

## **CVM INSTRUCTION 361, DATED MARCH 5, 2002**

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*Provides the procedure applicable to Tender Offers for publicly held company shares, the register of Tender Offers of shares for the cancellation of publicly held company registration, through the increase in participation of a controlling shareholder, through the alienation of publicly held company control, for the control acquisition of a publicly held company when involving securities exchange, and exchange for securities, revokes CVM Instruction 229, dated January 16, 1995, CVM Instruction 299, dated February 9, 1999, and CVM Instruction 345, dated September 4, 2000, and gives other provisions.*

**THE CHAIRMAN OF THE SECURITIES AND EXCHANGE COMMISSION - CVM** makes it public that the Board, in a meeting that took place on this date, and based on Items V, VI and VII of art. 4, Items I and III of art. 8, on Letter "a" of Item II of art. 18, on paragraph 6 of art. 21, and in Items III, V, VI and VIII of art. 22 of Law 6,385, dated December 7, 1976, and on arts. 4, 4-A, 30, Paragraph 2, 254-A and 257 of Law 6,404, dated December 15, 1976, DECIDED to issue the following Instruction:

### **SCOPE AND PURPOSE**

#### **Application**

Article 1 - This Instruction regulates the procedure applicable to any Tender Offer for publicly held companies shares, and also the process of registering tender offers for cancellation of publicly held company registration, through the increase in participation of a controlling shareholder, through the alienation of publicly held company control, for the control acquisition of a publicly held company when involving securities exchange, and exchange for securities.

#### **Modalities and Definitions**

Article 2 - The Tender Offer for publicly held company shares (Oferta Pública de Aquisição de ações de companhia aberta - OPA) may be of one of the following modalities:

I – OPA for the cancellation of registration: it is the mandatory OPA, accomplished as a condition for the cancellation of the registration of the publicly held company, by force of Paragraph 4 of art. 4 of Law 6,404/76 and Paragraph 6 of art. 21 of Law 6.385/76;

II – OPA for increase in participation: it is the mandatory OPA, accomplished as a consequence of increase in the participation of the controlling shareholder in the share capital of a publicly held company, by force of Paragraph 6 of art. 4 of Law 6,404/76;

III – OPA due to alienation of control: it is the mandatory OPA, accomplished as a condition of efficacy of legal transaction of publicly held company alienation of control, by force of art. 254-A of Law 6,404/76;

IV – voluntary OPA: is the OPA that aims to acquire issuing shares of publicly held company that is not supposed to be accomplished according the specific procedures

established herein for any mandatory OPA referred to in previous Items;

V – OPA for the acquisition of control of publicly held company: it is the voluntary OPA treated by art. 257 of Law 6,404/76; and

VI – Competitor OPA: it is the OPA that is formulated by a third party different from the offerer or person entailed to him/her/it, and that has as object actions comprised in OPA that has already been presented for registration before the CVM, or in ongoing OPA that is not subject to registrations.

Paragraph 1 It shall be subject to registration before CVM the modalities of OPA mentioned in Items I to III of the *caput*, those that are treated by Items IV and V, when there is exchange by securities, and those treated by Item VI, when they compete with OPA subject to registration before the CVM.

Paragraph 2 Be it subject or not to be registered in the CVM, every OPA shall observe the general procedure established in arts. 4 to 8 and 10 to 12, in what it is applicable, being the OPA that is subject to registration due to observe also, the additional requirements and additional procedures related to the respective modality, which are established herein.

Paragraph 3 For the effects of this Instruction, it is considered as OPA the offer that is made outside the stock exchange or outside an entity of organized over-the-counter market that aims to the acquisition of publicly held company shares, regardless of the quantity of shares aimed by the offerer.

Paragraph 4 For the effects of the paragraph hereinbefore, the offer is considered as public when any means of publication of the Tender Offer, including mail, electronic ads or acquisition efforts, is used.

Paragraph 5–Acquisition offers exclusively accomplished in negotiation premises of the stock exchanges and organized over-the-counter entity, continue ruled by the provisions applicable to them, including the adoption of special procedures, as long as they don't fulfill any of the hypothesis referred in Paragraph 1, and there is no publicity of the offer.

Article 3 - For the effects of this Instruction, it is understood as:

I – object company: the publicly held company issuing the shares aimed by the OPA;

II – shares that are the object of OPA: shares aimed by the offerer in the OPA;

III – circulating shares: every share issued by the object company, except shares held by the controlling shareholder, by people entailed to him/her/it, by administrators of the object company, and those in the treasury;

IV – controlling shareholder: the person, natural or legal, fund or universality of rights or the group of people entailed by vote agreement, or under common control, direct or indirect, that:

a) is titular of partnership rights that assure him/her in a permanent way, the majority of votes in the decisions of the general meeting and the power of electing the majority of officers in the company; and

b) effectively uses his/her power to coordinate the social activities and to orient the operation of the company bodies.

V – offerer: the proponent of share acquisition in an OPA, be he/she a natural person or legal entity, fund or universality of rights;

VI – person entailed to: natural person or legal entity, fund or universality of rights, that acts representing the same interest of the controlling shareholder, offerer, or middleman,

as the case may be.

Paragraph 1 Except for the effect of alienation of control, which shall be characterized according to applicable specific rules, it is equalized to the controlling shareholder, for the effects of this Instruction, the holder of securities convertible into shares, or securities that grant the right to the subscription of shares, as long as such shares, in themselves or added to those already held by the holder and people entailed to him/her, grant him/her the control of shares.

Paragraph 2 It is assumed as representing the same interest of the controlling shareholder, the offerer, or the middleman, as the case may be, the one who:

a) directly or indirectly, under any form, controls it, or is through it submitted to common control; or

b) acquired, even under suspensive condition, its control or the control of the object company, or is a prominent buyer or holder of purchase option of the share control of the object company, or middleman in business of transference of that control.

Paragraph 3 For the effects of this Instruction, it is not assumed that the object company acts in the same interest as the controlling shareholder.

## GENERAL OPA PROCEDURE

### General principles

Article 4 - In the accomplishment of an OPA, the following principles shall be observed:

I – the OPA shall always be indistinctly addressed to the holders of shares of the same type and class of those that are object of the OPA;

II – the OPA shall be accomplished in a way as to ensure equitable treatment to receivers, allow them the adequate information in relation to the object company and the offerer, and endow them with the elements that are necessary for a reflected and independent decision in relation to the acceptance of OPA;

III – as the case might be (art. 2, Paragraph 1), the OPA shall be previously registered before CVM, according to the adequate modality;

IV – the OPA shall be intermediated by brokerage or securities distributor society, or financial institution with investment portfolio;

V – the OPA shall be launched through uniform price, except for the possibility of fixing different prices, depending on the class and type of shares that are object of the OPA, as long as compatible with the modality of OPA, and if the difference is justified by the assessment report of the object company or by express declaration of the offerer in relation to the reasons of his/her/its differentiated OFFER;

VI – whenever it is an OPA that is formulated by the company itself, by the controlling shareholder, or by a person entailed to him/her, the OPA shall be instructed with assessment report of the object company, as established herein;

VII – the OPA shall be effected in auction of stock exchange or organized over-the-counter market entity, except if, being the case of volunteer OPA or OPA for the acquisition of control, which are not subject to registration, it is expressly authorized by CVM the adoption of a different procedure;

VIII – the OPA can be subject to conditions whose implementation doesn't depend on the direct or indirect performance of the offerer or of people entailed to him/her/it; and

IX – the OPA shall be immutable and irrevocable after the announcement is published, except for the hypothesis previewed in art. 5.

Paragraph 1 Without harming the provisions of Item V, the OPA can, if this doesn't violate other provisions of this Instruction, have different cash and term prices for the same receivers, as long as the choice is on the receivers, there is a justified reason for their existence, and such distinction doesn't affect the reflection and independence of the decision of accepting the OPA, as for instance if it is entailed to the term of acceptance or to the quantity of acceptations already manifested.

