

Provisional Amendment of the Revised Rules of the Ethiopia Commodity Exchange No. 4/2010

1. Preamble

- 1.1 It is found necessary to amend the Revised Rules of the Ethiopia Commodity Exchange No. 3/2009.
- 1.2 These Amendments of the Rules are issued by the Ethiopia Commodity Exchange (the “Exchange”).
- 1.3 These Rules shall come into force after the approval of the Ethiopia Commodity Exchange Authority as per its power under Article 6(3) of the Ethiopia Commodity Exchange Authority Proclamation No.551/2007.
- 1.4 These Rules may be cited as the “Amendment of the Revised Rules of the Ethiopia Commodity Exchange No. 4/2010”

2. Amendment

The Revised Rules of the Ethiopia Commodity Exchange No.3/2009 (the “Rules”) is hereby amended as follows:-

- (1) The following new Sub-Article 2.1.18, 2.1.23 and 2.1.40 are added following Sub-Article 2.1.17, 2.1.21 and 2.1.37 of Sub-Article 2.1 of the Rules. Sub-Articles 2.1.18 to 2.1.21, 2.1.22 to 2.1.37 and 2.1.38 to 2.1.44 of the same Sub-Article of the Rules are renumbered as Sub-Articles 2.1.19 to 2.1.22, 2.1.24 to 2.1.39 and 2.1.41 to 2.1.47 respectively.

2.1.18 Direct Specialty Trade: A modality for facilitating direct exports by producers of specialty commodity to international buyers.

2.1.23 Export Service Provider: An Exchange Member that provides services of export preparation and facilitation on behalf of a producer engaged in direct specialty trade.

2.1.40 Specialty Commodity: A commodity that has a value premium above commercial grade commodity due to particular attributes, including but not limited to its quality or certifications, that it possesses or due to its geographic origin.”

(2) The following new sub-Article 5.6 is added under Article 5 of the Rules.

“5.6 Direct Specialty Trade

Producers of specialty commodity entitled under specific provision of relevant laws to engage in direct export may engage with international buyers through the Direct Specialty Trade facility of the Exchange.

The Direct Specialty Trade facility is not intended to execute an actual international sales contract between producer and international buyer, but only to facilitate the process of price discovery and market coordination. The international sales contract shall be executed directly between the producer and the international buyer, after the conclusion of the Direct Specialty Trade bidding session conducted by the Exchange.

5.6.1 Eligibility for Participation in Direct Specialty Trade

The main actors who can participate in Direct Specialty Trade are:

5.6.1.1 A producer of specialty commodity, such as farmers cooperatives, private investors and state-owned producing enterprises; and

5.6.1.2 An international commodity buyer or his legal representative.

5.6.2 Deposit of Commodity for Direct Specialty Trade

5.6.2.1 An interested producer shall bring his commodity to a designated Direct Specialty Trade Exchange Warehouse and shall be required to obtain a specialty grade for his commodity.

5.6.2.2 The commodity may obtain a specialty grade as either pre-export processed or post-export processed.

5.6.2.3 The seller shall deposit the commodity at the designated warehouse and obtain a Direct Specialty Trade Warehouse Receipt.

5.6.2.4 There shall be a minimum lot size for deposit of 30 bags, or as specified by the Exchange.

5.6.2.5 The Exchange shall issue a Direct Specialty Trade Warehouse Receipt that specifies the quality, producer identity and other special attributes of the commodity.

5.6.2.6 The Direct Specialty Trade inventory management shall store the consignment in the warehouse separately according to the identity of the producer.

5.6.3 Qualification to the Direct Specialty Trade bidding session

5.6.3.1 The Exchange shall conduct a Direct Specialty Trade bidding session between specialty commodity producers and international buyers on a regular basis, at a pre-announced frequency as it may deem necessary.

5.6.3.2 The producer of specialty commodity shall designate a third party as an Export Service Provider, unless he indicates otherwise to the Exchange. In order to qualify for the Direct Specialty Trade bidding session, the producer must register an Export Service Agreement with the Exchange.

5.6.3.3 The producer must also indicate the identity of the agent, if any, along with agency agreement, if he wishes to designate a representative to the bidding session.

