A Brief Q&A for Framework Agreements among Individuals and Brokerage Companies for Stock Market Transactions

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Quick and mass trading in securities and other instruments of the capital market requires a special regulation concerning the organization of the market, intermediation in transactions as well as facilitating the investment decision making process. With the new regulations on Capital Markets Law several amendments were made by the communiqués, regarding the principles on intermediary activities and intermediary institutions.

As a general principle public trading transactions should be concluded via intermediary institutions (Brokerage Firms). Regardless of whether Brokerage Firms acted as an intermediary in transactions or not, the settlement of transactions concerning securities has to be carried out by Brokerage Firms running securities accounts of the parties to the transaction. Terms for providing services by given Brokerage Firms (including payments and commissions) are contained in the regulations on the provision of services and on running investment accounts, which are part of the agreement concluded by a Client with the given Brokerage Firms. This type of agreement is called a 'Framework Agreement'.

With this article, framework agreements among individuals and brokerage companies for stock market transactions are taken into consideration. On the other hand, the aim of this article is to give a short guideline to the investors.

What is a 'Framework Agreement'?

Intermediary institutions (brokerage firms) ('BF's) dealing with stock market transactions are obliged by law to enter into an agreement with their clients before realizing purchase and sale intermediation, portfolio management, investment counseling, repo and reverse repo actions, intermediation for derivative instruments purchase and sale, credited marketable securities, short selling and market transaction acts.

Minimum requirements of such an agreement are regulated by Turkish Capital Markets Board (CMP). With the execution of the framework agreement, the client and institution specifies the groundwork of the ultimate proceedings. Framework agreements shall bear a continuous sequence number and shall at least be two copies, one to be provided to the client. Although there is a contractual freedom for specifications the framework agreements cannot contain any clauses which are not in conformity with CMP regulations. In addition provisions that may substantially override the rights of the client in favor of the brokerage firm are deemed null and void.

What are the principles of brokerage activities on purchase and sales?

After executing framework agreements, BF's could accept capital market transaction orders of clients accordingly. Orders take effect when realized by brokerage firms subject to regulations provided by CMP. One example of the CMB regulations is that no institution other than Takasbank is permitted to safekeeping physical certificates of securities in Turkey.

What are the documents that must be sent by the BF's to clients?

BF's must send the below listed documents to their client's designated addresses by registered mail by the end of every month of operations within seven days at the latest:

I- An abstract of the clients' account;
II- List of securities movements;
III- Detailed presentation of securities movements with pricing and costs.

How are the orders of clients processed?

When an investor submits a written order, BF's shall make at least two copies with a continuous sequence number of 'Client Order Form' and should send a signed copy to the investor.

It is possible to take oral or non-signed written orders from the clients via telephone, facsimile, ATM records and/or other electronic forms before or during session of the stock market. These orders are classified as 'oral orders'. Brokerage firms shall keep records of oral orders transmitted via telephone.

Are BF's obliged to accept all orders from investors?

No. They may reject certain types of orders from clients however BF's bear the responsibility to justify the grounds of such refusal.

Could BF's claim directly for their clients' rights' incurring from their portfolio?

Yes; BF's may directly claim for the rights of their clients' incurring form their portfolio such as capital bonuses, benefit collections and payments, rights of taking new/costless stock initiations and even voting rights if designated in their framework contract or otherwise authorized.

Are BF's under an obligation to keep their clients' identification?

Due to the provisions of the Law of Prevention of Money Laundering (Code no 4208) BF's determine the identification information of their clients and shall keep this information as record to. In addition BF's are obliged to submit standard forms and also keep them updated as a view of the information about earning yields and risk preferential investment purposes and financial conditions of the clients. It is essential to notice by BF to the client that the information are required for risk preferences and if the client abstains to give information about mentioned conditions then the liability will occur on the clients side. In this point BF should warn the client otherwise written statement has to be taken from the client about absence of assent.

What are the BF's legal responsibilities towards their clients?

BF's legal responsibilities are dependent to the type of agreement executed with their clients. BF's act in the stock market on behalf and on account of their clients therefore it is references as a commission-type business relationship.

Accordingly the commission agent should convey the benefits and obligations to the client. If the commission agent falls to perform, the client therefore has to right to file a claim. Proxy provisions are also applicable alongside this commission relation. Thus the BF's are bound to execute their clients' orders.

BF's must announce to their clients about the process of the work and about orders that are performed or not. Commissioner (BF's agents and/or employees) must perform intermediation acts personally and in this point issue of loyalty raises between BF and client. Therefore, commissioner (BF) should work for the benefit of the client and BF's behavior should abstain from prejudicing the client's rights.

In addition to the loyalty, BF agent has also a duty of diligence. In this point the agent is under an obligation to conduct its operations with care that could be expected from a diligent professional.

There had been many cases where BF's personnel had lacked the diligence or acted in bad faith while executing the client's orders. Similar incidents had also occurred where the agents of BF's acted without authority and caused damages to client's portfolios. In order to avoid such losses the BF's should establish strong internal auditing principles to maintain diligence on their behalf and clients must be careful while choosing and operating with a BF.