

COFFEE HOLDING CO INC  
Form 10-K/A  
April 02, 2013

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

Form 10-K/A  
Amendment No. 2

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended October 31, 2012

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission file number: 001-32491

COFFEE HOLDING CO., INC.  
(Exact name of registrant as specified in its charter)

Nevada  
(State or other jurisdiction of incorporation  
or organization)

11-2238111  
(I.R.S. Employer Identification No.)

3475 Victory Boulevard, Staten Island, New  
York  
(Address of principal executive offices)

10314  
(Zip Code)

Registrant's telephone number, including area code: (718) 832-0800

Securities registered under Section 12(b) of the Act:

Title of each class:  
Common Stock, Par Value \$0.001 Per Share

Name of each exchange on which registered:  
Nasdaq Stock Market LLC

Securities registered under Section 12(b) of the Exchange Act:

None

Indicate by check mark if registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained in, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

|                         |                          |                           |                          |
|-------------------------|--------------------------|---------------------------|--------------------------|
| Large accelerated filer | <input type="checkbox"/> | Non-accelerated filer     | <input type="checkbox"/> |
| Accelerated filer       | <input type="checkbox"/> | Smaller Reporting Company | <input type="checkbox"/> |

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

The aggregate market value of the common equity held by non-affiliates of the registrant, computed by reference to the closing price of the registrant's common stock on the Nasdaq Capital Market on April 30, 2012, was \$51,725,596.

As of January 23, 2013, the registrant had 6,372,309 shares of common stock, par value \$0.001 per share, outstanding.

Documents incorporated by reference

Portions of the registrant's proxy statement for the 2013 annual meeting of stockholders to be filed pursuant to Regulation 14A within 120 days after the registrant's fiscal year ended October 31, 2012, are incorporated by reference in Part III of this Form 10-K.

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Explanatory Note

The purpose of this Amendment No. 2 ( this “Amendment No. 2”) to the Company’s Annual Report on Form 10-K for the year ended October 31, 2012, filed with the Securities and Exchange Commission on January 28, 2013 (the “Form 10-K”), is solely to re-submit Exhibit 10.4.

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PART IV

ITEM 15. EXHIBITS

| Exhibit No. | Description  |
|-------------|--|
| 2.1         | Agreement and Plan of Merger, dated October 31, 1997, by and among Transpacific International Group Corp. and Coffee Holding Co., Inc. (incorporated herein by reference to Exhibit 2 to Post-Effective Amendment No. 1 to the Company’s Registration Statement on Form SB-2 filed on November 10, 1997 (File No. 333-00588-NY)).  |
| 2.2         | Asset Purchase Agreement, dated February 4, 2004, by and between Coffee Holding Co., Inc. and Premier Roasters LLC (incorporated herein by reference to Exhibit 2.1 to the Company’s Current Report on Form 8-K filed on February 20, 2004 (File No. 333-00588-NY)).   |
| 3.1         | Amended and Restated Articles of Incorporation of the Company (incorporated herein by reference to Exhibit 3.1 to the Company’s Registration Statement on Form 8-A the “2005 Registration Statement” filed on May 2, 2005 (File No. 001-32491)).   |
| 3.2         | ByLaws of the Company (incorporated herein by reference to Exhibit 3.2 to the 2005 Registration Statement (File No. 001-32491)).   |
| 4.1         | Form of Stock Certificate of the Company (incorporated herein by reference to the Company’s Registration Statement on Form SB-2 filed on June 24, 2004 (Registration No. 333-116838)).   |
| 10.1        | Loan and Security Agreement, dated February 17, 2009, by and between Sterling National Bank and Coffee Holding Co., Inc. (incorporated herein by reference to Exhibit 10.21 to the Company’s Current Report on Form 8-K filed on February 23, 2009 (File No. 001-32491)).  |
| 10.2        | Lease, dated February 4, 2004, by and between Coffee Holding Co., Inc. and the City of La Junta, Colorado (incorporated herein by reference to Exhibit 10.12 to Amendment No. 1 to the Company’s Registration Statement on Form SB-2/A filed on August 12, 2004 (Registration No. 333-116838)).  |
| 10.3        | Trademark License Agreement, dated February 4, 2004, between Del Monte Corporation and Coffee Holding Co., Inc. (incorporated herein by reference to Exhibit 10.13 to the Company’s Quarterly Report on Form 10-QSB/A for the quarter ended April 30, 2004 filed on August 26, 2004 (File No. 333-00588-NY)) as amended by that First Amendment to Trademark License Agreement, dated January 4, 2013. |
| 10.4        | First Amendment to Trademark License Agreement, dated January 4, 2013, by and between Del Monte Corporation and Coffee Holding Co., Inc. Certain portions of Exhibit 10.4 are omitted based upon a request for confidential treatment. The omitted portions were filed separately with the SEC on a confidential basis. *  |
| 10.5        | Amended and Restated Employment Agreement, dated April 11, 2008, by and between Coffee Holding Co., Inc. and Andrew Gordon (incorporated herein by reference to Exhibit 10.14 of the Company’s Current Report on Form 8-K filed on April 16, 2008 (File No. 001-32491)).   |