Paragraph 2 The CVM may determine, at any time:

I - the suspension of ongoing OPA, or the respective auction, if verifying that the OPA or auction show healable irregularity or illegality, being the suspension maintained until they are corrected; or

II - cancellation of OPA, when verifying that it shows unhealable irregularity or illegality.

Paragraph 3 It is denied the transfer to the object company, by any reason, of expenses relative to the launching and settlement of an OPA, except if the OPA is formulated by the company itself in cases admitted by law.

#### Modification and Revocation

Article 5 - When it is an OPA that is subject to register, its modification or revocation after the announcement is published shall depend on previous and express authorization of the CVM, by observing, in the first case, the requirements for registration previewed in art. 9.

Paragraph 1 The requisition for modification or revocation of OPA shall lead to a suspension of the announcement term, if it is ongoing, and shall be followed by the copy of the relevant fact notice issuing that has published the formulated requisition, in the form required by the CVM regulation.

Paragraph 2 The modification or revocation of OPA, whenever deferred, shall require the immediate divulgence as relevant fact, with emphasis in modifications deferred by CVM, and if it is the case, indicating the remaining term for the offer announcement and the date of auction.

Paragraph 3 Requirement of modification or revocation of OPA shall be accepted only if, at the CVM discretion, there has been substantial alteration, further and unpredictable, in the circumstances really existing when the OPA was launched, leading to relevant increase in the risks assumed by the offerer, which are inherent to the OPA itself.

Paragraph 4 When it is the case of modification of OPA due to a better offer favoring the receivers, or through waiver by the offerer of the condition established by him/her/it for the accomplishment of the OPA, the request shall be considered as deferred in case there is no manifestation by the CVM in the term of 10 (ten) days, counted from the protocol.

Paragraph 5 When it is the case of mandatory OPA, the revocation request can only be deferred if, besides the requirements mentioned in Paragraph 3, the offerer proves that the legal acts and legal transactions that have determined the accomplishment of the OPA shall have no effect if the revocation is deferred.

Paragraph 6 It shall be licit for the offerer to waive the OPA for registration and OPA cancellation due to increase in participation, in the hypothesis of revision of the offer price due to the procedure previewed in art. 4-A of Law 6,404/76, being applied, in such hypothesis, respectively, the rules of arts. 24, Item IV, and 28 of this Instruction.

Paragraph 7 Without harming the restrictions established in civil and commercial laws, and the administrative sanctions of the CVM jurisdiction, if it is the case, the modification or

revocation of OPA not subject to registration shall be object of notice of relevant fact, including the information mentioned in Paragraph 2.

### Financial Settlement

Article 6 - The tender offer, according to the form of payment proposed by the offerer, shall be:

I - of purchase, when the payment proposed should be accomplished in current exchange;

II - of barter, when the payment proposed should be accomplished through securities, which shall be of publicly held company issuing, admitted for negotiation in the securities market, already issued, or to be issued;

III - mixed, when the payment proposed should be accomplished part in cash and part in securities mentioned in the previous Item.

Paragraph 1 It shall be admitted the formulation of an alternative tender offer, as it is understood the one in which to the offer receivers it is deferred the choice of the liquidation form, if it is in current exchange or with the securities mentioned in Item II.

Paragraph 2 To the barter , mixed and alternative offers are applied, besides the general procedure of this Instruction, the provisions of art. 33.

### Intermediation

Article 7- The offerer shall hire a brokerage society or a distributor of stock and securities or financial institution with investment portfolio to intermediate the OPA.

Paragraph 1 The offerer is responsible for the truthfulness, quality, and sufficiency of information supplied to CVM and to the market, as well as for eventual damages caused to the object company, to shareholders and third parts, through guilt or fraud, due to falsehood, imprecision or omission of such information.

Paragraph 2 The intermediary institution shall take all cautions and act with high standards of diligence to assure that the information rendered by the offerer are true, consistent, correct, and sufficient, being responsible for omission in this duty, being also responsible for verifying the sufficiency and quality of information supplied to the market during the whole procedure of OPA, which are necessary for investors decision making, including the eventual and periodic information that should be rendered by the company, and those consisting of the OPA instrument, the assessment report, and the announcement.

Paragraph 3 The intermediary institution shall help the offerer during all phases of OPA, and request from him/her/it the practice of acts necessary for the correct development of the offer, as well as the ceasing of activities that harm such development, being subject to interrupt its services in case there is a refusal by the offerer, under the penalty of not being exempt from the responsibilities imposed by this Instruction.

Paragraph 4 The intermediary institution shall guarantee the financial settlement of the OPA, and the payment of the purchase price in case of use of the right mentioned in Paragraph 2 of art. 10.

Paragraph 5 The intermediary institution, its controller, and people entailed to it, shall present a declaration of the quantity of shares issued by the object company that they hold, or that are under their discretionary administration.

Paragraph 6 When hired to intermediate the OPA, the brokerage society or distributor of stock and securities or financial institution with investment portfolio shall be hindered of negotiating the shares issued by the object company, as well as of making researches and

public reports about the company and the operation.

## Evaluation

Article 8 - Whenever it is an OPA formulated by the company itself, by the controlling shareholder, or by a person entailed to him/her, it shall be elaborated an assessment report of the object company.

Paragraph 1 The assessment mentioned in the *caput* shall be elaborated by the intermediary institution, brokerage society, or distributor of securities, or financial institution with investment portfolio that have specialized and duly equipped area, having proven experience, or even by specialized company with proven experience.

Paragraph 2 The proven experience mentioned in the paragraph hereinbefore should be related to the assessment of publicly held companies.

Paragraph 3. The assessment report shall observe what is set forth in Annex III of this Instruction and shall indicate the criteria for assessment, the elements for comparison adopted and the person responsible for its elaboration, including at minimum and cumulatively the following:

### ***Caput of Paragraph 3 amended by CVM Instruction 436, dated July 05, 2006.***

I – average weighted price of quotation of object company shares in the stock exchange or in the organized over-the-counter market, for the last 12 (twelve) months, if existing, by discriminating the prices of shares by type and class;

II – value of net equity per share of the object company, counted through the last periodic information sent to the CVM;

III – economic value per action of the object company, calculated through the rule of discounted cash flow or through multiples, as considered groundedly more adequate to the company's case, in a way as to correctly evaluate it;

IV – company value according to evaluation criteria adopted by the offerer for the definition of fair price, if it is the case, and if it is not included in previous Items;

V – evaluator's declaration:

a) in relation to the quantity of shares issued by the object company owned by himself/herself, his/her controller, or people entailed to them, or that are under their discretionary administration;

b) about the evaluation criteria, among those consisting of the assessment, that he/she finds the most appropriate to the definition of fair price, if it is the case;

c) that there is no conflict of interests diminishing his/her independence, necessary for the performance of his/her functions;

d) of the assessment report cost; and

VI – calculation spreadsheets and projections used in the evaluation by economic value, emphasizing the main premises used, and justification for each one of them.

Paragraph 4 The assessment report can evaluate the company within a minimal and maximal range of values, as long as the difference between such prices doesn't exceed 10% (ten percent).

Paragraph 5 The assessment report shall be directed to CVM in 3 (three) copies, and also to its electronic address, in the specific format indicated by CVM, being available to people

eventually interested at least at CVM, at the stock exchange, or at the organized over-the-counter market entity where the OPA auction shall occur, at the offerer's address, at the intermediary institution headquarters, at the object company headquarters, as well as being accessible in the world computer network, in the CVM and object company electronic address, if the later has one.

Paragraph 6 The evaluator shall direct to CVM a declaration of values received from the offerer and the object company, as remuneration for any services of consulting, assessment, auditing, and similar, for the 12 (twelve) months before the requisition of registration.

Paragraph 7. In the event of an exchange offer, an assessment report shall also be presented to the company whose securities are being given in exchange, including the information from Annex III of this Instruction, considering the same assessment criteria for both companies.

***Paragraph 7 added by CVM Instruction 436, dated July 05, 2006.***

## Registration

Article 9- When dealing with an OPA subject to registration, the requisition shall be registered at the CVM by the offerer, through the intermediary institution, in the maximum term of 30 (thirty) days, to be counted from the date in which the notice of relevant fact or of the decision that allows the accomplishment of the OPA is published, by observing the minimum elements that allow its comprehension and exam, and obeying the requirements described in Annex I of this Instruction.

