

# **COMMUNIQUÉ ON SALES OF CAPITAL MARKET INSTRUMENTS**

**(II-5.2)**

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## **List of Amendments:**

1. Communiqué (II-5.2.a) Amending Communiqué (II-5.2) on Sales of Capital Market Instruments, published in the Official Gazette edition 30257 on 01.12.2017.

## **FIRST CHAPTER**

### **Purpose, Scope, Grounds, Definitions and Abbreviations**

#### **Purpose**

**ARTICLE 1 – (1)** The purpose of this Communiqué is to set down the principles with respect to sales method, distribution and delivery of capital market instruments.

#### **Scope**

**ARTICLE 2 – (1)** This Communiqué covers the principles relating to price to be determined in sales, and sales types and methods, distribution and delivery of capital market instruments, as well as incentives in public offering, and priorities in sales of capital market instruments.

**(2)** The issuance of investment fund and pension fund participation units and shares of investment companies with variable capital, and sales without public offering of the existing shares of shareholders of non-public corporations or of shares to be issued by these corporations through capital increase are not subject to the provisions of this Communiqué.

#### **Grounds**

**ARTICLE 3 – (1)** This Communiqué is prepared and issued in reliance upon Article 5 of the Capital Markets Law no. 6362 dated 06.12.2012.

#### **Definitions and Abbreviations**

**ARTICLE 4 – (1)** For the purposes and in the context of this Communiqué:

**a)** “**Individual investor**” refers to natural persons or legal entities not covered by the institutional investor definition;

**b)** “**Exchange**” refers to exchange as defined in sub-paragraph (ç) of first paragraph of article 3 of the Law;

**c)** “**Emerging Companies Market (ECM)**” refers to such market defined in the exchange regulations;

**ç)** “**Public offering**” refers to a general call made by any means for purchase of capital market instruments and the sales executed subsequent to and upon this call;

**d) “Public offeror”** refers to a natural person or legal entity who applies to the Board for public offering of its capital market instruments;

**e) “ISIN Code”** refers to an international securities identification number allocated to capital market instruments;

**f) “Issue”** refers to the issue of capital market instruments by issuers and sale of them with or without public offering;

**g) “Issuer”** refers to a legal entity that issues capital market instruments or files an application to the Board for issuance, and a legal entity whose capital market instruments are offered to public;

**g) “Issue document”** refers to the document defined in the regulations of the Board pertaining to preparation of prospectuses;

**h) “Prospectus”** refers to the public disclosure document defined in sub-paragraph (j) of first paragraph of article 3 of the Law;

**i) “Law”** refers to the Capital Markets Law no. 6362 dated 06.12.2012;

**i) “Board”** refers to the Capital Markets Board;

**j) “Institutional investor”** refers to professional customers who are defined in the regulations of the Board pertaining to investment firms, other than those who are accepted as professional upon request;

**k) “CRA”** refers to Central Registry Agency Inc.;

**l) “CDS”** refers to central dematerialization system;

**m)“Qualified investor”** refers to professional customers who are defined in the regulations of the Board pertaining to investment firms, also including those who are accepted as professional upon request;

**n) “Corporation”** refers to a joint-stock corporation;

**o) “Capital market instruments”** refers to securities, derivatives and investment contracts and other capital market instruments classified as such by the Board;

**ö) “Private placement”** refers to sales of capital market instruments directly to persons resident abroad and/or in the domestic market either through private placement outside the exchange or on wholesale basis in the exchange;

**p) “Tenor issue document”** refers to the document defined in the regulations of the Board pertaining to preparation of prospectus;

**r) “Investor group”** refers to a group to which a certain amount or rate of capital market instruments will be allocated, as further defined in this Communiqué or as qualified and specified in the prospectus;

**s) “Authorized institution”** refers to intermediary institutions and investment and development banks authorized by the Board to act as an intermediary in public offering sales of capital market instruments;

**ş) “Local investor”** refers to persons deemed resident in Turkey pursuant to the Income Tax Law no. 193 dated 31.12.1960.

## **SECOND CHAPTER**

### **Principles on Sales Methods and Sales of Capital Market Instruments**

#### **General Principles**

**ARTICLE 5 – (1)** Price, sales and distribution principles applicable in issuance of capital market instruments shall be determined by the issuer and/or the public offeror or if decided so by the authorized body of the issuer and/or if approved in writing by the public offeror, by the authorized institution or if any, the consortium leader or co-leader, under principles set forth in this Communiqué. In sales of capital market instruments through public offering, the responsibilities of authorized institutions relating to determination of public offering price arising out of the relevant regulations of the Board are, however, reserved.

**(2)** In sales of capital market instruments through public offering, the obligations of the issuer and/or the public offeror shall be detailed in the prospectus or in other sales-related documents. These obligations shall be performed to be most suitable for investors.

**(3)** In sales of capital market instruments through public offering, the Board may request the issuer, public offerors, sellers and exchanges to take measures for facilitating their purchase by investors and for protection of their rights and interests, and to apply a certain sales method.

**(4)** Shares to be issued by corporations the shares of which are traded in the exchange and by corporations which have applied for listing of their shares in the exchange, and other capital market instruments to be issued in the domestic market shall be delivered through recording in accounts opened in CRA in the name of the beneficiary. The Board may decide to keep these accounts of capital market instruments collectively without opening a specific account in the name of each beneficiary, depending on the type of capital market instruments and the description of its issuer or CRA member.

