodity broker shall establish a client group account with the designated settlement bank of the commodity exchange of which that commodity broker is a member.

(3) A commodity broker shall undertake and complete reconciliation on a daily basis between—

- (a) the client group account maintained at the designated clearing house of a commodity exchange;
- (b) the client group account at the clearing house of a commodity exchange; and
- (c) individual clients' account maintained at the clearing house of a commodity exchange.

(4) A commodity broker shall not accept cash from or pay cash to a client for a transaction under these Regulations.

(5) A commodity broker shall maintain a record of transactions with the relevant banks including client's deposits and withdrawals from the client group account maintained with the commodity exchange designated clearing house.

PART V—COMMODITY SETTLEMENT GUARANTEE FUND

46. (1) For the purposes of section 12(1) (i) and (j) of the Act, the commodity exchange shall establish a Fund to be known as the Settlement Guarantee Fund for the purpose of providing guarantee to a member of a commodity exchange who fails to meet their clearing and settlement obligations to a commodity exchange arising out of transactions on a commodity exchange.

Establishment of the Fund.

(2) The settlement guarantee fund shall be maintained by the commodities exchange.

(3) Subject to the approval of the Authority, a commodity exchange shall prepare rules, procedures, terms and conditions governing the settlement guarantee fund, which may specify the—

- (a) amount of deposit or contribution to be made by each member of the commodity exchange to the settlement guarantee fund;
- (b) terms, manner and mode of deposit or contribution;
- (c) conditions of repayment of deposit or withdrawal of contributions from the settlement guarantee fund;
- (d) charges for drawing from the settlement guarantee fund;
- (e) penalties applicable; and
- (f) disciplinary actions.

47. (1) The Settlement Guarantee Fund shall consist of—

Composition of the Fund.

- (a) contributions from a commodity exchange and its clearing house;

- (b) contributions from settlementbanks of a commodity exchange as may be determined by the board of a commodity exchange, with the approval of the Authority, from time to time;
- (c) such sums of money as accrued from interest and profits from investing the assets of the settlement guarantee fund;
- (d) such money recovered by or on behalf of a commodity exchange from entities whose failure to meet their obligations to investors results in payments from the settlement guarantee fund; and
- (e) such sums of money as are received for purposes of the settlement guarantee fund from any other source approved by the commodity exchange.

(2) Money accumulated in the settlement guarantee fund may be invested by the commodities exchange in such manner as set out in the rules of the Settlement Guarantee Fund.

(3) A commodity exchange shall recommend the amount of additional contributions or deposit to be made by each of its members.

(4) A clearing house shall, in respect of settlement of transactions, guarantee financial settlement of such transactions to the extent it has acted as a legal counter party.

48. The commodity exchange may, permit a member of a commodity exchange to contribute to or provide the deposit to be maintained with the Fund, in the form of cash or in such other form or method and subject to such terms and conditions, as may be specified by the commodity exchange.

Form of contribution or deposit to the Fund.

49. The Settlement Guarantee Fund may be used for such purposes specified by the commodity exchange, which may include—

Management of the Fund.

- (a) defraying the expenses of creation and maintenance of the settlement guarantee fund;
- (b) temporary application of the settlement guarantee fund to meet shortfalls and deficiencies arising out of the clearing and settlement obligations of members of a commodity exchange in respect of and connected to transactions related to spot commodity contracts;
- (c) meeting any loss or liability of a clearing house arising out of clearing and settlement operations;
- (d) repayment of the balance amount to a member pursuant to provisions in the commodity exchange rules regarding the repayment of deposits after meeting all obligations, when such a member ceases to be a member of a commodity exchange; and
- (e) any other purpose as may be specified by the commodity exchange.

50. Where a member of a commodity exchange has failed to meet his clearing and settlement obligations or where a member of a commodity exchange has been declared a defaulter, a commodity exchange or a clearing house, may use the settlement guarantee fund and other monies of the concerned member to the extent necessary to fulfil his obligations in the following order—

Scheme of arrangements on default.