Paragraph 1 The concession of OPA registration by the CVM shall be conditioned to the obtainment of its registration in the stock exchange or in the organized over-the-counter market entity in which the auction shall be accomplished.

Paragraph 2 The requisition of registration shall be judged by the CVM within the term of 30 (thirty) days, to be counted from the date the requisition is registered with the CVM; it is presumed to be deferred if there is no manifestation of the CVM during that term, without harming the provisions of art. 11.

Paragraph 3 The fluency of the term mentioned by the paragraph hereinbefore shall be interrupted when the CVM formulates requirements to the offerer, what it can do just once, except when they refer to new facts, information, or documents.

Paragraph 4 For the fulfillment of eventual requirements, it shall be allowed a term that is not superior to 60 days, at the discretion of the CVM, according to the complexity of requirements, by counting the term of reception of the requirements office by the representative indicated by the offerer, being the requisition rejected in case the requirements are not fulfilled during the term, and by applying the rule of Paragraph 2 of this article to the analysis by the CVM of the fulfillment of requirements.

Paragraph 5 The document of fulfillment of requirements formulated by the CVM shall be presented to the CVM to be registered in two versions, having the first one, the voluntary modifications, and corrections determined by the CVM, duly highlighted, and the second, without any mark.

Paragraph 6 The CVM can, through grounded office, retribute the petitioner the registration request and the documents guiding it without formulating requirements if verifying that they show unhealable irregularity or illegality, or if verifying that the requisition doesn't have the necessary documents.

Paragraph 7 Under any hypothesis of rejection of registration requisition, the documents that have instructed it can be withdrawn by the offerer from the thirtieth day following the communication of rejection, and for a term of 90 days; after that, CVM can destroy them, except if there is any appeal by the interested part.

#### Instrument

Article 10 - The instrument of OPA shall be signed both by the offerer and the intermediary institution, and shall contain, besides the requirements described in the Annex II of this Instruction, the following:

I – declaration of the offerer, when he/she/it is a controlling shareholder or person entailed to he/she/it or the very company, that he/she/it is obliged to pay the holders of circulating shares who accepted the OPA, the biggest difference, if existing, between the price they received for selling their shares, updated in the terms of the OPA instrument and the ruling legislation, and adjusted by the alterations in the number of shares as a result of bonus, deployment, grouping, and conversion eventually occurring, and:

a) the price per share that would be due, or turns out to be due, if occurring, in the term of 1 (one) year to be counted from the date of accomplishment of the OPA auction, a fact that would impose, or might impose, the accomplishment of mandatory OPA, among those mentioned in Items I to III of art. 2; and

b) the value they would have the right to, in case they were still shareholders and dissented of the deliberation of the object company that should approve the accomplishment of any corporate event that allows the exercise of the right to recess, when this event is verified within the term of 1 (one) year, to be counted from the date the OPA auction is accomplished.

II – statements by the offerer and the intermediary institution that they don't acknowledge the existence of any fact or circumstances not revealed to the public, which can influence in a relevant way the results of the object company or the quotations of shares that are the object of OPA;

III – report about the object company registration with the CVM, when dealing with offer formulated by the company itself, the controlling shareholder, or person entailed to he/she/it;

IV - report informing that it is at the disposal of eventual interested people, through identification and receipt, at the offerer's address, in the headquarters of the object company, in the intermediary institution, the CVM and at the stock exchange or organized over-the-counter market entity in which the OPA auction shall take place, the nominal list of all shareholders of the object company, with their respective addresses and quantity of shares, discriminated by type and class, including electronic media;

V – date, place, and starting time of the OPA auction; and

VI – other information considered necessary by the CVM in order to guarantee the perfect clarification of the market.

Paragraph 1 The offerer shall not be obliged to the payment mentioned in Item I of the *caput*, in case the information about the future occurrence of the mandatory OPA or of the corporate event mentioned hereinbefore has already been divulged when the OPA announcement is published.

Paragraph 2 Except for the hypothesis of OPA through alienation of control, it shall consist of the instrument of any OPA formulated by the controlling shareholder, person entailed to him/her, or the company itself, aiming to acquire more than 1/3 (one third) of circulating shares of the same type or class, a statement of the offerer that, in case he/she acquires



more than 2/3 (two thirds) of circulating shares of the same type and class, he/she shall be obliged to acquire the remaining circulating shares, in the term of 3 (three) months, counted from the date the auction is accomplished, by the final price of the OPA auction, updated to the date of effective payment, under the terms of the OPA instrument and the ruling legislation, as payment in the maximal term of 15 (fifteen) days after the faculty has been used by the shareholder, all without harming the provisions of art. 15.

Paragraph 3 For the finality treated in the paragraph hereinbefore, and when treating exclusively mixed, alternative or barter public offers (art. 6 II, III and Paragraph 1), it shall be licit for the offerer to establish up to three dates, being one necessarily the last day of the term mentioned there, for the beginning of the elapsing of the 15 (fifteen) days term treated in the paragraph hereinbefore.

Paragraph 4 When the OPA is formulated by a third party different from the object company, the controlling shareholder, or person entailed to them, the company shall, under requisition made by the offerer, supply him/her the nominal list mentioned in Item IV, in the form of Paragraph 1 of art. 100 of Law 6,404/76;

Paragraph 5 When dealing with OPA that is not subject to registration, or formulated by a third party different from the object company, the controlling shareholder or person entailed to them, the instrument shall contain, besides the requirements of this article and Annex II, information mentioned in Items I and II of Paragraph 3 of art. 8.

### **Publication**

Article 11 - The OPA instrument shall be published, under the form of announcement, at least once in the newspapers of big circulation habitually used by the object company, by observing the maximum term of 10 (ten) days, after the obtainment of the registration with the CVM, when it is requirable.

Paragraph 1 The publication of the OPA instrument it shall also , if the case may be, consist of the date when the requisition of OPA registration with the CVM has been deferred, having the highlighted information that the approval of the requisition of registration of OPA doesn't imply, on the part of the CVM, a guarantee of truthfulness of information rendered, judgment of the quality of the object company, or of the price offered for the shares object of OPA.

Paragraph 2 In the maximum term of 24 (twenty four) hours, counted from the publication of the announcement, a copy of the publication shall be directed to the CVM, and also to its electronic address, in the specific format indicated by the CVM, being available to people eventually interested at least at the CVM, at the stock exchange, or at the organized over-the-counter market entity where the auction shall occur, at the offerer's address, at the intermediary institution headquarters, at the object company headquarters, as well as being accessible in the world computer network, in the CVM and object company electronic address, if the later has one.

### **Auction**

Article 12 - The OPA shall be necessarily effectuated in auction in the stock exchange or in the organized over-the-counter market in which the shares object of OPA are admitted for negotiation or, in case they are not, in stock exchange or organized over-the-counter market, at the free choice of the offerer.

Paragraph 1 The acceptance or not of OPA shall take place at the auction, which shall be accomplished in the minimal term of 30 (thirty), and maximal of 45 (forty five) days, counted from the date in which the announcement is published, and shall obey the rules established by the stock exchange or by the organized over-the-counter market entity responsible for the auction.

Paragraph 2 The auction shall adopt procedures that necessarily assure:

I – the possibility of increasing the price to be paid for shares during the auction, being the new price extended to all shareholders that accept the previous calls, by observing the differentiation of prices among the several classes or types of shares, if existing, and the possibility of increasing the price of just one or some classes or types of actions; and

II – the possibility of buyer interferences, which can comprise lot of shares inferior to the OPA object, proceeding the apportionment, except for the OPA for the cancellation of registration and for increase of participation, in which the interferences shall have the object of total lot;

Paragraph 3 In up to 4 (four) business days after the accomplishment of the auction, the stock exchange or the organized over-the-counter market entity in which it is accomplished shall direct to the CVM the statements relative to the auction.

Paragraph 4 When dealing with OPA subject to registration before the CVM, the buyer interferences can be accomplished only through intervenient that has registered competitor OPA with the CVM, as per rules of art. 13, with the exception of the provisions of art. 32 in relation to the OPA for acquisition of control.

