

## **REGULATIONS ACT NR. 11/2005**

### **regarding the primary market of government securities administrated by the National Bank of Romania**

#### **CHAPTER I**

##### **GENERAL PROVISIONS**

**Art. 1** – The current Regulations establish:

- a. the general terms and conditions regarding the placement of the Government Securities issued under a dematerialized form by the Ministry of Public Finance, in domestic currency or foreign currency, on the domestic market;
- b. the access requirements for the participants to the primary market in their capacity as primary dealers;
- c. the rights and obligations of the primary dealers, as well as other requirements and procedures regarding the organization and the development of the activity on this market.

#### **CHAPTER II**

##### **PRIMARY MARKET OF THE GOVERNMENT SECURITIES**

**Art. 2** – (1) The activity of first selling/trading of government securities is organized and conducted by the National Bank of Romania, in accordance with the provisions in the current regulations and in observance with the principles regarding:

- a. the transparency of the market and the market access requirements;
- b. the methods and procedures used to carry out the operations of selling out the government securities;
- c. the security of the investors;
- d. the unbiased treatment of all the participants.

(2) The selling of the government securities by public subscription or, under the current regulations, is done by the National Bank of Romania acting as agent of the Ministry of Public Finance;

(3) The date and place of the auction/public subscription, as well as the identification data for the issuance that is to be launched are set by the Ministry of Public Finance in the prospectus of issuance and published by the National Bank of Romania.

(4) The Ministry of Public Finance reserves the right to increase, decrease or even cancel the values borrowed under the, depending on the financing needs and/or the yield level resulted after an auction.

**Art. 3** – (1) The primary dealers participating to the primary market of the government securities are:

- a. credit institutions, as defined in art. 1 par 2, a) in the Law nr. 58/1998 regarding the banking activity, with the subsequent revisions and amendments, which are authorized by the National Bank of Romania;
- b. financial services & investment companies, as defined in the art. 6 of the Law nr. 297/2004 regarding the capital market, with the subsequent revisions and amendments, which are authorized by the National Commission for Securities;

- c. the equivalent of the institutions mentioned under a) and b) in the current article, authorized by the member states of the European Union and/or other states within the European Economic Area.
- (2) The natural and legal persons, resident or non-resident, other than the ones mentioned in par (1) have the right to conduct transactions on the primary market of the government securities, but only through the primary dealers.

**Art. 4** – The requirements for the primary dealers to access the primary market of the government securities are as follows:

- (1) the primary dealers must to have a license allowing them to supply the following services:
  - a. trade the government securities in own name and in the name of their clients
  - b. intermediate in the government securities offer through subscription and placement of the government securities;
  - c. keep in custody and administer the government securities.
- (2) the primary dealers have to meet the access criteria stipulated in the SaFIR depository and settlement system for the government securities;
- (3) the primary dealers will have a distinct organizational structure, specific premises need to carry out the transactions with government securities, the necessary technical equipment for transactions and custody of government securities;
- (4) the primary dealers must have own norms to regulate customer procedures, records of the securities owned by the investors, as well as the internal control procedures for the transactions with government securities;
- (5) the institutions mentioned in art. 3 must be rated low investment risk by one of the rating agencies such as Fitch Ratings, Moody's or Standard & Poor's.

**Art. 5** – (1) The institutions which request the access to the primary market of government securities must file an application with the National Bank of Romania for obtaining the rights of primary dealers; the application must be sent together with backing documents showing the applicant meets the access requirements. Within 30 days, the National Bank will send a notification to the institution which requested the access rights to either approve or reject (specifying the grounds) the application.

(2) The National Bank of Romania approves the applications for access to the primary market after consultations with the concerned supervising authority.

(3) Primary dealers can also request withdrawal of the market access rights, in which case the withdrawal is effective as of the first day following the date when the access rights withdrawal decision is communicated by the National Bank to the primary dealers. The National Bank of Romania has the responsibility to inform as soon as possible the participants to the market, the Ministry of Public Finance and the concerned supervising authorities on this decision.