**(5)** Investors shall deposit the price of capital market instruments intended to be purchased, for transfer to the relevant bank account within the period of time specified in the issue-related documents, and if any, fill in and sign a request form. Provided that the required security measures are properly taken by the authorized institutions, the request form may further be filled in and certified electronically. Institutional investors may pay the price of capital market instruments also following the end of the book-building period thereof, provided that the non-payment risk thereof is assumed by the authorized institutions.

**(6)** In sales of capital market instruments through public offering, investors may bid through blockage of shares included in BIST-30 index, money market funds, short-term bond and debenture funds, government bonds and bills, foreign exchange, deposits, private sector debt instruments and lease certificates traded in the exchange, and similar other assets with high liquidity as may be deemed fit by the Board. The authorized institution and the issuer and/or the public offeror will be held liable for damages and losses that may arise out of or in connection with book building through blockage. In the case of book building through blockage, the prospectus shall show the amount of requests that may be raised against assets or instruments covered by blockage.

(7) If and when the sales process of the issued capital market instruments is decided by the Board to be temporarily or permanently ceased by stating the reasons thereof, the sales must immediately be stopped.

(8) The sales process shall be completed upon transfer of capital market instruments dematerialized pursuant to Article 13 of the Law to the investor's account held with CRA or to other relevant accounts in CRA.

(9) Delivery of capital market instruments that are not dematerialized shall be subject to provisions of the regulations of the Board pertaining to the issuance of the relevant capital market instruments.

(10) The same ISIN code may not be used for capital market instruments the maturity, interest or discount rate or issue ceiling of which are different as of the date of issuance, even if their maturity date is the same date.

### **Methods of Sales**

#### **ARTICLE 6 – (1)** Capital market instruments may be sold:

- a) through public offering, or
- b) without public offering
  - i) by private placement, or
  - ii) to qualified investors.

(2) Unless otherwise stipulated in the relevant regulations of the Board, the methods of sales referred to in the first paragraph of this Article may be employed jointly.

#### **General Provisions on Sales Methods Applied Without Public Offering**

**ARTICLE 7 – (1)** Capital market instruments issued for sale to qualified investors may be listed in the exchange only for trading among qualified investors under relevant regulations of the exchange. In principle, capital market instruments issued for sales through private placement shall not be traded in the exchange. The provisions of the second paragraph of this Article are, however, reserved.

(2) In the event that shares issued by public corporations without public offering are created so as to be traded in the exchange or are later converted so as to be traded in the exchange within the frame of the regulations of the Board pertaining to the issuance of shares, these shares may be publicly traded in the exchange without any limitation on the number of investors.

(3) In sales in the domestic market without public offering, the statements with a content determined by the Board are required to be signed by investors. The statement to be signed with respect to private placement sales shall contain information about risks of the capital market instruments offered for sale and a statement that the investor understands and accepts all such risks. The statement to be signed with respect to sales to qualified investors will contain information about risks of the capital market instruments offered for sale and a statement that the investor understands and accepts all such risks, and that the investor is a qualified investor. However, such statement is not required to be obtained from the qualified investors already registered in CRA under the second paragraph of Article 9 of this Communiqué. Thereupon, the CRA member investment firms are under obligation to check,

before execution of the transaction, whether the investor in whose name the transaction will be executed is among the qualified investors registered in CRA, or not.

(4) The fact that statements have already been signed in the previous private placement sales does not relieve the investor from their obligation of declaration as specified in third paragraph of this Article.

(5) The issuers or if any, the authorized institutions are under obligation keep the statements received from investors pursuant to this Article for a period of five years following the date of receipt, and if requested, to send a copy thereof to the Board.

### **Special Provisions on Private Placement Sales**

**ARTICLE 8 – (1)** Except for secondary market transactions in shares, total number of investors holding at a certain point in time, the capital market instruments sold through private placement must not exceed one hundred and fifty. In the controls to be effected daily on the basis of ISIN codes throughout the maturity of capital market instruments:

- a) co-owners of accounts shall be taken into consideration separately,
- b) only accounts having a balance as of the end of day shall be taken into consideration.

(2) Capital market instruments sold through private placement may be purchased also by qualified investors, together with other investors. In this case, qualified investors shall not be taken into consideration in the calculation of the one hundred and fifty threshold.

(3) If and when total number of investors holding at a certain point in time, the capital market instruments sold on private placement basis is in excess of one hundred and fifty, the fact that this threshold is exceeded shall be notified immediately by CRA to the issuer and the Board. Within twenty business days following receipt of this notification, the issuer shall apply to the Board for approval of its prospectus, and to the exchange for admitting related capital market instruments to trading in the exchange.

### **Special Provisions on Sales to Qualified Investors**

**ARTICLE 9 – (1)** Sales to qualified investors may be effected only through a call addressed to these investors and/or through predetermination of qualified investors. Sales of capital market instruments to qualified investors are not subject to any restriction or limitation in terms of the number of investors.