Paragraph 5 Exclusively when dealing with OPA with cash price, the first buyer interference shall be at least 5% (five percent) superior to the last price offered.

Paragraph 6 When dealing with voluntary OPA accomplished by a third part, different from the controlling shareholder or person entailed to him/her, or OPA for the acquisition of control, the CVM may, through requisition of the offerer, authorize that the OPA is accomplished through a means different from the auction mentioned in this article.

#### Competitor OPA

Article 13 - The competitor OPA shall observe the same requirements and procedures established by this Instruction for the OPA it competes with, also in relation to registration, if it is the case, by observing the rules of this article.

Paragraph 1 The competitor offerer declarations mentioned by Item I of art. 10 and Paragraph 2 of that article, shall become effective in case he/she, or person entailed to him/her, is or turns out to be the controlling shareholder of the object company.

Paragraph 2 The competing OPA shall be launched with a price at least 5% (five percent) superior to the one of the OPA it is competing with, and its launching retracts the effect of the manifestations that have already been firmed in relation to the acceptance of the last one, which auction can be postponed, if necessary, also by determination of the CVM, to be accomplished in the same date of the competing OPA auction.

Paragraph 3 Once a competing OPA is launched, it shall be licit both for the initial offerer as well as for the competing offerer to increase the price of their OFFERs as many times as they consider convenient, as long as they give public notice of such increase, with the same emphasis as with the offer.

Paragraph 4 If the competing OPA depends on registration, it shall be considered as deferred in the term of 5 (five) days counted from registering with the CVM, as long as:

a) it is a competing purchase offer, or if dealing with competing offer of barter, mixed or alternative, if the securities offered are identical to those of OPA;

b) the offerer presents the statements treated by Items I and II of art. 10 and Paragraph 2 of the same article, and the information mentioned in Item V of art. 10 and Letters (a) and (g) of Item I of Annex II;

c) the requisition is instructed with intermediation contract in the terms of art. 7; and

d) the requisition is presented in a date that allows the publication of the competing OPA announcement happens at least 10 (ten) days in advance in relation to the OPA auction.

Paragraph 5 Except for the hypothesis of the paragraph hereinbefore, every competing OPA that depends on registration shall observe the same requirements, procedures and terms established in art. 9.

### Prohibitions

Article 14 - The object company, the controlling shareholder and people entailed to him/her cannot effectuate new OPA having as object the same shares that are object of a previous OPA, only, after the term of 1 (one) year, to be counted from the previous OPA auction, is elapsed, except if they are obliged to accomplish it, or if they extend to the takers of the previous OPA the same conditions of the new OPA, by paying them the updated difference in price, if existing.

Article 15 - With any OPA formulated by the object company, by the controlling shareholder, or by people entailed to him/her, as long as not dealing with OPA for alienation of control, in case there is the acceptance by holders of more than 1/3 (one third) and less than 2/3 (two thirds) of circulating shares, the offerer shall only be able to:

I - acquire up to 1/3 (one third) of circulating shares of the same type and class, by proceeding to the apportionment among the takers, and observing, if it is the case, the provisions of Paragraph 1 and 2 of art. 37; or

II - waive the OPA, as long as such waiver has been expressly manifested in the OPA instrument, being subject only to the condition of the offer not being accepted by shareholders holding at least 2/3 (two thirds) of circulating shares;

### OPA FOR CANCELLATION OF REGISTRATION

#### Requirements for cancellation

Article 16 - The cancellation of the registration of publicly held companies shall be deferred by the CVM only in case it is preceded by an OPA for registration cancellation, formulated by the controlling shareholder or by the publicly held company itself, and having as object all shares issued by the object company, by observing the following requirements:

I – the price offered should be fair, in the form established in Paragraph 4 of art. 4 of Law 6,404/76, by considering the assessment mentioned by Paragraph 1 of art. 8. and

II – shareholders holding more than 2/3 (two thirds) of circulating shares shall accept the OPA or expressly agree with the registration cancellation, by considering circulating shares, for this effect, only shares whose holders expressly agree with the cancellation of registration or qualify themselves for the OPA auction, in the form of art. 22.

Sole paragraph. Without harming the legal restrictions applicable, when the OPA for cancellation of registration is accomplished by the company itself, the limits of negotiation with its own shares, established by the CVM in its own regulation, shall happen only in case it is not reached the requirement of acceptance of Item II of this article, being observed also, in this case, the limit treated in Item I of art. 15.

Article 17 - The company that has issued or has accomplished public distribution of debentures can cancel its registration of publicly held company only if proving, through declaration of the trustee, that:

I – has redeemed the totality of circulating debentures;

II – after the term for redemption is due or if it is anticipated, and the whole issuing has not been redeemed, it has made the deposit of the debentures redemption value in a commercial bank, being such value at the disposal of the holders of debentures;

III – the offerer or entailed person has acquired the totality of circulating debentures; or

IV – all holders of debentures agree with the cancellation of registration of publicly held company, and expressly declare to be aware that, in reason of that, the registration for the negotiation of debentures in organized secondary market, if existing, shall be cancelled.

Paragraph 1 Under the hypothesis of accomplishment of the bank deposit mentioned by Item II, the company shall issue an advertisement informing such situation to debenture holders, with the express mention of the bank name and identification of the agency in which the deposit has been made.

Paragraph 2 In the hypothesis of Item IV, the declaration of the trustee shall be followed by a copy of the declarations signed by all debenture holders, or of the debenture holders meeting act that has approved, unanimously and with the presence of all debenture holders, the cancellation of registration.

Article 18 - The company that has issued or made public distribution of other securities different from shares and debentures can cancel its registration of publicly held company only if the offerer proves that he/she has acquired, directly or through entailed person, the totality of securities circulating in the market, with the exception of beneficiary parts, or if fulfilling, in relation to the holders of such securities, the requirements of Item IV and Paragraph 2 of art. 17.

Article 19 - In the case the controlling shareholder, person entailed to him/her, or the company, intend to accomplish OPA for cancellation of registration in a term inferior to 1 (one) year, counted from the date of approval of the last public subscription having all shareholders occurred in the object company, the price to be offered for circulating shares shall be, at least, equal to the price obtained for shares in the mentioned increase of capital, duly updated by the terms of the OPA instrument and the ruling legislation, and adjusted in such way as to consider, in the calculation of price, the alterations in the number of shares as a result of bonus, deployment, grouping and conversion that eventually occur.

Sole paragraph. The provision in the *caput* of this article is applied to the cases of private subscription, as long as at least 1/3 (one third) of the shares object of the capital increase, excluded those subscribed by the controlling shareholder in the exercise of his/her right of preference, have been subscribed by minority shareholders and third parts, and at least 10% (ten percent) of shares of the same type and class of those that are the object of capital increase, remain in circulation, by counting the term established in the *caput*, of the date of approval of capital increase.

#### Instrument

Article 20 - The instrument of OPA for cancellation of registration, besides the requirements established in art. 10, shall mandatory consist of:

I – summons of shareholders who want to manifest their agreement in relation to the cancellation of registration, with the specification of the term and procedure to be adopted to do so;

II – declaration that the object company did not issue other securities that are circulating, or that it has fulfilled the provisions of arts. 17 and 18;

III – declaration that, in case the company exercises the right treated by Paragraph 5 of art. 4 of Law 6,404/76, the deposit of the value of redemption shall be accomplished in up

to 15 (fifteen) days, counted from the redemption decision, in a financial institution that maintains agencies able to make the payment to shareholders, at least, in the company headquarter location, and in the headquarters of the stock exchange or organized over-the-counter market entity in which the shares should be admitted for negotiation, and in the capitals of all states in the Country, being the information divulged through relevant fact communication; and

IV – in cases of OPA launched by the company itself, a copy of the decision of the company body that has approved the launching of OPA, containing at least the justification for the operation, of the unnecessariness of funding resources by means of public subscription of shares in the term of 2 (two) years, and the reference to the existence of reserves required by law.