- (a) any amount that may have been paid by the defaulting member in the form of a pre-trade deposit, but does not include a client's pre-trade deposit, or any other money deposited with or retained by a clearing house for the purpose of meeting the clearing and settlement obligations;
- (b) any amount that may have been deposited by the defaulting member towards additional deposit with the clearing house;
- (c) the proceeds, if any, recovered from auctioning or disposing of the member's membership rights vested in a commodity exchange, subject to deduction of the expenses relating or incidental to the auction or disposal, as the case may be;
- (d) the fines, penalties, interest or other income, if any, earned by investment or divestments of the settlement guarantee fund as may be decided by the Authority;
- (e) the contribution made by all classes of members in proportion to their deposit to the settlement guarantee fund, or where the deposit is deficient, the deficit in the amount shall be deposited in the Settlement Guarantee Fund;
- (f) the profits, if any, from returns on investments of the settlement guarantee fund; and
- (g) any other funds set aside by the commodities exchange.

51. (1) Where a pro-rata charge has been made against a member's actual contribution or deposit, and as a consequence, the member's remaining contribution or deposit towards the settlement guarantee fund falls below his required contribution or deposit, the member shall contribute or deposit towards the shortfall in the settlement guarantee fund within such time as the commodity exchange may specify.

Additional contributions or deposits.

(2) Where any member who is required to contribute or deposit to the Fund fails to do so, the commodities exchange may charge such rate of interest on the shortfall, as it may determine, in addition to any administrative action, including imposing fines and penalties against the member.

PART VI—RECORD KEEPING, ACCOUNTS, AUDITS AND INSPECTIONS

52. (1) A commodity exchange, clearing house or commodity broker shall—

Production of records.

- (a) produce any books, accounts and records kept by it in

connection with, or for the purposes of, its business, or in respect of any trading in spot commodity contracts;

- (b) collect and furnish any returns; and
- (c) provide any information relating to its business, or any trading in spot commodity contracts, or any other specified information, as the Authority may require.

(2) The Authority, may, on production of any books, accounts or records under paragraph (1) take copies of or extracts from them.

53. (1) A commodity exchange, commodity broker and a clearing house shall keep such records as are necessary for the proper recording of each transaction on the exchange, commodity broker or clearing house.

Records of transactions on a commodity market or clearing house.

(2) The records kept under paragraph (1) shall be availed to any client of any member of such an exchange, broker or clearing house, upon production of a written confirmation of any transaction with such member, particulars of the approximate time at which the transaction took place and verification or otherwise of the matters set forth in the confirmation.

(3) The Authority may, at any time, require a commodity exchange, commodity broker or a clearing house of a commodity exchange to deliver to it reports of transactions on the commodity exchange, commodity broker or clearing house of a commodity exchange.

54. (1) Upon a determination by the Authority that information concerning accounts may be relevant to determine whether manipulation, corner, squeeze or other market disorders exist in any commodity exchange, the Authority may, by notice in writing, require such information as it thinks necessary from any person, including a member of a clearing house or a commodity broker or any client in the commodity market, and the person concerned shall provide the required information within such time as may be specified by the Authority.

Information to be provided by market participants.

(2) Where the Authority has reason to believe that any person has failed to give the information required in the notice under paragraph (1), it may without prejudice to any other penalty that may be imposed, inform a commodity exchange or a clearing house which shall, in the event, prohibit the execution of, or acceptance for orders of, trades on the exchange or a clearing house in the months or expiration dates specified in the notice unless such trades offset open contracts of that person.

55. (1) A commodity exchange, clearing house and commodity broker shall keep proper books of accounts and records of income and expenditure, assets and liabilities and all other transactions of the commodity exchange.

Accounts and audit.

(2) A commodity exchange, clearing house and commodity brokers shall, within four months after the end of each financial year, prepare a statement of accounts of the commodity exchange, clearing

house and commodity brokers for the financial year, including a statement of comprehensive income and a statement of financial position.

