يارسول الله ﷺ

بسم الله الرحمن الرحيم

فسئلوا اهل الذكر ان كنتم لا تعلمون

دار الإفتاء النور

جمعیت اشاعت اہلسنت پاکستان

یا اللہ جل جلالہ

Noor Masjid Kagzi Bazar
Mithadar, Karachi.

www.ishaateislam.net

021-32439799

Question:

Dear Scholar,
Our company has entered into a **forward contract with the commodities exchange for the procurement of agricultural commodities** for an **agreed quantity** at **an agreed future price**. Here are the details:
Ex. Company **entered into a forward contract** with the commodity exchange dated 6th Dec 2024, to procure 1,000 tons of soya beans at the price of Mk. 1.7mn per ton.
The current price of Soya beans per ton is Mk. 1.5mn.
The **forward contract date is 6th March 2025**.
In future, the company expects to revise the contract date into 28th Feb 2025 and procure the beans for the productions.
The commodity exchange is willing to give us a discount on the pricing due to early maturity of the contract.
Please advise whether accepting such a discount is within the Sharia law?
(Questioner: Abdullah, c/o Mufti Abdul Rahman Malawi, Africa)

باسمہ تعالیٰ وتقدّس الجواب:

<u>A commodities exchange:</u> is a marketplace where **contracts** are traded for buying and selling various commodities, such as agricultural products, metals, and energy resources.

Traders typically engage in **futures contracts**, agreeing to buy or sell a specific quantity of a commodity at a **pre-determined price for future delivery.**

This mechanism is **used to stabilize prices and manage risks associated with price fluctuations.**

Most **trading is now conducted electronically**, with major exchanges like the *Chicago Mercantile Exchange* **(CME)** and *New York Mercantile Exchange* **(NYMEX)** facilitating these transactions.

Normally, **the objective in Futures transactions is NOT to buy, sell and actually take delivery of the commodities, rather it is to settle the differences of prices only**.
At times, prior to the specified date of delivery approaching, the commodity is transacted and sold further to another party, and they also sell it further and so on. ***(just like in the question).***

Forwards vs Futures:
Forwards are customized and traded Over The Counter (OTC), while Futures are standardized and traded on exchanges. Both serve similar purposes but differ in terms of flexibility, trading venues, and settlement processes.

Hedging:
Hedging is generally also a part and objective of future transactions
It is a risk management strategy used to offset potential losses in one market by taking an opposite position in another.
It involves taking a position in a futures market opposite to a position held in the cash market to minimize the risk of financial loss from an adverse price change.
By doing this, traders and businesses can stabilize their revenues or costs despite market volatility.
Futures are used as a temporary substitute for a cash transaction that will occur later.

Options:
An option is a contractual agreement that **gives the holder the right** ***(and not an obligation)*** to buy (call option) or sell (put option) a fixed quantity of a security or commodity at a fixed price, within a specified period of time.

The person buying the option pays a premium, which is the maximum loss he can incur.
In summary, as opposed to hedging, using options allows for more flexibility and limited downside risk compared to futures contracts while providing a way to capitalize on favorable price movements in the cash market.

(Options contracts are not only restricted to commodities, rather one can also purchase options on future contracts, interest rates and currencies in the same way.)

Some basic differences between options and futures:

- Options give you the right, but not the obligation, to buy or sell an asset at a specified price before the contract expires. This means you can choose not to exercise the option if it's not favorable.
  Whereas, Futures contracts obligate you to buy or sell an asset at a predetermined price on a specific future date. Both parties must fulfill the contract unless they close their position before expiration
- Options involve paying a premium,
  Whereas, futures require margin payments and can lead to larger gains or losses due to leverage / borrowing. Futures contracts always require margin and inherently involve leverage.
- Options provide leverage through the premium paid and may require margin when writing (selling) options.

Margin Payments:

- **Margin** is the amount of money that you need to deposit to open a trading position. It acts as a security deposit to cover potential losses.
- **Initial Margin**: This is the percentage of the total trade value that you must deposit to open a position.
- **Maintenance Margin**: This is the minimum amount of equity that you must maintain in your margin account. If your account falls below this level, you may receive a margin call requiring you to deposit additional funds to bring the account back to the required level.

Leverage / Borrowed Capital:

Leverage allows you to control a larger position than the amount of money you have in your trading account. **It's essentially borrowed capital** that amplifies both gains and losses.

- **Leverage Ratio**: This ratio indicates how much you can control with your capital. For example, a 10:1 leverage ratio means you can control $10,000 worth of assets with only $1,000.
- **Risk and Reward**: While leverage can significantly increase potential profits, it also increases the potential for substantial losses.

Example: Imagine you have $1,000 in your trading account and you're trading with **10:1 leverage**:

- **Without Leverage**: You can only buy $1,000 worth of assets.
- **With Leverage**: You can control $10,000 worth of assets.

If the asset price increases by 1%, without leverage, you make a $10 profit. With 10:1 leverage, the same 1% increase results in a $100 profit. However, the reverse is also true; a 1% decrease would mean a $100 loss instead of $10.