## Auction

Article 21 - In the OPA for cancellation of registration, the shareholders shall be considered as:

I – agreeing with the cancellation of registration, if accepting the OPA, by selling their shares in the auction, or expressly manifesting their agreement in relation to the cancellation;

II – not agreeing with the cancellation of registration if, having been qualified for auction, in the form of art. 22, do not accept the OPA.

Paragraph 1 Shares of shareholders who do not manifest by expressly agreeing with the cancellation of registration, and do not qualify for the auction in the form of art. 22, shall not be considered as circulating shares for the effects of Item II of art. 16, being at their discretion, however, to alienate such shares in the form and term previewed in Paragraph 2 of art. 10.

Paragraph 2 The instrument of express agreement manifestation about the cancellation of registration, it shall consist of, as highlighted, the declaration of the shareholder that he/she is aware that:

I – his/her shares shall remain unavailable up to the liquidation of the OPA auction; and,

II – after cancellation, he/she cannot alienate his/her shares in the stock exchange or organized over-the-counter market in which they were admitted for negotiation.

Article 22 - In the OPA auction for cancellation of registration, besides the rules established in art. 12, it shall be adopted a procedure that allows the follow up, during the auction, of the quantity of shares of shareholders who agreed with the cancellation of registration, as well as of the sum of that quantity of shares retained by shareholders who accepted the OPA.

Paragraph 1 All shareholders holding circulating shares that intend to participate in the auction or to disagree with the cancellation of registration, as well as the shareholders who have manifested express agreement with the cancellation of registration, shall accredit, up to the auction's eve, a brokerage society to represent them at the OPA auction.

Paragraph 2 The brokerage societies, accredited in the form of the paragraph hereinbefore, shall communicate to the stock exchange or organized over-the-counter market entity in which the auction shall be accomplished, until it starts, the quantity of shares of shareholders who shall be represented by them at the OPA auction, and the sum of shares reported by all brokerage societies shall make the total of circulating shares for the effects of calculation of the quantity of takers and concordants mentioned by Item II of art. 16.

Paragraph 3 The minimum quantity mentioned in Item II of art. 16 shall be calculated by

adding up the selling orders issued with the express manifestations of agreement with the cancellation of registration, being the auction closed when the term provided for its accomplishment is over, or when the minimum quantity mentioned in Item II of art. 16 is reached, whichever occurs first.

Paragraph 4 The express manifestations of agreement with the cancellation of registration and the orders of offer acceptance shall be made by brokerage societies, being valid the silence of qualified shareholders in the form of Paragraph 1 as disagreement with the auction.

Paragraph 5 The brokerage societies shall prove with documents, in the term of 24 (twenty four) hours, counted from auction closing, to the stock exchange or organized over-the-counter market entity where the auction has taken place, and to the intermediary institution, the legitimacy of representation of shareholders who were qualified, in the form of Paragraph 1<sup>o</sup>.

Paragraph 6 The brokerage societies shall answer civil, administrative, and criminally for the undue accreditation of shareholders that are not legitimately represented by them, or that do not have, in the date of auction, the qualified shares.

Paragraph 7 The intermediary institution and the stock exchange or organized over-the-counter market entity in which the auction is accomplished shall adopt all complementary measures necessary for perfectly obeying the requirements imposed in paragraph hereinbefore, or others that substitute them with equal result.

#### Review of the offer price

Article 23 – In the case of reviewing the OPA price, as provided for in art. 4-A Law 6,404/76, and since there is no waive on behalf of the offerer, the auction shall begin with the new price, and it must be published a relevant event notice informing about the price review or the OPA maintenance or waiving.

Article 24 - In price review it shall be adopted the following procedure:

I – the request of summons to the special meeting of shareholders of circulating shares, duly founded and accompanied by conviction elements which show the failure or imprecision in the use of calculation methodology or the adopted assessment criterion, should be formulated within 15 (fifteen) days from the divulgation of the tender offer value, as provided in the Paragraph 1 of art. 4 -A of Law 6,404/76, and it shall suspend the course of the registration process or, if it was already granted the term of the OPA publication, postpone the respective auction and the offerer must provide the publication of relevant fact notice informing the postponing and the assigned date for the special shareholders meeting;

II – in case of special shareholders meeting deliberates for the non performance of a new company assessment, it shall be retaken the course of the registration process, or of the own OPA by the remaining term as case might be, the offerer must provide, in this latter hypothesis, the publication of relevant fact notice informing the new date of auction performance;

III – in case of shareholders meeting deliberates for the performance of new assessment and the assessment report come to clear a value that is equal or inferior to the OPA initial value, it shall be retaken the course of the registration process, or of the own OPA by the remaining term as case might be, the offerer must provide, in this latter hypothesis, the publication of relevant fact notice informing the new date of auction performance; and

IV – in case of special shareholders meeting deliberates for the performance of new

assessment and the assessment report come to clear a value that is equal or inferior to the OPA initial value, the offerer must publish, within 5 (five) days from the assessment presentation, relevant event notice informing whether OPA is kept or waived, and clarifying, in the former hypothesis, that it shall be retaken the course of the registration process, or of the own OPA for the remaining term as case might be, the offerer must provide, in this latter hypothesis, the publication of relevant fact notice informing the new date of auction performance and the new price.

Paragraph 1 The 15 (fifteen) days term referred on the Item I shall only start to count after the delivery of the original assessment report to the CVM, or after its availability as provided in the Paragraph 6 below, if it occurs first the offerer must publish the relevant fact notice giving notice of such delivery.

Paragraph 2 The reviewing assessment report shall be elaborated by society that attends to the requirements of Paragraphs 1 and 2 of art. 8, and it should meet all of the requirements established in Paragraphs 3 and 4 of the same article.

Paragraph 3 The special shareholders meeting that deliberated for the performance of new assessment should name the responsible for the assessment elaboration, approve his remuneration, establish a term not after 30 (thirty) days for the services termination and determine that the assessment be directed to the object company in attention to its investor relations director, to the stock market or entity of organized over-the-counter market in which should be performed the auction, and to the CVM, besides being also directed to the electronic mail address of the latter, in an specific format indicated by the CVM.

Paragraph 4 The management of the object company should collaborate with the evaluator aiming at the availability of elements needed to the elaboration of the assessment report.

Paragraph 5 The institution responsible for the elaboration of the assessment report should also communicate, on the same date of the assessment delivery to the CVM, to the intermediary institution the assessment results, so that it and the offerer take the necessary steps, among those provided for in the Items III and IV.

Paragraph 6 The assessment report treated by in this article shall be available in the same places and in same format of the assessment report mentioned in art. 8.

Paragraph 7 The special meeting act to which this article refers shall necessarily indicate the name of the shareholders that voted on behalf of the proposal for new assessment performance for the effects of eventual application of the Paragraph 3 of the art. 4-A of Law 6,404/76.

#### Cancellation of registration and Redemption of Shares

Article 25 – The CVM, within 15 (fifteen) days from receipt of the schedules about the OPA auction of stock market or entity of organized over-the-counter market in which the auction is performed, and after having verified the rules of this Instruction that were met, it shall proceed the cancellation of the publicly held company registration communicating the fact to the object company and to the stock market or the entity of organized over-the-counter market in which shares were admitted to negotiation.

#### OPA FOR INCREASE OF PARTICIPATION

##### Incidence hypotheses

Article 26 - The OPA for increase of participation, as provided in Paragraph 6 of art. 4 of Law 6,404/76, should be performed whenever the controlling shareholder, the person entailed to him, and other people which actuate together with the controlling shareholder or person entailed to him, acquire, by other means different from an OPA, shares which

represent more than a 1/3 (one third) of the total shares of each type or class circulating on the date of validity of this Instruction, regarded the provided in Paragraph 1 and 2 of art. 37.

Paragraph 1 In the case of people mentioned in the *caput* hold, at the validity of this Instruction, together or separately, more than half of the shares issued by a company of determined type or class, and acquire, from the date of validity of this Instruction, separately or together, a participation equal or superior to 10% (ten per cent) of that same type and class during the period of 12 (twelve) months, without being achieved the limit treated by the *caput*, the CVM may determine the performance of the OPA for increase of participation, in case of verifying within the maximum period of 6 (six) months from the communication of acquisition of the mentioned participation, informing that such acquisition had the effect of preventing shares liquidity of the acquired type and class.