5.6.3.4 The Exchange shall publicly pre-announce the available lots of specialty commodity of qualified producers for the Direct Specialty Trade bidding session, along with information on the lot number, producer identity, commodity origin, quantity, specialty grade, other special attributes, and the designated Export Service Provider.

5.6.3.5 Following the session announcement, the Exchange shall pre-register international buyers willing to participate in the Direct Specialty Trade session. The buyer shall be required to provide company information and to indicate the identity of the agent, if any, along with agency agreement, if he wishes to designate a representative to the bidding session.

5.6.3.6 Following the close of the buyer registration period, the Exchange shall send samples of the commodity on a request basis to interested buyers and shall allow on-site inspection

of the commodity prior to the Direct Specialty Trade bidding session.

5.6.3.7 The Exchange shall publicly announce the identity of pre-registered buyers prior to the Direct Specialty Trade bidding session.

5.6.4 Procedures for Conducting the Direct Specialty Trade Bidding Session

5.6.4.1 Only qualified producers and pre-registered buyers, and/or their designated agents, shall be allowed to participate in the Direct Specialty Trade bidding session.

5.6.4.2 The bidding session shall be conducted by the Exchange on a lot by lot basis using open outcry or electronic method with both buyer and seller participation, or their designated agents.

5.6.4.3 At the conclusion of each lot bidding, the Exchange shall record the identities of the counterparties, the agreed upon price and quantity and produce a final Direct Specialty Trade session report that shall be made publicly available.

5.6.4.4 The prices and quantities agreed upon at the Direct Specialty Trade bidding session shall be considered binding by both parties.

5.6.4.5 Within twenty-four hours of the Direct Specialty Trade bidding session, the producer or his Export Service Provider is required to provide to the Exchange a copy of the international sales contract registered with the National Bank of Ethiopia.

5.6.4.6 If the price, quantity, or delivery terms of the registered sales contract have changed from the agreed upon terms in the Direct Specialty Trade bidding session, the Exchange shall consider this a false bid and make this publicly known.

5.6.5 Terms and Conditions of Direct Specialty Trade bidding

5.6.5.1 All prices in the Direct Specialty Trade bidding session shall be on exportable quantity, FOB Port, prompt shipment basis.

- 5.6.5.2 The Exchange shall require a minimum return of 85 percent of the final FOB price to the producer.
- 5.6.5.3 The Exchange shall require evidence to support the minimum return requirement from the relevant parties.
- 5.6.5.4 Prices and quantities quoted in any international sales contracts resulting from Direct Specialty Trade bidding sessions shall be tracked and announced publicly by the Exchange.
- 5.6.5.5 The Exchange shall guarantee quantity, quality, and delivery of the deposited specialty commodity to the seller or his Export Service Provider. However, the execution of the international sales contract between the producer and the international buyer shall be governed by relevant laws.
- 5.6.5.6 The Exchange shall require that all Direct Specialty Trade producers enter into an Exchange-approved Export Service Provider agreement, in which all responsibilities and liabilities up to delivery to the international buyer are specified, unless the producer is specifically exempted in writing by the Exchange, based on an evaluation of the producer's export capacity.
- 5.6.5.7 All international sales contracts resulting from a Direct Specialty Trade bidding session shall require reference to an Operational Agreement entered into between the producer and the Export Service Provider, in which the identity and roles and liabilities of the Export Service Provider are indicated.
- 5.6.5.8 Buyers may indicate at pre-registration their willingness to engage in a Direct Specialty Trade Transparency Clause in the Operational Agreement, in which the payment to the farmers and the fees paid to the Export Service Provider are disclosed.
- 5.6.5.9 In such cases under Article 5.6.5.8, the buyer shall pay a fixed transparency premium in addition to the initially agreed price in the Direct Specialty Trade bidding session. The Exchange shall determine and pre-announce the transparency premium from time to time.

5.6.6 Delivery of Commodity under Direct Specialty Trade

- 5.6.6.1 After the conclusion of the Direct Specialty Trade bidding session, the producer shall indicate the date of pick-up from the designated warehouse and the identity of the agent who shall take delivery.
- 5.6.6.2 The producer is obligated to schedule pick-up of the commodity within three working days of the concluded Direct Specialty Trade bidding session.
- 5.6.6.3 The Exchange shall release the commodity upon payment of the storage, handling, and transaction fees by the producer, or his designated agent, as well as of payment of transaction and other fees by the international buyer, where agreed sale has occurred.
- 5.6.6.4 The producer may schedule a pick-up of the deposited commodity at any time before or after a Direct Specialty Trade bidding session, where no agreed sale has occurred, in which case the Exchange shall release the commodity upon payment of the storage and handling fees by the producer or his designated agent, without penalty.”