**Art. 6** – The primary dealers have the following obligations:

- (1) to place purchase bids in their name and/ or in the name of their clients for minimum 10% of the value announced for each series according to the prospectus of issuance;
- (2) to get, in own name, at least 1% of the total value allotted associated with the government securities issuances launched in the past 12 months, in national and/ or foreign currency. For the issuances in foreign currency the calculations will be based on the National Bank exchange rate in the settlement day for the issuance in question;
- (3) to keep record of the custody accounts for the clients;
- (4) to own, at end-quarter, a volume of government securities obtained in their own name of maximum 20% of the issuances in circulation allotted during the quarter in question. For

the issuances in foreign currency the calculations will be based on the National Bank exchange rate on the last day of the quarter that is analyzed.

**Art. 7** – In the case of a merger in which at least one primary dealer is involved, the National Bank of Romania will check if the market access requirements are met by the newly formed institution.

**Art. 8** – The primary market dealers have the responsibility to submit to the National Bank any information and/or requested documents on the activity developed by them on the primary market.

### **CHAPTER III**

#### **Sale of government securities on the primary market**

**Art. 9** – The auctions and the public subscriptions are organized by a Commission formed of representatives of the National Bank of Romania and the Ministry of Public Finance, as follows: chairman and secretary appointed by the National Bank of Romania and at least 2 expert members, out of whom one shall be appointed by the Ministry of Public Finance.

**Art. 10** – The Chairman of the Commission and the representative of the Ministry of Public Finance check on the allotment procedure, sign the Minute and the Official Release for the closing of the auction or the public subscription.

**Art.11** – The Secretary of the Commission, jointly with the members, has the responsibility to carry out the operations for the opening, the development and establishing the final result of the auction or the public subscription, and to draw up the Minute and the Official Release and sign, together with the expert members of the Commission, the Minute as well as the Official Release.

#### ***Section 1 The Auction***

**Art. 12** – Dealers acting on the primary market shall submit purchase offers, on their behalf and on behalf of their clients, up to the total subscription of the issue or up to 12:00 hours of the last day of the subscription period, unless otherwise specified in the issue launching documents, deemed to be the selling day

**Art. 13** – (1) The form of the public subscription purchase offer shall include at least the following elements:

- the issue for which the offer is submitted;
- the filling-in date;
- the auction date;
- the total value and the interest rate put up for auction;
- the breakdown of the total subscribed amount into the own amount and the account of the clients;
- identification data of the dealer acting on the primary market, the full name and the address, registered headquarters, authorized signatures, official stamp etc.
- current account number, number of the account attesting ownership of government securities.

(2) The subscription offers shall be submitted in sealed envelopes, bearing the stamp and the logo of the participants. The Secretary of the Commission shall issue a certificate to them, certifying the receipt of the envelope.

(3) The bids can also be submitted in other ways that are considered acceptable by the market administrator (encrypted telex, SWIFT, electronic system, etc.), in this case the subscription procedure will be presented having in specific regulations.

**Art. 14** – (1) The already submitted purchasing bids cannot be withdrawn, because these offers are considered firm commitments made by the participants.

(2) The maximal number of price tranches is set by the Ministry of Finance and announced in the prospectus of issuance for the issuance in question.

**Art. 15** – (1) The auction session starts at 13:00 hours, if not otherwise specified in the documents for launching the issuance, with the Secretary of the Commission opening the envelopes containing the participants' purchase offers, in the presence of the other participants in the auction

(2) The members on the Commission have the responsibility to make sure that all the requirements under art. 13 are met.

(3) The bids which do not meet the requirements established in the current regulations will be rejected.

(4) The Chairman of the Commission may exceptionally decide, by agreement with the primary dealer, to rectify on the spot the mistakes in form and to validate the bid. The primary dealer's agreement may be communicated over the phone, provided it is later confirmed in writing, during the auction session.

**Art. 16** – (1) The Secretary of the Commission, together with the expert members, shall draft a summary list of the purchase bids and, based on the quotation brackets, and determine the level at which the request, cumulated in an ascending order for the interest rates and in an descending order for the price, satisfies the offer announced by the Ministry of Public Finance.

(2) At the same time, the following shall be established: the value of the auctioned issuance that found its counterpart in the demand and the maximum, minimum and medium price or interest rate to which the purchase offers are awarded.