(2) The fact that an investor is a qualified investor is required to be registered in CDS by CRA-member investment firms upon a statement received from the related party. Registration made by any one of CRA-member investment firms shall be sufficient for the recognition of an investor as a qualified investor. All individual accounts held by qualified investors shall be treated as qualified. However, joint accounts may be treated as qualified only if and when all co-owners of the account are classified as qualified investors. Institutional investors are included among the qualified investors registered in CRA, ex officio by CRA-member investment firms without any statement from institutional investors. For the sake of verifying whether an investor is among the qualified investors registered in CRA or not, CRA will establish the required system in such manner to ensure access of CRA-member investment firms.

**(3)** If a qualified investor is no longer classifiable as a qualified investor, this shall be notified by the relevant investor to a CRA-member investment firm. Upon receipt of this notification, it is the obligation of that CRA-member investment firm to ensure that the status of the relevant investor in CRA is changed accordingly.

**(4)** In the case of loss of the professional customer status as defined in the regulations of the Board pertaining to investment firms, also including those who are accepted as professional upon request, the relevant investor shall also be deemed to have lost the status of qualified investor.

### **Sales Periods for Issuance of Capital Market Instruments through Public Offering**

**ARTICLE 10 – (1)** Public offering of capital market instruments may, at the earliest, be started in the third day following the date of publication of the prospectus and the price determination report. If and when the prospectus and price determination report are published at different days, this period shall start as of the date of publication of the document which is published later. The sales notice to savers and the final term referred to in the regulations of the Board pertaining to preparation of prospectus are also required to be published separately prior to sales.

**(2) (As amended: OG 01.12.2017 – 30257)** Where the prospectus does not state the public offering price of capital market instruments, or price range in the case of book-building within a price range, or nominal value or interest or additional yield range or interest or discount rate of capital market instruments offered for sale, and where it is not mandatory to prepare a price determination report, public offering of capital market instruments may, at the earliest, be started on the third day following the date of disclosure of such information to public through a public disclosure of material information, provided that the prospectus is previously published. Public offering price of capital market instruments, or price range in the case of book-building within a price range, or interest or discount rate of capital market instruments may be revised in the downward direction without requiring an amendment to the prospectus, upon a material event disclosure, prior to the start of the sale and/or book-building period or during these periods. In cases where the price is revised prior to the start of the sale and/or book-building period, the public offer may be initiated, at the earliest, on the second day following the relevant material event disclosure. In cases where such revision is made during the sale and/or book-building period, two business days shall be added to the public offering period determined previously.

**(3)** For issuers the capital market instruments offered to public of which are traded on the exchange, the periods referred to in the first or second paragraphs of this Article shall be applied as the following business day. However, in the case of initial public offering of shares of such corporations, the periods referred to in the first or second paragraphs of this Article shall be applied.

**(4)** Where the prospectus is prepared and published as more than one document, the date of publication of the securities note and summary shall be considered as the date of publication of the prospectus.

**(5)** If and when the public offering price, nominal value or interest or additional yield range or interest or discount rate of capital market instruments offered for sale, disclosed to public as per this Article are not finalized, then the finalized price, amount or rate will, within

one business day following the end of public offering, be disclosed to public through a material event disclosure by the issuer or the public offeror.

(6) The period specified for disclosure to public of information mentioned in the second paragraph of this Article may be reduced upon request and if deemed appropriate by the Board.

(7) The period of sales of capital market instruments through public offering shall be determined freely by the issuer and/or the public offeror, but will in no case be less than two business days or more than twenty business days. In public offerings where capital market instruments are offered for sale through book-building, even if adequate demands are collected during the book-building period, demands will be continued to be collected and collated until the end of this period.

(8) If the sales in exchange method is applied in public offering of capital market instruments:

a) In the case of sales without a book-building process, the sales period shall be two business days. The sales process shall be terminated if all of the capital market instruments offered for sale are sold before the end of two business days.

b) In the case of sales with a book-building process, the book-building period shall not be less than two business days and not more than three business days. Even if adequate demands are collected during the book-building period for the capital market instruments offered for sale, demands will be continued to be collected and collated until the end of this period.

(9) Sales of shares being the subject matter of a sales notice to savers or of capital market instruments being the subject matter of a final term, shall be started within ten business days following the date of publication of this notice or final term.

(10) In the case of capital raises in publicly held corporations, sales of the shares remaining after exercise of the preemptive rights shall be started within ten business days following the end of the period of exercise of the preemptive rights.

### **Sales Periods for Issuance of Capital Market Instruments without Public Offering**

**ARTICLE 11 – (1)** Sales of shares issued upon capital raises of publicly held corporations without public offering shall be started within ten business days following the date of publication of the issue document and shall be completed within a maximum period of ten business days.

(2) Sales of capital market instruments, other than shares, without public offering by issuers may be started in the first business day following the date of publication of the issue document or if any, the tenor issue document.

### **Common Provisions on Sales Periods of Issued Capital Market Instruments**

**ARTICLE 12 – (1)** In cases where reasonable grounds exist and upon request of the issuer or the public offeror, the Board may decide to extend the sales periods stipulated in this Communiqué or to determine a different sales period. If a request for change of these periods is found acceptable by the Board, in sales of capital market instruments through public offering, the new dates of sales period shall be immediately disclosed by the issuer or the public offeror through a material event disclosure.