(3) A commodity exchange and commodity broker shall appoint a qualified auditor or auditors, to audit the books of accounts or to investigate any affairs of a commodity exchange or broker.

(4) A commodity exchange, clearing house and commodity brokers shall submit the statement of accounts prepared under paragraph (2) to their auditors for audit.

(5) The auditors shall prepare a report on the accounts and submit the report to the commodity exchange, clearing house and commodity brokers.

(6) A commodity exchange, clearing house and commodity brokers shall, within thirty days from the date of receipt of the auditor's report referred to under paragraph (5), send a copy of the report and a copy of the statement of accounts to the Authority.

(7) The auditors' report shall include—

- (a) the opinion of the auditor, whether the statement of comprehensive income for the financial year to which the report relates gives a true and fair view of the surplus or deficit of a commodity exchange, clearing house or commodity broker;
- (b) a statement whether, in the opinion of the auditor, the statement of financial position for the financial year gives a true and fair view of a commodity exchange, clearing house or commodity broker and their financial affairs at the end of that financial year; and
- (c) any other information that the auditor may consider important.

(8) Every commodity exchange, clearing house, commodity broker and any of their employee or agent shall on demand by an audit firm—

- (a) allow the auditor reasonable access to the premises occupied by a commodity broker or by any other person acting on behalf of a commodity broker;
- (b) extend reasonable facilities to the auditor;
- (c) provide any information required by an auditor; and
- (d) produce for inspection any documents, books, vouchers and other records or copies of any documents, books, vouchers and other records, that the audit firm may consider necessary for the performance of its duties.

(9) An auditor shall, during an audit or investigation, be entitled to examine or record statements of any member, director, partner,

proprietor, associate or employee of a commodity exchange, commodity broker or clearing house, under audit or investigation.

(10) A member, director, partner, proprietor, associate or employee of a commodity exchange, broker or clearing house under audit or investigation shall give the auditor all assistance in connection with the audit or investigation.

56. The Authority may, where satisfied that it is in the public interest to do so, appoint an auditor, in writing, at the expense of a commodity exchange, clearing house or commodity broker, to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of a commodity exchange, clearing house or commodity broker.

Authority may appoint an auditor.

57. (1) A commodity exchange, clearing house or commodity broker shall, within four months after the end of their respective financial year, submit to the Authority an annual report.

Annual report.

(2) The annual report submitted under paragraph (1) shall include—

- (a) a description of the activities undertaken in that financial year;
- (b) the resources, including financial, technological and human resources, that were available and used, to ensure compliance with obligations and, in particular, for a commodity exchange, the obligation to ensure that the commodity market operates in a fair, efficient and transparent manner;
- (c) an analysis of the extent to which activities undertaken, and resources used have resulted in full compliance with all obligations under these Regulations and the rules of the commodity exchange;
- (d) the audit report as required under these Regulations; and
- (e) any other information and statements as the Authority may specify, in writing.

58. The Authority may appoint one or more persons as inspecting officers to undertake inspection of the books of accounts and other records of a commodity exchange, commodity broker or clearing house where there is need to—

The right of the Authority to inspect.

- (a) establish that the books of accounts and other records are being maintained in the manner required;
- (b) ensure the provisions of the Act are being complied with;
- (c) investigate into the complaints received from investors, other commodity brokers or any other person on any matter having a bearing on the activities of the commodity exchange, commodity broker or clearing house; and
- (d) investigate on its own motion, in the interest of the commodity market or the interest of investors, into the

affairs of a commodity exchange, commodity broker or clearing house.

59. (1) The Authority shall, before undertaking an inspection under regulation 58, give the relevant commodity exchange, commodity broker or clearing house a reasonable notice on the intention to undertake an inspection.

Procedure for inspection.

(2) The Authority may direct, in writing, that an inspection of a commodity exchange, commodity broker or clearing house be carried out without notice to the commodity exchange, commodity broker or clearing house, if the Authority is satisfied that it is in the interest of the commodity market or investors in the commodity market that no such notice should be given.