(3) In the event that all the issue is sold and at the marginal level (minimum level of the price or of the maximum accepted interest rate) there are several purchase offers that cannot be integrally satisfied, and in the event that the Ministry of Public Finance does not increase the value of the issue up to a value allowing integral execution of the marginal level, the proportionality principle shall apply, each party receiving the resulting value. All values shall be rounded up to the nearest value divisible by the nominal value of a government security.

**Art. 17** – (1) The following methods shall be used in order to establish the price: the multiple price method and the uniform price method.

(2) The method of the multiple price is the allocation of the government securities for the offers awarded at the price or the interest rate offered by each of the winning bidders, up to the awarding of the entire issuance. An average awarding price or an interest rate shall be calculated based on the purchase offers awarded at various prices or interest rates.

(3) The method of the uniform price is the allocation of the government securities for the awarded offers for the lowest price or the highest interest rate accepted for the awarding of the issue.

**Art. 18** – (1) Purchase offers submitted in auction may be competitive purchase offers (competition) and non-competitive purchase offers (non-competition).

(2) Purchase offers, regardless of their type, shall indicate a value that is a multiple of the nominal value of the government securities.

**Art. 19** – The competitive purchase bid is the offer in which the dealers indicate, besides the value that they want to be awarded, the maximal price (as minimal interest rate) that they are willing to pay.

**Art. 20** – (1) The non-competitive purchase bid is an offer in which the dealers indicate only the value they wish to be awarded.

(2) Execution priority for non-competitive purchase bids is as follows:

- a. bids executed at the average weighted price or the average weighted rate of the interest for the competitive purchase offers accepted in the issues awarded based on the multiple price method;
- b. at the final price or the final interest rate for the issues awarded based on the uniform price method.

(3) The Ministry of Public Finance, in the prospectus of issuance, must specify:

- a. the categories of investors who can submit non-competitive purchase offers;
- b. the maximum limit on the weight of the non-competitive purchase offers in the total value of the issuance and/or
- c. minimum and/or maximum limits for the value of a non-competitive purchase offers.

(4) If the non-competitive offers exceed the maximum value accepted in the total issue, the proportionality principle will apply in the allotment.

## **Section 2**            **Public Subscription**

**Art. 21** – (1) Dealers acting on the primary market shall submit their purchase offers on their own behalf and on behalf of their clients on the day of the subscription, until the total subscription of the issuance, up to 12:00 hours of the last day of the subscription period, if no otherwise specified in the issuance documents.

(2) The closing date of the subscription offer is the selling date.

**Art. 22** – (1) The purchase offer shall include at least the following elements:

- the issue the offer is submitted for;
- the filling-in date;
- the date of the session;
- the total value;
- a breakdown of the total amount subscribed into the amount requested on dealer's own behalf and the amount requested on behalf of the clients;
- identification data of the dealer acting on the primary market, denomination and registered headquarters, authorized signatures, official stamp, etc.;
- the number of the current account and of the account attesting ownership of the government securities.

(2) Subscription offers shall be submitted in sealed envelopes, bearing the stamp and logo of the participants. The Secretary of the subscription Commission shall issue a certificate to them, certifying the receipt of the envelope.

(3) Subscription offers may be also submitted in other way considered acceptable by the agent appointed by the Ministry of Public Finance (encrypted telex, SWIFT, electronic system, etc.), the subscription procedure having to observe certain specific rules.

**Art. 23** – (1) Submitted subscription offers cannot not be withdrawn, as they represent firm commitments made by the participants.

(2) Subscription offers shall indicate a value that is a multiple of the nominal value of the government securities.

**Art. 24** – (1) The subscription session starts at 13:00 hours, if not otherwise specified in the documents for launching the issuance, with the Secretary of the Commission opening the envelopes containing the participants' purchase offers, in the presence of the other participants in the auction

- (2) The members on the Commission have the responsibility to make sure that all the requirements under art. 22 are met.
- (3) The purchase offers which do not meet the requirements established in the current regulations will be rejected.
- (4) The Chairman of the Commission may exceptionally decide, by agreement with the primary dealer, to rectify on the spot the mistakes in form and to validate the bid. The primary dealer's agreement may be communicated over the phone, provided it is later confirmed in writing, during the subscription session.