## **THIRD CHAPTER**

### **Methods Applicable in Public Offering Sales of Capital Market Instruments**

#### **Sales Methods Applicable in Public Offering**

**ARTICLE 13 – (1)** In sales of capital market instruments with public offering:

- a)** sales via book-building;
- b)** sales without book-building;
- c)** sales in the exchange

shall be applicable.

#### **Sales Via Book-building**

**ARTICLE 14 – (1)** Sales via book-building consists of collection of demands of investors for capital market instruments offered to public, and sales of a portion of the demands met in accordance with predetermined procedures and principles.

**(2)** In sales via book-building, demands of investors for capital market instruments offered for sale shall be collected in a demand form as provided in the annex to this Communiqué, and sales shall be conducted after collection of demands in accordance with the procedures and principles specified in the prospectus. Capital market instruments shall then be allocated only among investors who have conveyed demands. Investors may, if they wish so, incorporate in the demand form a lower limit for the amount of capital market instruments they intend to purchase. Before accepting the demand form, the authorized institutions shall verify the identity information of investors. However, the collection of demands for capital market instruments planned to be sold shall not indicate that these demands will be definitely met.

**(3)** Unless provided otherwise in the prospectus, in public offerings with sales via book-building, even if no amendment is made in the prospectus, investors shall have the right to change or withdraw their demands during the book-building period.

**(4)** Sales via book-building shall be executed through:

- a)** book-building with a fixed price;
- b)** book-building with a price bid;
- c)** book-building within a price range.

**(5)** In sales via book-building with a fixed price:

**a)** If the instrument offered for sale is a share, demands shall be collected by determining a fixed price.

**b)** In the case of sales of capital market instruments other than shares, fixed criteria such as discount rate and coupon interest rate shall be determined depending on the attributes of the relevant instrument.

**(6)** In sales via book-building with a price bid method:

**a)** If the instrument offered for sale is a share, a minimum sale price shall be determined, and price bids over that minimum sale price shall be collected.

**b)** In the case of sales of capital market instruments other than shares, criteria such as discount rate and coupon interest rate shall be determined depending on the attributes of the relevant instrument, and price bids shall be collected on the basis of such criteria.

**(7)** In the sales via book-building within a price range:

**a)** If the instrument offered for sale is a share, a base price and a ceiling price shall be determined, and demands of investors shall be collected within this price range.

**b)** In the case of sales of capital market instruments other than shares, demands of investors shall be collected within the base and ceiling price range to be determined according to such criteria as minimum and maximum discount rates and coupon interest rate depending on the attributes of the relevant instrument.

**c)** Under this paragraph, demands may be collected at different rates or price steps provided that they remain within the price range.

**(8)** If sales via book-building within a price range method is used, ceiling price is determined so as not to exceed twenty percent surplus of base price.

**(9)** If the sales via book building method is applied, but adequate demand cannot be collected for shares offered to public, the provisions of this Communiqué pertaining to the sales without book-building shall be applicable for shares for which there was no demand.

### **Sales without Book-Building**

**ARTICLE 15 – (1)** Sales without book-building refers to the sale of shares of publicly held corporations the shares of which are not traded in the exchange, other than corporations as specified and described in the third paragraph of Article 17 of this Communiqué, through public offering at a certain price by the corporation or through authorized institutions according to certain procedures to be stipulated in the prospectus. In sales without book-building, it is required to choose a procedure which does not lead to inequality among investors.

**(2)** If the sales without book-building method is employed, investors shall participate in capital raises through transfer of share prices to a special account opened in the bank named in the prospectus within a period of time specified in the sales notice to savers.

### **Sales in the Exchange**

**ARTICLE 16 – (1)** Sales in the exchange refers to sales of capital market instruments in the exchange within the under the regulations of the exchange.

**(2)** Principles of sales in the exchange shall be determined by the exchange. If and when the exchange determines more than one sales method, the sales shall be effected by the method chosen by the issuer and/or the public offeror.

### **Sales Methods Applicable for Shares to be Offered to Public by Corporations with Determined Specifications**

**ARTICLE 17 – (1)** In case of capital increases of listed corporations, through issue of shares in a certain group, listed in the exchange, it is mandatory to use the sales in exchange method in sales of shares remaining after the exercise of preemptive rights. Shares remaining after exercise of the preemptive rights may not be offered for sale at a price below the nominal value thereof.

**(2)** For shares in a certain group, not listed in the exchange, of listed corporations, it is not mandatory to use the sales in exchange method in sales of shares remaining after the

exercise of preemptive rights. If the sales in exchange method is not applied, shares remaining after the exercise of preemptive rights are required to be sold at a price not less than the weighted average of daily weighted average prices quoted in the primary market of the exchange during the last two trading days of the public offering period for the portion of listed shares remaining after the exercise of preemptive rights. If the primary market is not opened for public offering in the exchange, or no trade is executed in this market, these shares are required to be sold at a price not less than the daily weighted average price quoted in the secondary market in the last day of the period of exercise of preemptive rights. In the case of absence of a trade in the secondary market in the last day of the period of exercise of the preemptive rights, these shares shall be sold over the daily weighted average price quoted in the secondary market in the last trading day in the secondary market. In the transactions within the frame of this paragraph, shares remaining after exercise of preemptive rights may not be offered for sale at a price below the nominal value thereof. If shares listed in the exchange provide rights and interests different from those provided by shares not listed in the exchange, the sale price may be determined by different methods, subject to prior consent of the Board.