Paragraph 2 The OPA treated in this article shall have as object all of the shares of affected class or type.

Paragraph 3 The request for OPA registration treated in the *caput* should be presented to the CVM within the period of 30 (thirty) days from the date in which the hypothesis of the *caput* is verified, or in the term determined by the CVM, in the hypothesis of the Paragraph 1.

Paragraph 4 In any of the hypotheses in this article, it shall be licit to people mentioned in the *caput* to adopt the alternative procedure treated in art. 28, under the conditions therein.

#### Review of the offer Price

Article 27- In the case of reviewing the OPA price, as provided by art. 4-A of Law 6,404/76, it shall not be allowed the waive to the OPA by the offerer, except if adopting the alternative procedure referred in the art. 28.

Sole Paragraph. The review of the OPA price shall adopt the procedures established in arts. 23 e 24.

#### Alternative Procedure in relation to OPA

Article 28 - In the case of verifying any of the hypotheses of the art. 26, it shall be licit to the controlling shareholder request to the CVM an authorization to not perform the OPA for increase of participation, since it compromises to alienate the excess of participation within the term of 3 (three) months from the occurrence of the acquisition.

Paragraph 1 The alienation treated in the *caput* shall only be effective in case of the purchasers are not entailed to the controlling shareholder, and do not actuate together with him or people entailed to him.

Paragraph 2 In the case of the shares are not alienated within the term and condition provided in the *caput* and the first paragraph of this article, the controlling shareholder should present to the CVM the request of registration of OPA for increase of participation within the term of 30 (thirty) days from the termination of the term established by the *caput*.

Paragraph 3 The alternative procedure in relation to OPA for increase of participation may only be used one time, each period of 2 (two) years.

Paragraph 4 The CVM may extend just once the term mentioned in the *caput*, in case of verifying, at the interested request, that the alienation of all of the bloc within the initial term can significantly affect the quotation of shares in the stock market or in organized over-the-counter market in which are admitted to negotiation.



## OPA FOR ALIENATION OF CONTROL

### Incidence, object and price hypothesis

Article 29 – The OPA for alienation of a publicly-held company control shall be mandatory, as provided in art. 254-A of Law 6,404/76, whenever there is direct or indirect alienation of publicly held company control, and it shall have by object all shares issued by the company to which is granted full and permanent right to vote, by legal or statutory provision.

Paragraph 1 The OPA shall be formulated by the purchaser of the control, and its private agreement shall contain, moreover the requirements established by the art. 10, the information contained in the notice of relevant fact divulged at the alienation of control, without harming the provisions in the Item I of the Paragraph 1 of the art. 33, if it is the case.

Paragraph 2 The request of OPA registration treated in the *caput* should be presented to the CVM within the maximum term of 30 (thirty) days from the celebration of the definitive instrument of alienations of shares representing the control, whether the OPA performance is constituted in suspensive condition or in resolutely condition of the alienation.

Paragraph 3 The OPA registration with the CVM implicates in authorization of control alienation under the condition of tender offer comes to be effected in the approved conditions and regulate terms.

Paragraph 4 To the effects of this instruction, it is understood by control alienation an operation, or a set of operations, of securities alienation with voting rights, or to which are convertible, or of onerous assignment of subscription rights to these securities, performed by the controlling shareholder or by people which are partners of the control group, by which a third party or a group of third parties representing same interests acquire the company control power, as defined in art. 116 of Law 6,404/76.

Paragraph 5 Without harming the definition mentioned in the paragraph hereinbefore, the CVM may impose the performance of the OPA for control alienation whenever verifies having occurred onerous alienation of the publicly held company control.

Paragraph 6 In case of indirect alienation of the controlling interest, the offerer shall subject to the CVM, together with the registration request, the justified demonstration of the way the price is calculated by force of art. 254-A of Law 6,404/76, corresponding to the object company control alienation.

### Premium offer for permanence as shareholder

Article 30 - In the form of the Paragraph 4 of art. 254-A of Law 6,404/76, the purchaser of the controlling interest can offer to the minority shareholders receivers of the OPA a minimum premium equivalent to the difference between the stock market value and the value paid by integrating share of the control bloc.

Paragraph 1 Offered such faculty, the shareholders can manifest at OPA auction their option of receiving the premium, instead of accepting the OPA, being understood that all of the shareholders who do not manifest their acceptance and have a right to the premium.

Paragraph 2 Market value, to the effects of the premium determination mentioned in the *caput*, means the weighted average quotation of shares object of this offer in the last 60 (sixty) floors performed before the divulgence of the relevant fact notice giving notice of the control alienation.

Paragraph 3 In the event the OPA includes the premium treated in the *caput*, the instrument shall state the term within which the premium shall be available to the shareholders, which shall not be less than 3 (three) months, as well as shall state the financial institution and its agencies in charge of the payment to the shareholders which shall be located at least at the location of the company headquarters and the stock market or organized over-the-counter market in which the shares were admitted to negotiation, and at the capital of all states in the Country.

Paragraph 4 The offerer request to the CVM may grant a premium offer different from that referred to in the *caput*, as long as:

I – it remains facultative to the offer receivers the acceptance of the own OPA;

II –it is granted to the premium offer takers the option treated in the Paragraph 2 of the art. 10, deducting from the due price in case of exercise this option, the amount already received as premium; and;

III – the premium offer conditions be equitable.

#### VOLUNTARY OPA

Article 31 - Any original, competitor or voluntary OPA of publicly held company shares, having as object either part or total of shares issued by the company, shall comply with the procedures treated in arts. 4 to 8 and 10 to 12, and the prohibition in arts. 14 and 15, in what they are applicable.

Sole Paragraph. To voluntary OPA formulated by a controlling shareholder or by a person entailed to him, having as object the total of circulating shares issued by object company or of a specific class or type of circulating shares, the OPA rules for increase of participation shall be applied.

#### TENDER OFFER

Article 32 - The voluntary publicly held company TENDER OFFER, treated in the art. 257 of the Law 6,404/76, shall only depend on registration with the CVM, in case of involving exchange to securities, and shall observe the following:

I – the general and special procedures are applicable to any voluntary TENDER OFFER, and also the requirements in the art. 33;

II –the same information required for OPA for control alienation shall be divulged by the offerer, if they are at his disposal; and

III –the TENDER offer shall have as object at least a quantity of shares able to, when added to offerer ones or to the ones of people entailed to him or actuating with him, assure the publicly held company control.

#### BARTER OFFER

Article 33 - Any offer that involves a securities barter, including mixed and alternative Offers (art. 6, III and Paragraph 1), shall depend on registration before the CVM, as provided in art. 9, besides comply with the rules in arts. 4 and 8 and 10 to 12.

Paragraph 1 It shall only be offered by exchange of securities issued by publicly held company those securities admitted to negotiation in stock market or organized over-the-counter market, but in conformity with the following:

I - in the event of an OPA for control alienation in which price paid by the purchaser involves goods or securities not admitted to negotiation, and in other special circumstances, in which it is assured equitable treatment and proper information to the

holders of the shares object of the OPA, the CVM may admit exchange or mixed offer to be liquidated with payment in goods or securities not admitted to negotiation or not issued by publicly held companies;

II - to the effects of the provided in this article, publicly held companies are comparable to the foreigner companies issuing securities, as long as such securities are admitted to negotiation security market submitted to the CVM inspection.

III - to the effects of the provided in this article, securities admitted to negotiation are comparable to the share certificates admitted to negotiation, including those issued by financial institution authorized to operate in Brazil, financially substantiated in securities issued by foreigner societies, as long as these latter obtain the registration of publicly held companies before the CVM, as provided in the ruling legislation.

Paragraph 2 The OPA instrument treated in this article shall also contain:

I - the information about the exchange rate, quantity, type and class of offered assigned, the legal rights statutorily assigned to such values, its history of negotiation in the last 12 (twelve) months, and the treatment given to these eventual fractions due to the exchange rate, without harming other information considered necessary by the CVM; and

II - the information about the company issuing offered securities, in the same way required by the CVM for public distribution of securities.