(3) Sub-Article 15.2.2.1.3 of the Rules is amended as follows:

- “15.2.2.1.3 As soon as a complaint is lodged, the MOARD-CLU shall, within a maximum of three working days:
 - a. Retrieve the reference sample of the commodity in dispute from the Exchange;
 - b. Organize a quality expert panel by assigning three qualified experts from its staff and calling one expert from the Exchange and the complainant each, in order to make a panel of five members in totality; provided however that, where the complainant or the Exchange is unable and/or unwilling to assign an expert, the MOARD-CLU may assign one or more additional expert or experts, as the case may be, to compose an odd numbered panel;
 - c. Administer the expert determination process, and notify the applicant and the Exchange of the outcome of the determination in writing.”

(4) Sub-Article 15.2.2.2.1 of the Rules is deleted.

(5) Sub-Article 15.2.2.2.2 of the Rules is amended as follows:

“15.2.2.2.2 Upon arrival of the sample retrieved as per sub article 15.2.2.1.3 (a) above to the MOARD-CLU, the latter’s designated officer shall entirely remove marks, sack numbers, truck names, and quantity indications, if any, from the sample and substituting it by a symbol, the identity of which shall in no way be known to any person except the designated officer. The purpose of this step is to conceal from the experts the owner of the commodity in question.”

(6) Sub-Article 15.2.2.8.2 of the Rules is deleted and replaced by the following new provision:

“15.2.2.8.2 At delivery of the coffee to the buyer, the Exchange shall draw a representative sample from each bag of the coffee, a comprehensive average three kg sample for each lot, after it has been loaded on truck in the presence of the buyer or his agent and of a designated MOARD-CLU employee at the Exchange warehouse, before the truck leaves the Exchange’s warehouse compound. The sample shall be divided into three parts, one to be kept by the Exchange as working sample, the second part to be kept in a secure container of the Exchange that shall be jointly managed by the Exchange and designated MOARD-CLU employee as a reference sample, and the third part to be given to the buyer or his agent as a consignment sample at delivery.”

(7) The following new Sub-Articles 15.2.2.8.3, 15.2.2.8.4, and 15.2.2.8.5 are added to Sub-Article 15.2.2.8 of the Rules. Sub-Article 15.2.2.8.3 of the Rules is renumbered as Sub-Article 15.2.2.8.6.

“15.2.2.8.3 Upon arrival of the coffee in the buyer’s premises, the buyer may challenge the quality determination of the coffee, based on the consignment sample only, within five days of picking-up of his coffee from the Exchange’s warehouse by bringing his case to the MOARD-CLU.

15.2.2.8.4 If the dispute is between the Exchange and a buyer, the expert determination proceeding is conducted based on the working sample taken under Sub-Article 15.2.2.8.2 and transferred by the Exchange to MOARD-CLU.

15.2.2.8.5 If the consignment sample should differ from the working sample, the expert determination proceeding is conducted

based on the reference sample mentioned under Sub-Article 15.2.2.8.2.”

- (8) The following new Sub-Article 15.2.2.10.3 is added under Sub-Article 15.2.2.10 of the Rules.

“15.2.2.10.3 If the Expert Determination decides against the Exchange under Sub-Article 15.2.2.5 of the Rules, besides its obligation to cover the cost of Expert Determination, the Exchange shall compensate the buyer for the difference in value between the coffee delivered and the coffee purchased by the buyer. The compensation shall be calculated based on the average price of similar coffee on the date of purchase of the disputed coffee at the Exchange. If such coffee was not traded on such date the average price of the nearest preceding date shall be taken as a basis of calculation of the compensation.”

3. Effective date

These Rules shall take effect on the day falling fourteen days after the date of approval by the Authority in accordance with Article 20.1 of the Rules.

**Approved by the Board of the Ethiopia Commodity Exchange
Authority at Addis Ababa, on 9th day of February, 2010**