Islamic Perspective on Commodities Forwards, Futures and Options:

Forwards and Futures transactions violate **several** well-established and recognized principles of Sharia:

- It is a **sale that is contingent on a future** event or time.
  As per Sharia, **a sale cannot be affected or attributed to a future date**. (تأجيل المبيع / بيع مُعلَّق بشرط فاسد).

  Futures/Forwards are not a moral promise/right to sell or purchase.
  They involve margins, leverages and legally binding contracts. Whereas, as per Sharia a promise is only "a morally binding word" upon the promisor without any legal or financial binding.

- **Ownership & Possession** are indispensable for a valid sale according to Sharia.
  Here, in Futures/Forwards market usually the **commodity is sold without the seller actually owning and/or possessing the commodity.** (بيع ما ليس عندك)

  As per Hanfi Fiqh Possession should be be either physical (for movable items) or constructive (for immovable items)
  Constructive possession means a situation where someone has not taken physical delivery of the item sold, but it has fully come into his control. And all the access, rights and liabilities are passed on to him.

- The Commodity futures is a **"Sale of Debt Against Debt"** i.e., (بيع الدَّين بالدَّين),

  In Futures/Forwards market, the commodity remains a debt, which the seller owes to the buyer and the price remains a debt upon the buyer.

- **Regarding Options**:
  From a Sharia perspective, options contracts are also **not permissible**.
  The reason is that although a promise/right to sell or purchase is in itself permissible and is morally binding upon the promisor, but this **promise cannot be a subject matter** (مبيع) of a sale or purchase.

  In other words, apart from the issues of ownership, possession and future contingency in "Options", it is also not permissible to charge a fee for making such a promise.

References:

Regarding the prohibition of selling a commodity before acquiring its possession,

- Narrated Hazrat Hakim bin Hizaam, The Beloved Messenger of Allah (ﷺ) said:

عَنْ حَكِيمِ بْنِ حِزَامٍ، قَالَ أَتَيْتُ رَسُولَ اللَّهِ صلى الله عليه وسلم فَقُلْتُ يَأْتِينِي الرَّجُلُ يَسْأَلُنِي مِنَ الْبَيْعِ مَا لَيْسَ عِنْدِي أَبْتَاعُ لَهُ مِنَ السُّوقِ ثُمَّ أَبِيعُهُ قَالَ "لاَ تَبِعْ مَا لَيْسَ عِنْدَكَ"

(سنن الترمذي ، أبواب البيوع عن رسول الله ﷺ، باب ما جاء في كراهية بيع ما ليس عندك، ٥١٤/٢، برقم:1232، دار الغرب الإسلامي، بيروت، الطبعة: الأولى، ١٩٩٦م)

Translation: A man came to me asking to buy something that I did not have. Can I buy it from the market for him and then give it to him?' He said: "Do not sell what is not with you." *(Jami`at-Tirmidhi 1232, In-book reference: Book 14, Hadith 32)*

- **Hazrat Ibn Abbas** (Allah be pleased with them) reported **Allah's Messenger** (ﷺ) as saying:

عَنِ ابْنِ عَبَّاسٍ، أَنَّ رَسُولَ اللَّهِ صلى الله عليه وسلم قَالَ "مَنِ ابْتَاعَ طَعَامًا فَلاَ يَبِعْهُ حَتَّى يَسْتَوْفِيَهُ". قَالَ ابْنُ عَبَّاسٍ وَأَحْسِبُ كُلَّ شَىْءٍ مِثْلَهُ. (صحيح مسلم، كتاب البيوع، باب بطلان بيع المبيع قبل القبض، 1159/3، برقم:1525، مطبعة عيسى البابي الحلبي وشركاه، القاهرة)

Translation: He who buys food grain should not sell it until he has taken possession of it. Ibn Abbas states: "I consider this ruling to be in all transactions." *(Sahih Muslim 1525a, In-book reference: Book 21, Hadith 36)*

- **Sayyiduna Abdullah ibn Umar** narrates

عَنِ ابْنِ عُمَرَ «أَنَّ رَسُولَ اللهِ ﷺ نَهَى عَنْ بَيْعِ الْكَالِئِ بِالْكَالِئِ» (السنن الكبرى للبيهقي، كتاب البيوع، باب ما جاء في النهي عن بيع الدين بالدين، 474/5، برقم:10537، ط العلمية)

Translation: The Messenger of Allah (ﷺ) prohibited the selling of a debt in return for a debt.