(3) In capital increases of publicly held corporations the shares of which are not listed in the exchange, in sales of shares remaining after the exercise of preemptive rights, the corporations the book value of shares of which is equal at least to twice the nominal value thereof according to their balance sheet of the last year prepared and issued in accordance with the standards determined by the Board, are required to use any one of the sales via book-building methods, if and when they have obtained a net profit of period and their total assets have exceeded twenty million TL in the last yearly accounting period. In this case, the book-building process may be conducted by the corporation or through the authorized institution. However, if the ratio of the amount remaining after the exercise of preemptive rights to the capital to be increased in cash is ten percent or less, these methods may not be applied if an application is made and with prior consent of the Board. The Board may, if deemed necessary in its sole discretion, require the use of one of the sales via book-building methods or rescind such requirement.

(4) The sales via book-building method is required to be employed in sales of shares of corporations which file an application for listing and trading in ECM (Emerging Companies Market) for the first time. If the exchange determines more than one sales method, the sales shall be effected by the method chosen by the corporation.

(5) In transactions to be executed under the first and second paragraphs of this Article, as for the sales of shares remaining after exercise of the preemptive rights, the regulations of the Board pertaining to the issue of shares at a price below the nominal value thereof are reserved.

## **FOURTH CHAPTER**

### **Distribution in Public Offering of Capital Market Instruments**

#### **General Principles on Allocations**

**ARTICLE 18 – (1)** Capital market instruments to be offered to public may be sold through allocation among investor groups as defined and specified in the prospectus. In this case, the prospectus shall show in detail, the rates of allocation for each investor group.

(2) Minimum or maximum limits may be imposed on amounts of capital market instruments that may be demanded at the time of sales, providing that they are stated in the prospectus by the issuer or the public offeror. However, such limitations may not be used in order to benefit the authorized institution, issuer or public offeror or persons having an association in terms of capital, management, supervision or otherwise with the authorized institution.

(3) In the case of an allocation to a certain investor group, investors applying from that group are required to attach to the demand form, all of the submittals specified in the prospectus and required to prove that they bear necessary qualifications.

(4) **(As amended: OG 01.12.2017 – 30257)** At least ten percent of nominal value of capital market instruments to be offered to public is required to be allocated to local individual investors, and ten percent thereof is required to be allocated to local institutional investors. The allocation limitations of this paragraph shall not be applicable to public offerings by sales in the exchange method, public offerings without a book-building process, capital increases of corporations with determined specifications, and in the case of additional sales, on capital market instruments being the subject of additional sales. The Board may decrease the minimum allocation limitations of this paragraph down to zero or increase them up to double the existing rate, upon considering the market value of the capital market instrument to be issued, market conditions and similar reasons as well as the request of the issuer and/or public offeror.

(5) Regardless of whether adequate demand meeting the amount allocated to each investor group are received by the end of the book-building period, rates of allocation specified for investor groups may be shifted, so as not to reduce the minimum allocation rates of local retail and local institutional investors, provided that the principles thereof are described in the prospectus. However, the amount of allocation to any investor group may not be reduced by more than twenty percent of the amount specified in the prospectus.

(6) In sales via book-building method, if demands adequate to meet the amount allocated to a certain investor group are not received by the end of the book-building period, the unmet portion of allocation of that group may be transferred to other groups, whereupon the limitations mentioned in fourth paragraph of this Article shall not be applied.

(7) Investor demands which cannot be included in any allocation group shall be included in an appropriate allocation group with prior approval of the authorized institution underwriting the public offering process.

### **General Principles on Distribution**

**ARTICLE 19 – (1)** During distribution, each investor must be treated equally and fairly in its group, and demands must be evaluated in the same manner, irrespective of the authorized institution collecting the same.

(2) For group distribution of capital market instruments to be allocated to investors classified in qualified investor and/or institutional investor groups, principles different from the principles set forth in first paragraph of this Article may be determined and applied, provided that they are detailed in the prospectus.

(3) In cases where the issuer's employees or the issuer group's employees are classified as a separate investor group, distribution of capital market instruments allocated to that group must be subject to the same distribution principles with retail investors.

(4) The issuer and/or the public offeror and the authorized institution, and if any, consortium leader and co-leaders shall, to the extent they may be held liable for damages depending on their faults and the current requirements, be responsible for failure in performance of distribution in accordance with the provisions of this Communiqué and the principles set forth in the prospectus. The consortium leader or if any, co-leader shall be responsible for keeping records of distribution regularly and so as to include the details relating to distribution, and for consolidating records of distribution. All authorized institutions participating in the consortium shall be under obligation to provide the required facilities to the consortium leader for consolidation of records of distribution.

#### **Distribution Principles in Sales via Book-Building with a Fixed Price or within a Price Range**

**ARTICLE 20 – (1)** In public offerings via book-building with a fixed price or within a price range, the authorized institution collecting the demand forms shall distribute the capital market instruments offered to public among investors in accordance with the principles set forth in this Article after expiration of the book-building period. In the case of a consortium, each consortium-member authorized institution collecting the demand forms shall transmit to the consortium leader a list of investors who have bid according to the procedures specified in the prospectus and/or consortium agreement. The consortium leader shall consolidate investor lists and distribute the capital market instruments offered to public among investors in accordance with the principles set forth in this Article after expiration of the book-building period.