(3) The inspecting officers appointed for the purpose of an inspection, shall have the power to undertake the inspection as directed by the Authority and that commodity broker is bound to discharge its statutory obligation.

60. (1) An inspecting officer may require a shareholder, director, officer or an employee of a commodity exchange, commodity broker or clearing house under inspection to produce such books, accounts and other documents in his custody or control and furnish the inspecting officer with the statements and information relating to the transactions in a commodity exchange within such time as the inspecting officer may require.

Obligations of a commodity broker in respect of inspections.

(2) A commodity exchange, commodity broker or clearing house shall—

- (a) allow the inspecting officer reasonable access to its premises;
- (b) extend reasonable facilities to the inspecting officer to examine any books, records, documents and computer data in its possession;
- (c) provide copies of documents or other materials which, in the opinion of the inspecting officer, are relevant.

(3) An inspecting officer shall, during inspection, be entitled to examine or record statements of any shareholder, director, partner, proprietor or employee of a commodity exchange, commodity broker or clearing house under inspection.

(4) A director, an officer or an employee of the commodity exchange, commodity broker or clearing house under investigation shall give to the inspecting officer all assistance in connection with the inspection as it may reasonably be expected to give.

61. The Authority may, after considering an inspection report, take such action as provided for under the Act.

Action on inspection report.

PART VII—OFFENCES

62. (1) A person who—

Market offences

- (a) directly or indirectly purchases or sells spot commodity contracts to cause a false appearance of active trading or cause the creation of misleading information regarding the condition of the market or price of any spot commodity contract;
 - (b) issues an order for the purchase or sale of a spot commodity contract, whose execution would involve no change in ownership or without incurring a market risk or change in the commodity broker's position;
 - (c) circulates, disseminates, authorises the circulation or dissemination of any untruthful or misleading statements or information to the effect that the price of trading in any class of spot commodity contracts will, or is likely to, rise or fall because of the market operations of one or more persons, with the purpose of benefitting from the fluctuations so created on the commodity exchange or off the commodity exchange;
 - (d) knowingly executes, or hold himself out as having executed, an order for the purchase or sale of a spot commodity contract on a commodity exchange without having effected a bona fide purchase or sale of the spot commodity contract in accordance with the rules and practices of a commodity;
- commits and offence.

63. A person who knowingly executes, or hold himself out as having executed, an order for the purchase or sale of a spot commodity contract on a commodity exchange without having effected a bona fide purchase or sale of the spot commodity contract in accordance with the rules and practices of a commodity exchange commits an offence.

Bucketing.

64. A person who directly or indirectly –
- (a) manipulates, or attempts to manipulate, the price, of a spot commodity contract that may be dealt in on a commodity exchange;
 - (b) misrepresents the quality or quantity of a commodity that is the subject of a spot commodity contract; or
 - (c) corners, or attempts to corner, any commodity which is the subject of any spot commodity contract,
- commits an offence.

Manipulation of price and cornering.

65. A person who directly or indirectly, in connection with any transaction with any other person involving trading in a spot commodity contract—

Employment of fraudulent or deceptive devices, etc.

- (a) employs any device, scheme or artifice to defraud that other person;
- (b) engages in any act, practice or course of business which operates as a fraud or deception, of that other person; or
- (c) makes any untrue statement of a material fact or omits to

state a material fact necessary to make the statements made in light of the circumstances under which they were made not misleading,

commits an offence.

66. A person who directly or indirectly, for the purposes of inducing or attempting to induce another person to trade in a spot commodity contract or class of spot commodity contracts, makes or publishes—

Fraudulently inducing trading.

- (a) any statement which is, at the time and considering the circumstances in which it is made, false, misleading or deceptive with respect to any material fact and which he knows, or has reasonable grounds for believing, is false, misleading or deceptive; or
 - (b) any statement which is, by reason of the omission of a material fact, rendered false, misleading or deceptive and which he knows, or has reasonable grounds for believing is rendered false, misleading or deceptive by reason of the omission of that fact;
- commits an offence.