**Art. 25** – (1) The Secretary of the Commission, together with the expert members, shall draft a shortlist list of the purchase offers.

(2) If the demand exceeds the total value issued, all the bids will be accepted proportionally, or, with the Ministry's approval, the issuance may be increased.

(3) The government securities which remain unsubscribed at 12.00 on the last day of the subscription shall be cancelled and the issuance will be closed for the value subscribed until that moment.

### **Section 3**            *Settlement of the primary market transactions*

**Art. 26** – (1) The results of the auction or the public subscription, as the case may be, are sent to the Depository and Settlement System for government securities, SaFIR.

(2) The settlement of the operations with government securities on the GS primary market and the payment of the financial obligations of the issuer are performed in accordance with the rules of the Depository and Settlement System for government securities – SaFIR, the Real Time Gross Settlement System – ReGIS, as well as other regulations issued by the National Bank of Romania.

(3) If the deadline for settlement of the auction/subscription results is not respected, for each day of delay, the primary dealer and/or the participants having a settlement account opened in ReGIS who have access to the primary market through a primary dealer, will be charged a certain amount in interest as penalty that will be calculated for each day at the level of the interest rate awarded/at subscription, plus the BUBID-ON rate for each day of the delay. The amounts collected in lei will be transferred in the State Treasury General Current Account, opened in ReGIS; the amounts collected in foreign currency will be transferred in the foreign currency account of the Ministry of Public Finance opened with the National Bank of Romania.

## **CHAPTER IV** **Monitoring**

**Art. 27** – (1) The activity of the primary dealers is monitored by the National Bank of Romania for the observance of the current regulations.

(2) If insolvency procedure is opened, or the provisions in articles 4 and 6 in the current regulations are not followed, the National Bank has the right to withdraw the authorization for primary dealer and/or suspend for 90 calendar days the access right in own name on the primary market, if the provisions in article 6 are respected.

**Art. 28** – (1) The National Bank of Romania will take the following measures in the case of withdrawal of the primary dealer authorization:

- a. forbid the access to the GS primary market starting with the date when the notification for insolvency procedure is sent, or in any other case of withdrawal of the primary dealer attributions, with the exception of the purchase offers in the auction/subscription submitted before the receipt of the notification;
- b. notify the other participants on the issue, as well as the regulating and supervising authority;

(2) The access rights of the financial services and investment companies can be withdrawn only after consultations with the National Commission for Securities.

## **CHAPTER V**

### **Penalties**

**Art. 29** – The National Bank of Romania will impose penalties on the primary dealers who fail to follow the provisions in the current Regulations, in conformance with the provisions in art. 57 in the Law nr. 312/2004 regarding the Statute of the National Bank of Romania.

## **CHAPTER VI**

### **Final provisions**

**Art. 30** – The institutions authorized based on the Regulations regarding the operations with government securities issued in a dematerialized form approved by Order 875 of May 21, 2001 keep their attributions as primary dealers provided they meet, no later than October 3, 2005, the access requirements described in art. 4 par (2).

**Art. 31** – (1) The National Bank of Romania, acting as agent of the Ministry of Public Finance, will encourage the setting up of professional associations with the purpose of boosting professional standards, as well as establishing a code of conduct&ethics to be followed in the transactions carried out on the primary market of the government securities.

(2) The participants to the primary market of government securities must respect the codes of conduct approved by the National Bank of Romania.

**Art. 32** – (1) For the institutions provided in the art. 3 par (1), c), the current regulations will apply starting with the date of Romania's admission to the European Union, with the market access requirements to be established later on.

(2) The provisions in art. 4 par (5) will apply starting the date of Romania's admission to the European Union.

**Art. 33** – The National Bank of Romania, within 90 days from the enforcement of the present Regulations, will issue technical norms for the application of the regulations.

**Art. 34** – (1) The current Regulations are in force as of October 3, 2005.

(2) The current Regulations will be published in Romania's Official Gazette, part I.