(2) If total demands are less than the number of capital market instruments offered for sale, all of the demands shall be met. If, however, total demands are more than the number of capital market instruments offered for sale, distribution shall be effected under the following principles:

a) Except for a portion reserved for a certain investor group, if any, total amount offered for sale shall be divided by the number of bidding investors, and demands equal to or below the result of such division shall be met.

b) The remaining amount shall be divided by the number of investors whose demands cannot be fully met, and shall be distributed likewise. This distribution process shall be continued until all of the capital market instruments offered for sale are distributed.

c) The amounts resulting from distribution shall be reviewed in terms of investors who impose a lower limit on amount. If the resulting amount is below this lower limit, the relevant investor shall be deleted from the list in line with his request, and these amounts shall be distributed again.

ç) All fractions, if any, in distribution calculations shall be rounded up, and shall be distributed among investors whose demands cannot be fully met, as deemed appropriate by the issuer or the public offeror.

(3) In public offerings via book-building with a fixed price or within a price range, if demanded, proportional distribution method, wherein the supply/demand coverage ratio is calculated by dividing total number of capital market instruments allocated to any investor group by total amount of demands for that group, may be employed. The said ratio shall be multiplied by the amount demanded by investors, and each investor's demand shall be met at the supply/demand coverage ratio.

(4) In public offerings via book-building with a fixed price or within a price range, the minimum amount to be distributed to all demanding retail investors up to the public offering amount may be determined before sales. In such case, the prospectus shall specify the method to be followed if and to the extent the public offering amount fails to meet the minimum demands of all retail investors.

#### **Distribution Principles in Sales via Book-Building with a Price Bid**

**ARTICLE 21 – (1)** The authorized institution collecting the demand forms shall distribute capital market instruments among investors in accordance with the principles set forth in this Article upon expiration of the book-building period:

a) The bids collected shall be tabulated in a chart showing the amounts demanded at each price level, and the cumulative amounts, listed from the highest price bid to the lowest. The price level where the highest number of capital market instruments can be sold on cumulative basis shall be determined and considered as the sales price.

b) Only bids meeting this sales price shall be considered in the distribution of capital market instruments. If the total number of capital market instruments demanded at this price level determined as the sales price is more than the total number of capital market instruments offered for sale, distribution shall be carried out starting from the highest price bid.

c) In the case of unmet demands of more than one investor at the price level determined as the sales price, distribution shall be effected in proportion to demand amount among those investors.

d) The amounts resulting from distribution shall be reviewed in terms of investors who impose a lower limit on amount. If the resulting amount is below this lower limit, the relevant investor shall be deleted from the list in line with his request, and these amounts shall be distributed again in proportion to the demand amount.

e) All fractions, if any, in distribution calculations shall be rounded up, and shall be distributed among investors whose demands cannot be fully met, as deemed appropriate by the issuer or the public offeror.

#### **Distribution Principles in Case of Repeated Demands**

**ARTICLE 22 – (1)** As a result of book-building, only the highest demand of investors who file more than one demand during distribution of capital market instruments shall be taken into consideration in calculations. If the proportional distribution method mentioned in the third paragraph of Article 20 of this Communiqué is applied, the provisions of this paragraph shall not be applied.

(2) As a result of controls aimed at detecting the repeated demands pursuant to the first paragraph of this Article, if total amount of demands is less than the amount of capital market instruments offered for sale, and provided that it is clearly stated so in the prospectus, the second highest demand of investors filing more than one demand may also be taken into consideration in calculations. Calculation shall be continued as such until demands sufficient to meet total amount of capital market instruments offered for sale are determined. The responsibility of these processes lies with the authorized institution or in the case of a consortium, with the consortium leader.

## **Finalization of Distribution List, Refund of Price, and Delivery**

**ARTICLE 23 – (1)** Within two business days following the end of the book-building period, the authorized institution or if any, the consortium leader shall issue and deliver to the issuer and/or the public offeror a list showing the name and surname, T.R. identity numbers , trade names and tax identity numbers, if any, of investors wishing to purchase capital market instruments, and number of capital market instruments demanded by them, the bid price, the demanded minimum amount, date and time of entry of demand in the system, and distribution of capital market instruments among investors. In demands received from abroad, the date and time of entry of demand in the system are not required to be included in this list.

**(2)** The issuer and/or the public offeror shall, within two business days following the date of delivery of the distribution list, approve the list and deliver the same to the authorized institution or the consortium leader.

**(3)** The authorized institution, upon receipt of the approved distribution list, shall deliver the capital market instruments of the met demands to the relevant investors under the procedures and principles specified in the prospectus. In the case of a consortium, it is the responsibility of the consortium leader to deliver the capital market instruments to investors.

**(4)** Cost of the unmet demands shall be refunded within the business day following the day of receipt of the approved distribution list by the authorized institution. In the case of a consortium, upon receipt of the approved distribution list, the consortium leader shall send a notice to consortium members in the same day for refund of costs of unmet demand. Thereupon, within the business day following the day of notice, the consortium members shall refund the cost of unmet demand.