- 10.6 Amended and Restated Employment Agreement, dated April 11, 2008, by and between Coffee Holding Co., Inc. and David Gordon (incorporated herein by reference to Exhibit 10.15 of the Company's Current Report on Form 8-K filed on April 16, 2008 (File No. 001-32491)).
- 10.7 Coffee Holding Co., Inc. Non-Qualified Deferred Compensation Plan (incorporated herein by reference to the Company's Quarterly Report on Form 10-QSB filed on June 14, 2005 (File No. 001-32491)).
- 10.8 Contract of Sale, dated April 14, 2009, by and between Coffee Holding Co., Inc. and 4401 1st Ave LLC (incorporated herein by reference to Exhibit 10.7 to the Company's Annual Report on Form 10-K filed on January 28, 2010 (File No. 001-32491)).
- 10.9 First Amendment to Loan and Security Agreement between Coffee Holding Co., Inc. and Sterling National Bank, dated July 23, 2010 (incorporated herein by reference to Exhibit 10.9 to the Company's Annual Report on Form 10-K filed on January 31, 2011 (File No. 001-32491)).
- 10.10 Placement Agency Agreement, dated as of September 27, 2011, by and among the Company, the selling stockholders named therein, Roth Capital Partners, LLC and Maxim Group, LLC (incorporated herein by reference to Exhibit 10.1 to the Company's Report on Form 8-K filed on September 27, 2011 (File No. 001-32491)).
- 10.10 Subscription Agreement, dated as of September 27, 2011, by and between the Company, the selling stockholders named therein and each of the purchasers identified on the signature pages thereto (incorporated herein by reference to Exhibit 10.2 to the Company's Report on Form 8-K filed on September 27, 2011 (File No. 001-32491)).
- 11.1 Calculation of Earnings Per Share.
- 23.1 Consent of ParenteBeard LLC
- 31.1 Principal Executive Officer and Principal Financial Officer's Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Principal Executive Officer and Principal Financial Officer's Certification furnished pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

\* Filed herewith

SIGNATURES

In accordance with Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on April 2, 2013.

COFFEE HOLDING CO., INC.

By: /s/ Andrew Gordon  
 Andrew Gordon  
 President, Chief Executive Officer

In accordance with the Exchange Act, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

| Name   | Title  | Date           |
|--|--|----------------|
| /s/ Andrew Gordon<br>Andrew Gordon           | President, Chief Executive Officer, Chief Financial Officer, Treasurer and Director (principal executive officer and principal financial and accounting officer) | April 2, 2013. |
| /s/ David Gordon<br>David Gordon             | Executive Vice President – Operations, Secretary and Director  | April 2, 2013. |
| /s/ Gerard DeCapua<br>Gerard DeCapua         | Director   | April 2, 2013. |
| /s/ Daniel Dwyer<br>Daniel Dwyer             | Director   | April 2, 2013. |
| /s/ Barry Knepper<br>Barry Knepper           | Director   | April 2, 2013. |
| /s/ John Rotelli<br>John Rotelli             | Director   | April 2, 2013. |
| /s/ Robert M. Williams<br>Robert M. Williams | Director   | April 2, 2013. |