67. (1) A board member, employee, member or agent of a commodity exchange who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any spot commodity contract for which such information has not been made public, and disseminates such information with intent to assist another person, directly or indirectly to participate in any transaction in a commodity exchange or any other exchange or off-exchange commits an offence.

Insider trading

(2) Any person who acquires information as described under paragraph (1) from a board member, employee, member or agent of a commodity exchange and uses such information to directly or indirectly participate in any transaction in a commodity exchange or any other exchange or off-exchange commits an offence.

68. A person who commits an offence under these Regulations shall be liable, upon conviction to—

Penalty.

- (a) the penalty specified under section 34A of the Act; and
- (b) damages for any loss occasioned.

PART VIII—GENERAL PROVISIONS

69. (1) The Fund established under section 18 of the Act, shall apply to the commodities market with the necessary modifications.

Investor compensation Fund.

(2) A commodity broker shall remit to the Fund fees payable to the Fund for every spot commodity contract within fifteen days following a transaction.

70. An entity carrying on the business of a commodity exchange prior the commencement of these Regulations shall comply with these Regulations within twelve months upon commencement of these Regulations.

Transition

FIRST SCHEDULE

FORM A

(r. 4(1))

APPLICATION FORM FOR A LICENCE TO CONDUCT THE BUSINESS OF A
COMMODITY EXCHANGE

Note-

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of application

22. Name of the Company.....Limited

23. Registered office.....

24. Date of incorporation.....

25. Address.....

26. E-mail.....

27. Location, address and telephone number of principal office.....

.....

28. Location, address and telephone number of branch offices.....

.....

29. Details of capital structure:

(d) Nominal/authorized capital (KSh.).....

(e) Number of shares.....

(f) Paid-up capital (KSh.).....

30. Shareholders (please attach list)

Name	Address and telephone number	Number of shares held

31. (a) Directors (please attach a list)

Name	Identity card/Passport number	Date of appointment	Date of Birth	Permanent address and telephone number	Academic or professional qualification	Number of shares held in the company

(b) Secretary

Name.....

Address.....

Institute of Certified Secretaries of Kenya Registration No.....

(d) Chief Executive Officers and other key personnel

Name	Identity card or Passport number.	Date of appointment	Date of birth.	Permanent address and telephone number	Academic and professional qualifications	Number of shares held in the company.
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32. Particulars of other directorship (s) of the directors and secretary.....

33. Particulars of shares held by the directors and secretary in other companies.....

34. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt or compounded with or made an assignment for the benefit of his creditors in Kenya or elsewhere? Yes/No. If “Yes”, give details.....

35. Has any director, secretary or key personnel of the applicant been a director of a company that has been:
- (d) denied any license or approval under the Capital Markets Act or equivalent in any other jurisdiction: Yes/No
 If Yes, give details.....

 - (e) a director of a company providing banking, insurance, financial or investment advisory services whose license has been revoked by the appointing authority: Yes/No. If Yes, give details.....

 - (f) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/No. If Yes, give details.....

36. Has any court ever found that the applicant, or a person associated with the applicant was involved in the violation of the Capital Markets Act or Regulations thereunder or equivalent law outside Kenya? Yes/No. If Yes, give details.....

37. Is the applicant or a person associated with the applicant is subject to any proceedings that could result in a “yes” answer to question 15? Yes/No. If “yes” give details.....

.....
 38. (1) is the applicant, any shareholder, director or secretary of the applicant a member or director of a member company of any securities exchange, derivatives exchange or commodity exchange? Yes/No. If “yes” give details.....

(2) have any of the above persons been-

(c) refused admission as a commodity member of any securities organization? Yes/No. if Yes, give details.....

(d) expelled from or suspended from trading on any securities organization? Yes/No if Yes, give details.....

(e) subjected to any other form of disciplinary action by any securities, derivatives or commodity exchange? Yes/No if Yes, give details.....