III - the price in Reais calculated according to the proposed exchange rate, that shall be used to the effects of the declarations treated in the Item I of the art. 10, if it is the case.

## FINAL AND TRANSITORY PROVISIONS

### Exceptional situations

Article 34 - Exceptional situations which justify the acquisition of shares without offer or with differentiated procedure shall be analyzed by the commissioners board of the CVM, for the effects of dismissal or approval of own procedure and formalities to be followed, including what concerns the disclosure of information to the public, when it is the case.

Paragraph 1 Examples of exceptional situations mentioned in the *caput* are those due to:

I - the company extraordinary concentration of share, or the difficulty of identification or localization of a significant number of shareholders;

II - the small quantity of shares to be acquired in comparison with the number of circulating shares or the total value, of the object or of the impact of the offer in the market;

III - the modality of the publicly held company registration, as defined in proper ruling;

IV - when treating about operations involving company with negative net worth or with paralyzed or interrupted activities; and

V - when treating about operation involving simultaneously offer in markets not inspected by CVM.

Paragraph 2 The CVM may authorize the formulation of one sole OPA aiming at more than one purposes provided herein as long as it is possible to make compatible the procedures of both OPA modalities and there is not harm to the offer receivers.

Article 35 - The CVM may dismiss the requirements of this Instruction related to the minimum or maximum limit of shares to be acquired, in an OPA formulated by controlling shareholder of a company listed in special segment of securities negotiation, determined

by stock market or organized over-the-counter market, which ensure by a contractual entailment differentiated practices of corporative governance as long as:

I - such offers are due to constant requirement of the listing ruling of the respective special negotiation segment, in case of withdrawal of the company from the respective segment, due to the function of company voluntary deliberation, due to noncompliance to the rules of the regulation, and as long as such offers do not imply in cancellation of the publicly held company registry; and,

II - the acquisition price corresponds to, at least, the economical value of the share, determined in the assessment report elaborated by specialized company with proved experience and independence in relation to the company power to decide.

#### Severe Infraction

Article 36 - It is considered as severe infraction, for the effects of the provisions of art. 11, Paragraph 3, of Law 6,385/76, noncompliance with the provisions of this present Instruction.

#### Validity Rules

Article 37 - This Instruction becomes effective from the date it is published, and revokes CVM Instructions 229/95, 299/99 and 345/00, except the application of Law 10,303, of October 31, 2001 to Offers not published yet.

Paragraph 1 For the effect of application of the provisions of arts. 15, Item I, 26 and 31, sole paragraph, to publicly held companies existing in the date this Instruction becomes effective, the limit of 1/3 of circulating shares mentioned there shall be calculated by considering the shares circulating in the date CVM Instruction 345, of September 4, 2000 becomes effective, so that shares acquired by the offerer, through tender offer, since that date, are deducted from the balance to be acquired.

Paragraph 2 Also for the effect of publicly held companies existing in the date this Instruction becomes effective, in case the offerer, for the Offers treated in the *caput* of art. 15, has already reached the limit mentioned in Item I of the same article, calculated in the form of paragraph hereinbefore, a new acquisition of shares can be accomplished only through OPA for increase of participation, with the limitations thereto established.

Paragraph 3 The rules of paragraph hereinbefore do not harm the application of the provisions of Paragraph 2 of art. 26 to publicly held companies existing in the date this Instruction becomes effective.

*Original signed by*

JOSÉ LUIZ OSORIO DE ALMEIDA FILHO

President

ANNEX I

### **REQUIREMENTS FOR REQUEST**

#### **OF OPA REGISTRATION**

I. In OPA registration, it shall be observed the following:

a) the requisition shall be presented in typographic text, in numbered pages, A4 size, with a minimum of 3 (three) centimeters of left upper margin;

b) the requisition shall mention the annexed documents, which shall be numbered in the

order they are cited, and shall keep the same order indicated in the text, with respective indication on the upper right margin, highlighted;

c) financial statements published in newspapers, presented as annexed documents, shall be highlighted, and the whole newspaper page containing them should be added, stapled to a detached sheet, then preserving the indication of the newspaper's name and its date, by obeying the provisions of Letters (a) and (b) above; and

d) the request shall be followed by proof of payment of the inspection fee due in the form of law.

II – Besides that, the request for OPA registration shall contain:

a) identification of the object company;

b) identification of a person responsible for the reception of requirements and for the representation of the offerer before the CVM in relation to the request of registration of OPA, with his/her telephone and facsimile numbers, address, electronic address, and any other media understood as applicable;

c) if there is entailment between the shareholders of the object company, mainly through agreement of shareholders, the indication of such relationship, above all in relation to the controlling shareholder, the offerer and the intermediary institution;

d) copy of the intermediation contract;

e) if it is the case, 3 (three) copies of the assessment report and a copy in electronic media in the format informed by CVM;

f) the minute of OPA instrument, in the form it shall be published, followed by a copy in electronic media, in the format informed by CVM;

g) nominal list, updated up to 10 (ten) days before registering the request of OPA registration with CVM, of all shareholders of the object company, with their respective addresses and quantity of shares, discriminated per type and class, followed by a copy in electronic media, in the format informed by CVM;

h) a copy of the presence list for the 3 (three) last General Shareholders Meeting of the object company;and

i) description of the publicity materials to be used for the divulgence of OPA.

## ANNEX II

### **REQUIREMENTS OF OPA INSTRUMENT**

I – The Instrument of OPA shall contain:

a) identification of the object company, the intermediary institution, and the offerer, including, in relation to the later, when it is the case, the identification of his/her controller, with the description of its business purpose, sectors where it acts, and activities developed by it;

b) express mention of the fact that it is a Tender Offer, with detailing of its object, in accordance with the modality of OPA;

c) information of the object company, including:

1) schedule with its share breakdown, with nominal discrimination and percentage of circulating shares, separated by type and class, and also those held by the controlling shareholder, people entailed to him/her, administrators,

and those in treasury;

2) demonstrative frame of economic-financial indexes of the object company, relative to the last two fiscal years and to the previous quarter made available to CVM, elaborated in consonance with the periodic information sent to CVM; and

3) indication of the average weighted price the object company shares quotation, discriminated by type and class, the value of net equity per share, and the economic value per share, in accordance with the assessment report.

d) the quantity of shares object of OPA, the price under which the OPA shall be formulated, and the conditions of payment;

e) the information that the assessment report, when it is the case, and the announcement are available for eventually interested people, at least at the CVM, at the offerer address, at the headquarters of the intermediary institution, and at the object company, and at the stock exchange or organized over-the-counter market entity in which the auction should be accomplished, as well as accessible in through the world computer network, at the electronic address of the CVM and of the object company, if the later has one.

f) information relative to the OPA auction, including warnings that shareholders who want to accept the OPA, by selling their shares in the auction, shall fulfill the requirements for the negotiation of shares included in the regulation of operation of the stock exchange or organized over-the-counter market entity in which the auction shall take place, and that shareholders can accept the OPA through any market agent that is authorized to act in Offering;

g) if it is a barter or mixed OPA, the same elements required in the specific regulation of the CVM for the publication of beginning of distribution of securities of the same type as the offered ones;

h) the statements and information treated in art. 9; and

i) the information mentioned by art. 15.

### ANNEX III

#### **PRELIMINARY DISPOSITIONS**

I – The information part of this assessment report shall be complete, precise, updated, clean and objective.

II – The assessment report for the object company shall reflect the opinion of the assessor about the value or reasonable interval of value for the object of the offer from the date of its elaboration, and shall be constituted on a well-founded value analysis based on the terms established in this Annex, and any opinions shall not be understood as a recommendation for an offer price, which shall be determined by the issuer.

III – The information part of the assessment report shall be based on the audited financial statements of the assessed company, with the possibility of including management information regarding the assessed company supplied by its administration, as well as any information available to the general public. The assessor shall not be responsible for conducting an independent inspection of the information received from the company or from third parties hired by it, and shall accept and use the information during its analysis, unless it understands that they are not consistent enough.