- **Imam al-Mawsili** Hanafi (d. 683 AH) states:

وَلَوْ بَاعَ عَيْنًا عَلَى أَنْ يُسَلِّمَهَا إِلَى رَأْسِ الشَّهْرِ فَهُوَ فَاسِدٌ لِأَنَّ تَأْجِيلَ الْأَعْيَانِ بَاطِلٌ

(الاختيار لتعليل المختار، كتاب البيوع، باب البيع الفاسد وأحكامه، 24/2، مطبعة الحلبي، القاهرة)

Translation: "If someone sold a commodity on the condition that its delivery will take place at the end of the month, then this sale will be void, because deferring commodities is invalid (batil)." *(Al-Ikhtiyar li talil al-mukhtar, 24/2, Cairo)*

Allama Kamal bin Al Humam (d. 861 AH) said:

مُجَرَّدَ تَأْجِيلِ الْمَبِيعِ مُفْسِدٌ، وَلَوْ كَانَ إِلَى أَجَلٍ مَعْلُومٍ فَلَا يُنَاسِبُ تَعْلِيلَ فَسَادِ تَأْجِيلِ الْمَبِيعِ بِجَهَالَةِ الْأَجَلِ. (فتح القدير، كتاب البيوع، باب البيع الفاسد، 453/6، شركة مكتبة ومطبعة مصفى البابي الحلبي وأولاده بمصر الطبعة: الأولى، 1389 هـ)

Translation: The mere deferment of the commodity/subject matter of sale makes the sale invalid even if the due date is known.
It is not right to associate the invalidity to the ambiguity or unknowingness of the due date.

Allama Syed Ibn Abideen Shaami (d. 1252 AH) said:

وَشَرْطُ الْمَعْقُودِ عَلَيْهِ سِتَّةٌ: كَوْنُهُ مَوْجُودًا مَالًا مُتَقَوِّمًا مَمْلُوكًا فِي نَفْسِهِ، وَكَوْنُ الْمِلْكِ لِلْبَائِعِ فِيمَا يَبِيعُهُ لِنَفْسِهِ، وَكَوْنُهُ مَقْدُورَ التَّسْلِيمِ فَلَمْ يَنْعَقِدْ بَيْعُ الْمَعْدُومِ وَمَا لَهُ خَطَرُ الْعَدَمِ كَالْحَمْلِ وَاللَّبَنِ فِي الضَّرْعِ وَالثَّمَرِ قَبْلَ ظُهُورِهِ. (رد المحتار على الدر المختار، دار الفكر، بيروت، الطبعة الثانية، 1412هـ)

Translation: There are 6 conditions for the subject matter of sale: It should be existent/available/present, owned by someone, and the product/commodity should belong to the seller (in what he sells for himself) and that he is able to deliver.

That's why the sale of the non-existent commodities and the ones that has the risk of being non-existent is "not-valid"/or void. Such as: Sale of fetus/pregnancy, milk in the udder and the fruit before its ripe /consumable.

To Summarize,

Due to the reasons mentioned above, the forwards and futures transactions are **totally impermissible and invalid according to Shariah,** regardless of their subject matter.

The primary objective in Futures transactions is NOT to buy, sell and actually take delivery of the commodities, rather it is to settle the differences of prices only.

Also, **In the absence of actual possession and delivery, it makes no difference whether these contracts are entered into for the purpose of speculation or for the purpose of hedging. Both situations are impermissible.**

Solution:

The Islamic alternative solution to the forwards is available in the Salam Contract (بیع سَلَم).

If the subject matter of sale (commodity) is not present in the ownership of seller and it will be delivered on a future date, then it is **not a valid sale contract (except in case of "Bae Salam" – a special kind of sale – which requires several strict conditions one of which is 100% advance payment).**

Consult some "Authentic Islamic Scholar/Jurist" regarding the details.

And Allah knows best.

والله تعالیٰ ورسوله (ﷺ) أعلم بالصواب

كتبه:

M. Tahir 30-12-24

أبو الليث محمد طاهر قادري
(المتخصّص فى الفقهِ الإسلامِى)

بـ دارالإفتاء النّور،

جمعية اشاعة أهل السنّة (باكستان)، كراتشى

TF-2037

الجواب صحيح

عبده ... نور

الدكتور المفتى محمد عطاء الله النّعيمى

شيخ الحديث جامعة النّور ورئيس دارالإفتاء النّور

جمعية إشاعة أهل السنة (باكستان)، كراتشى

Abul Laith Muhammad Tahir Qadri
Dars e Nizami with Specialization in Hanafi Jurisprudence
ACCA (Affiliate), MA Islamic Studies, Bachelors (Commerce) (UOK)
Research Fellow at Dar ul Ifta AnNoor
Jamiat Ishaat Ahlus Sunnah Pakistan

الجواب صحيح

المفتى محمد جنيد العطّارى النّعيمى

دارالإفتاء

جمعية إشاعة أهل السنة (باكستان)

الجواب صحيح

المفتى شهزاد العطارى المدنى
دارالإفتاء
جمعية إشاعة أهل السنة (باكستان)، كراتشى

الجواب صحيح

أبو الضياء المفتى محمد فرحان القادرى النّعيمى
رئيس دارالإفتاء الضيائيه ،كراتشى

الجواب صحيح

المفتى عبدالرحمن القادرى
دارالإفتاء غريب نواز
لمبى جامع مسجد، ملاوى وسطى، افريقه

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