39. Business references:

Name	Address	Telephone number(s)	Occupation

40. Profile of the chief executive officer and key personnel in the applicant company

41. List of office facilities of the applicant.....

42. Any other additional information considered relevant to this applicant.....

We.....(Director).....

(Director) and.....(Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this.....day of.....20....

Signed:

.....) Director
) Director
) Secretary

Note:

Please attach the documents and details referred to in regulation 4(2).

FORM B (r. 26(1))

APPLICATION FORM FOR LICENCE AS COMMODITY BROKER

1. Name of company Limited
2. Registered office
3. Date of incorporation
4. Address
5. E-mail
6. Location, address and telephone number of principal office.....
7. Location, address and telephone number of branch offices
8. Details of capital structure:
 - (a) Nominal capital (KSh.)
 - (b) Number of shares
 - (c) Paid-up capital (KSh.)
9. Shareholders (please attach a list)

Name	Address & telephone number	Number of shares Held

10 (a) Directors (please attach a list)

Name	Identity Card/ Passport number	Date of Appointment	Date of birth	Permanent address & telephone number	Academic Or Professional qualification	Number of shares held in the company

(b) Secretary

Name.....

Address

Institute of Certified Public Secretaries of Kenya Registration No.

(c) Chief executive and other key personnel

Name	Identity Card/ Passport number	Date of Appointment	Date of birth	Permanent address & telephone number	Academic Or Professional qualification	Number of shares held in the company

11. Particulars of other directorship(s) of the directors and secretary.

.....

12. Particulars of shares held by directors or secretary in other companies

.....

13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of his creditors, in Kenya or elsewhere? Yes/ No. If 'yes', give details

.....

14. Has any director, secretary or senior management of the applicant been a director of a company that has been:

- (a) denied any license or approval under the Capital Markets Act or equivalent legislation in any other jurisdiction: Yes/No.

If Yes, give details.

.....

- (b) a director of a company providing banking, insurance, financial or investment advisory services whose license has been revoked by the appropriate authority? Yes/No. If Yes, give details.

.....

- (c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/ No. If yes, give details.

.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or Regulations thereunder, or equivalent law outside Kenya? Yes / No. If 'yes', give details.

.....

16. Is the applicant and/or a person associated with the applicant now the subject of any proceeding that could result in a 'yes' answer to the above question (15)? Yes/No. If 'yes,' give details.

.....

17(1) Is the applicant, or any shareholder, director or the secretary of the applicant, a member or director of a member company of any securities, derivatives or commodity exchange? Yes/ No.

If 'yes', give details.

.....

(2) Have any of the above persons been -

(a) refused membership of any securities organization? Yes / No. If 'yes', give details

.....

(b) expelled from or suspended from trading on or membership of any securities organization? Yes/No. If 'yes' give details

.....

(c) subjected to any other form of disciplinary action by any securities, derivatives or commodity exchange? Yes/No. If 'yes', give details.

.....

18. Business references:

Name	Address	Telephone number (s)	Occupation
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19. One bank reference, where the applicant is a bank the reference shall be given by another bank independent of the applicant

20. Profile of the chief executive and key employees in the applicant company:

Name	Post	Qualifications	Experience
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21. List the office facilities of the applicant

.....

22. State the exact nature of the activity to be carried on which obliges the applicant to apply for a license from the Capital Markets Authority

.....

23. Any other additional information considered relevant to this application:

.....

We(Director), (Director) and (Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this day of 20

Signed:

.....) Director
) Director
) Secretary

Note:

1. Please attach the documents and details referred to in regulation 4(2).
2. If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of the application or renewal.

SECOND SCHEDULE

LICENSING AND ANNUAL FEES FOR COMMODITY EXCHANGE AND COMMODITY BROKERS (r. 4(1) (b);26(2)(a))

Licensee	Application fee (KSh.) Non-refundable	Annual Regulatory fee (KSh.)
Commodity exchange	10,000	2,500,000
Commodity broker	10,000	50,000

Dated the 18th March, 2020.

UKUR YATANI,
Cabinet Secretary, National Treasury and Planning.