IV – The text of the assessment report shall be written in Portuguese, using accessible, understandable language that allows the shareholders and the general public to form a sound opinion of the offer and the value of the assessed company's shares. Any foreign

language expressions shall feature translations in the Glossary.

V – The assessment report shall contain the signatures and identification of the professionals responsible for the assessment, as well as of any company officials responsible for the assessment.

VI – The assessment report shall present the information in the order established in this Annex, giving attention to what is required by any regulating legislation.

VII – The information required in this Annex is considered the minimum information necessary, and the assessor may request more than this guideline outlines, considering such information with others as it may deem necessary and convenient to enrich and better evaluate the content and the results of the assessment report or justify the registered amounts.

Index

VIII – The assessment report shall contain an index listing the subjects and the number of the pages.

Executive Summary

IX – The assessment report shall contain an Executive Summary that discusses the following information at least:

- a) the main information and conclusion of the assessment report;
- b) the criteria adopted and the main premises used;
- c) the chosen assessment method;
- d) the discount rate used, if such is the case;
- e) the value or the value interval outlined in each of the assessment methodologies used, featuring a comparative table of the determined values;
- f) indication of any assessment criteria considered by the assessor as the most adequate in defining the fair price, if such is the case; and
- g) in the event of OPA, the reasons why such criteria were used to cancel the registration;

Information about the Assessor

X – The assessment report shall present the following information regarding the assessor:

- a) the institution responsible for the elaboration of the assessment report with a description of their area of specialization along with proven experience in assessments of publicly held companies describing the assessments conducted over the past 3 (three) years and presenting the credentials that qualify it to elaborate the assessment – including recent assessment experience with companies in the sector where the assessed company works.
- b) summarized description of the internal process needed for the approval of the assessment by the assessment institution;
- c) identification and qualification of the professionals responsible for the assessment report, mainly regarding any credentials and experience that qualify them to elaborate the assessment report in question; and
- d) the assessor's declaration:

1. as to the quantity of securities issued by the object company of which he, its controller and people bound to them are owners, or that are under its discretionary administration. In the event of an offer for exchange, the declaration shall contemplate the same information for the securities that shall be offered in exchange;
2. as to commercial and credit information of any nature that might impact the assessment report;
3. that there is no conflict of interest that might reduce the necessary independence in the development of its functions;
4. as to the cost of the assessment report; and
5. as to the values received from the issuer and the object company as remuneration for any type of consulting services, assessment, auditing or other in the 12 (twelve) month period immediately before the request for registration, stating, among the amounts received, those regarding the assessment report.

#### Assessment

#### Information about the Assessed Company

XI – The assessment report shall contain the following company information:

- a) a brief history of the company (identification of the business, main activities, competition strategies, historic information and historic performance;
- b) a brief description of the company's market, market growth, market share, main products and clients;
- c) a brief analysis of the sector in which the company acts;
- d) the macroeconomic premises upon which the assessment is based; and
- e) any relevant investment projects that might have been considered in the assessment, indicating the values involved and the financial impact.

#### Value determined by the Different Criteria

XII – The assessment report shall indicate the value of the company according to the following criteria:

- a) the weighted average price of the listing of the object company shares on the stock exchange or on the organized over-the-counter market, dividing the prices of the shares into type and class
  1. 12 (twelve) months immediately before publication until the date of the relevant fact; and
  2. the date of publication and the relevant fact and date of the assessment report.
- b) the net equity per share of the object company for the last information (annual or quarterly) sent to the CVM;
- c) the economic value of the assessed company, with indications also of the value per share, calculated at least for one of the following methodologies:
  1. discounted cash flow;
  2. market multiples; or



3. comparable transaction multiples, whichever is understood as more adequate to the company's case for assessment purposes.

d) other criteria for assessment selected by the generally accepted assessor in the assessed company's field of activity as set forth in the law or accepted by the CVM, for the definition of a fair price or value interval (if such is the case) and not included in the previous letters.

XIII – the assessment report shall offer:

a) a description of the assessment criteria and the elements of comparison adopted, accompanied by an analysis of the applicability of each one of the criteria referred to in Sub-paragraph XII;

b) indication of the assessment date in which the determined values shall be considered valid, unless otherwise indicated;

c) the assessment criterion, among those in the assessment, that is considered by the assessor as the most adequate for defining the fair price or the value interval (if such is the case); and

d) in the event of assessments featuring a range of minimum and maximum values, the justification for these intervals that shall not be more than 10%, having as a basis the higher value.

Economic Value by Discounted Cash Flow Rule

XIV – For calculating the economic value through the discounted cash flow criterion, the following shall be observed:

a) the assessment report shall consider the sources, bases and justifications for the information as well as the data presented, indication of the equations used to calculate the cost of capital, plus any spreadsheets and projections used in the assessment of economic value, emphasizing the main premises used and a justification for each of them;

b) the premises and calculation methodology used to establish the rate of discount shall be explained according to the normal criteria used in financial theory;

c) the adjustments performed by other assets and liabilities not captured by the operational cash flow shall be considered, including any financial debts, contingencies, cash balances, non-operating assets and liabilities, among others, whose values shall be founded;

d) any presuppositions for determining residual values calculated through the Cash Flow Perpetuity method shall be indicated by multiples or other assessment criteria, always considering the term of duration of the company as established in its by-laws and, in the event of public utilities concessionaire companies, the term established in the utility contract;

e) whether the Cash Flow Statement and discount rates were presented in nominal or real values; and

f) the currency unit of all the registered values.

The value of the net equity assessed at market price

XV – the value of the net equity assessed at market price shall be determined based on the separate liquidation of assets and liabilities considering the following conditions:

a) market value shall correspond to the value in cash or equivalent to which the property

(or any other asset or liability) could be exchanged between the prospect buyer and the prospect seller with reasonable knowledge of both and regardless of the compulsion for purchase or sale on the part of one or both; and

b) the value of the assets shall be assessed in relation to the market price under organized liquidation conditions or of "equivalent current cash", i.e., the value of liquidation under conditions of forced sale shall not be considered, at any rate.

XVI – the report shall discriminate the assets and liabilities items calculated under trading conditions with debtors and creditors and shall contain the justification and calculations for each tangible and intangible item, whether monetary or non-monetary, that shall be grouped only under conditions of similarity and relevance of the item.

XVII – The following basis of assessment shall be observed in the different classes of items:

a) monetary assets such as cash, cash equivalents and receivable credits, assessed at fair value, i.e., the value at which an asset could be traded between independent and interested parties who are knowledgeable and able to negotiate in a normal transaction without favoring and exempt from other interests. In the event it is not possible to identify the market, as a second alternative these items may be assessed by the present value of the incomes that reflect present market assessments as to the monetary value during time and specific risks;

b) non-monetary assets, such as land, buildings, properties, machines, installations, as well as the intangibles such as patents and trademarks by the probable realization value;

c) monetary passives such as debts, payable debts, assessed at fair value as defined in letter "a" of this Sub-paragraph; and

d) contingencies such as lawsuits by the state in tax questions and other legal matters assessed according to the most probable results.

XVIII – The statement of shareholder equity value at market prices shall discriminate assets and liabilities in a deductive way, keeping net equity at market prices that, once divided by the number of shares, shall indicate the net equity at market prices per share.

Economic Value by the Multiples Criterion

XIX – For the calculation of economic value by the rule of multiples, the following steps shall be followed:

a) indicate the multiples of the market used, the criteria and the sources for comparison, justifying the methodology used and presenting the spreadsheet;

b) whenever possible, present similar operations in the market of companies of the same segment (multiples of comparable transactions), citing sources, data and dates of comparable transactions, as well as the criteria that demonstrate that the comparison is pertinent; and

c) present the average value and median of the resulting values of the sample used for market multiples and the comparable transactions, making the necessary adjustments to calculations whenever this is the case.

Glossary

XX – the assessment shall contain a glossary of terms, indicating the meaning of each technical term, abbreviations or economic index mentioned.

***Annex 3 added by CVM Instruction 436, dated July 05, 2006.***