## **Storage, Reporting and Public Disclosure of Results of Sales**

**ARTICLE 24 – (1)** The list of all investors wishing to purchase capital market instruments and the results of sales are required to be kept and preserved both in printed media and in electronic media by the issuer and/or the public offeror for a period of five years following the end of the sales period of capital market instruments. If and when the sale is effected through an authorized institution or consortium, the authorized institution or the consortium leader shall also be responsible for keeping and preserving the list of all investors wishing to purchase capital market instruments and the results of sales, as described in this paragraph. A table showing the natural persons and/or legal entities to whom capital market instruments are sold and who are affiliated or related to the issuer in terms of capital and/or management, as well as the number and amount of capital market instruments purchased by these persons and/or entities, shall be separately kept under the principles set forth in this paragraph. If requested by the Board or the exchange, a copy of each of the list of all investors wishing to purchase capital market instruments and the results of sales and the aforementioned table must be sent to the Board or the exchange, as the case may be.

**(2)** Except for the list of all investors wishing to purchase capital market instruments, the information and documents mentioned in the first paragraph of this Article are required to be sent to the Board without any request of the latter at the time of initial public offering of the shares.

**(3)** Within ten business days following the end of sales period of capital market instruments, the issuer or the public offeror is liable to send to the Board one copy of each of

the relevant pages of written media where the advertisements and announcements are published, and one copy of visual media recordings. This obligation may be fulfilled by the authorized institution.

(4) In initial public offering of shares and in public offering of capital market instruments other than shares, the authorized institution is under obligation to disclose under the regulations of the Board pertaining to public disclosure of material information, within two business days following the date the distribution list is finalized, the results of distribution prepared so as to contain also such information as final amount of issue, amount and rate of capital market instruments distributed by investor groups, and number of investors, and the results of green shoe option and shifting of allocations, as well as the persons or entities who have purchased more than five percent of nominal value of capital market instruments offered to public.

(5) In capital increases of public corporations, the authorized institution is under obligation to disclose within the frame of the regulations of the Board pertaining to public disclosure of material information, within two business days following the date the sale is finalized, final amount of issue, the persons or entities who have purchased more than five percent of nominal value of capital market instruments offered to public, and the persons or entities who have purchased the corporation's capital shares from related parties of the corporation, as defined in the relevant regulations of the Board, irrespective of the rate thereof. In the cases where there is no authorized institution, the obligations arising out of this paragraph shall be fulfilled by the corporation.

(6) In initial public offering of shares and in capital increases of public corporations, the share purchases of persons discharging managerial responsibilities in the corporation, as further defined in the regulations of the Board pertaining to public disclosure of material information are also required to be disclosed to public, irrespective of the rate specified in this Article.

## **FIFTH CHAPTER**

### **Specific Provisions on Sales of Capital Market Instruments and Incentives for Public Offering and Principles on Authorized Institutions Exercise of Preemptive Rights by Shareholders**

**ARTICLE 25 – (1)** In capital increases of public corporations, the strike price for preemptive rights per share shall be determined by the authorized organ of corporation. If the market price or book value of shares is above their nominal value, the Board may request preemptive rights to be exercised over a price above nominal value thereof.

#### **Principles Applicable by Public Corporations in Sales of Capital Market Instruments without Public Offering**

**ARTICLE 26 – (1)** In capital increases of public corporations without public offering, the sales price shall be determined under the regulations of the Board pertaining to the issue of shares.

(2) In case of issuance of capital market instruments other than shares, by publicly held corporations without public offering, unless otherwise provided in the regulations of the Board pertaining to the relevant capital market instruments, the sales price shall be determined upon

consideration of current market conditions, interests of the corporation and its shareholders, and current conditions of the corporation.

### **Incentives for Initial and Secondary Public Offerings of Shares**

**ARTICLE 27 – (1)** In initial and secondary public offerings of shares, the provision of cash and/or non-cash incentives to particular investor groups may be permitted by the Board, provided that the incentives and application principles are described in the prospectus completely and accurately so as not to contain exaggerated and misleading information, and that such information are not used in order to confer benefits to the issuer, public offeror or authorized institution or to persons related to them in terms of capital, management, supervision or otherwise. However, said incentives must not affect robust pricing in the market, and must not preclude investors from making sound and free investment decisions or from making conscious assessments.

**(2)** In initial and secondary public offerings of shares, different sales prices may be applied to particular investor groups with prior consent of the Board. In this case, however, the difference between public offering prices may not exceed twenty percent, and different prices may not be applied within the same investor group.

**(3)** In initial and secondary public offerings of shares, if and when discount sale is intended to be made by applying different prices to particular investor groups, and the existing shares of shareholders are also offered to public, the shares intended to be sold with a discount shall first be covered from existing shares owned and held by the public offerors.

**(4)** If and when the shares sold on discount basis are issued through a capital increase, the prospectus is required to contain information about the amount of probable reduction in total funds of public offering of the corporation due to discount sale.

**(5)** In initial and secondary public offerings of shares, investors may not be provided any incentives which may result in reduction of funds collected by the corporation from public offering after completion of sales. Price stabilization transactions and share buy-backs by the corporation, which are included in the regulations of the Board pertaining to issue of shares, shall not be considered hereunder.

### **Principles on Authorized Institutions**

**ARTICLE 28 – (1)** Capital market instruments are required to be offered to public through an authorized institution or a consortium composed of authorized institutions. Sales of capital market instruments to be offered to public, and such obligations as payment of principal and interests, associated thereto are required to be performed through the authorized institution acting as an underwriter in public offering or through other authorized institutions. The provisions of Articles 15 and 17 of this Communiqué are, however, reserved.

**(2)** In cases where the public offering is conducted with underwriting by more than one authorized institution, in the underwriting consortium agreement, at least one of the authorized institutions shall be designated as consortium leader. More than one consortium members may also be designated as co-leaders as above. The consortium agreement clearly reveals the duties and responsibilities of each co-leader. The consortium leader may be held liable for its failure to manage the consortium in accordance with the agreement, to the extent the losses can be attributed to it depending on its faults and the current requirements. The consortium agreement shall clearly state that the prospectus will be signed by the leader and co-leaders, and that

applications to the Board will be filed by the leader in the name of the consortium and if specifically authorized so, in the name of the issuer.

(3) Authorized institutions are under obligation to sell the capital market instruments to be offered to public, in accordance with the sales conditions specified in the prospectus, and other rules stipulated in applicable laws.

(4) During the public offering process, the amount of demand received may not be disclosed. The amount of demands received for public offering at or over public offering price level may be disclosed by the consortium leader or co-leaders only after the end of the public offering period, so as not to be misleading, and under regulations of the Board pertaining to public disclosure of material information. However, such disclosure may not be related to a selected portion of allocation groups filing demands in the public offering process. The consortium leader or co-leaders may be held liable for accuracy of such disclosure, to the extent the losses can be attributed to them depending on their faults and the current requirements.

(5) In cases where the public offering underwriting is conducted by a single authorized institution, that institution shall assume all duties and responsibilities specified in this Communiqué for the consortium leader.

## **SIXTH CHAPTER**

### **Final and Transitional Provisions**

#### **Specific Provisions on Public Offerings**

**ARTICLE 29 – (1)** In public offering of shares by corporations covered by privatization process, if and to the extent deemed fit by the Board, principles and rules different from those specified in this Communiqué may be applied as for the sales and announcement periods and the methods of payment of share prices.

#### **Reserved Provisions**

**ARTICLE 30 – (1)** In the implementation of this Communiqué, the provisions of other regulations of the Board pertaining exclusively to a particular capital market instrument shall be reserved.

(2) In the implementation of this Communiqué to investment companies, the relevant regulations of the Board shall be reserved.

#### **Revaluation**

**ARTICLE 31 – (1)** The amounts provided in this Communiqué shall in principle be re-determined by the Board by considering the revaluation coefficient declared by the Ministry of Finance every year. Thereupon, the re-determined amounts shall be published in the Board's Bulletin. However, the Board may also decide not to revalue the amounts specified in this Communiqué.

## **Repealed Communiqué**

**ARTICLE 32 – (1)** The Communiqué on Principles Regarding Sale Methods Used in the Public Offering of Capital Market Instruments (Serial VIII, No. 66), published in the Official Gazette edition 27541 on 3/4/2010 is hereby superseded and repealed. Accordingly, all references made in other regulations of the Board to the Communiqué on Principles Regarding Sale Methods Used in The Public Offering of Capital Market Instruments (Serial VIII, No. 66) shall hereafter be deemed to have been made to this Communiqué.

## **Finalization of Pending Applications**

**TRANSITIONAL ARTICLE 1 – (1)** Applications which have not yet been finalized by the Board’s Decision Making Authority as of the effective date of this Communiqué shall be handled and responded according to the provisions of this Communiqué.

## **Effective Date**

**ARTICLE 33 – (1)** This Communiqué shall become effective one month after the date of its publication.

## **Enforcement**

**ARTICLE 34 – (1)** The provisions of this Communiqué shall be enforced by the Board.

## ANNEX

..... <b>(Title of Issuer / Title or Name &amp; Surname of Public Offeror)</b> ..... <b>(Type of Capital Market Instrument Demanded)</b>	
<b>DEMAND FORM:</b> Information about investor:	
Name & Surname / Title:	(This section will be filled in only by the sellers.)
T.R. Identity Number / Tax Identity Number:	1- Acceptance No.
Address:	2- Amount Collected:
Telephone:	
E-mail Address:	
Number and Amount of Capital Market Instruments Demanded:	
Minimum Acceptable Amount (to be filled in if desired):	
Unit Bid Price <sup>1</sup> :	
Accepted Unit Price:	
Total Amount Paid:	
In the Case of Refund, Whether Capital Market Instruments Will be Demanded or Not:	
Method of Delivery of Capital Market Instruments: <input type="checkbox"/> Physical Delivery <input type="checkbox"/> Transfer to account no. ..... of ..... A.Ş. held with CRA (Central Registry Agency)	
I am hereby filing my demand in this form after having read, understood and accepted all of the information and conditions of the prospectus published in ..... (places of publication will be inserted) on ....../..../. .... <sup>2</sup> .	
If and when I fill in the "Minimum Acceptable Amount" line in this form, I hereby declare I know that if the minimum amount specified by me is not met as a result of distribution, my demand will not be taken into consideration in preparation of the distribution list.	
..... (Date) ..... (Signature)	

<sup>1</sup> To be inserted only in the case of sales via book-building with a price bid.

<sup>2</sup> If the prospectus consists of more than one document, publication date of each document of the prospectus will be provided as the date of publication.

