



Dear CEO Letter No. 3/2009

to all Credit Institutions, Financial Enterprises, Investment Enterprises and Insurance Companies

The most recent amendments to the financial legislation effective as of 1 January 2009 have significantly impacted the rules on the acquisition of qualified influence (or using the earlier terminology: the acquisition of an influencing share).

Pursuant to Section III/2 of the constructive provisions set forth within Annex 2 of *Act CXII of 1996 on credit institutions and financial enterprises* (the Credit Market Act – CMA), to Article 4 Paragraph (2) Section 11 of *Act CXXXVIII of 2007 on investment enterprises and commodity brokers and on the rules for their permitted activities* (the Investment Services Act – ISA), and to Article 3 Paragraph (1) Section 5 of *Act LX of 2003 on insurance companies and insurance activities* (the Insurance Act – IA), qualified influence is “an indirect and direct relationship established with an enterprise, on the basis of which, the person having the influence:

- a) Has an ownership stake (participation) of at least 10 percent in the enterprise, or can exercise at least 10 percent of its voting rights;
- b) Has the power to appoint or dismiss at least twenty percent of the members of its decision-making, executive or supervisory organs and bodies; or
- c) Can exercise decisive influence on the operations of the enterprise on the basis of its Articles or on the basis of some other agreement.”

Concurrently with standardising the use of the concept and with setting nearly identical rules for the acquisition of qualified influence within the individual financial sectors, the transitory provision contained in Article 176 Paragraph (1) of *Act CIII of 2008 on the amendment of certain acts with effects on financial services* (the Amendment Act – AA) prescribes that **the owners of financial institutions, investment enterprises and insurance companies have at the latest until 31 March 2009 to meet the new requirements concerning the acquisition of qualified influence.**

With consideration to this, one of the essential amendments is the inclusion of particular rules into the CMA, the ISA and the IA, providing for the determination of the extent of the qualified influence. **The determined extent of the ownership stake or participation acquired prior to 1 January 2009 may change with consideration to further voting rights exercised on the basis of the owner’s (the participation holder’s) specific legal status.** If the extent of the qualified influence, as modified pursuant to the new provisions, reaches 10, 20, 33 and 50% in the case of financial institutions, or reaches 10% or exceeds 20, 33, 50% in the case of investment enterprises, or if it reaches or exceeds 10, 20, 33, 50% in the case of insurance companies, this will entail an obligation to obtain a permit /see CMA Article 37 Paragraph (1), ISA Article 37 Paragraph (1) and Article 37/B Paragraph (1), IA Article 111 Paragraph (1)/.

With consideration to CMA Article 37/A Paragraphs (3)-(6) and to the essentially and substantially identical ISA Article 37/A Paragraphs (3)-(6) – also referenced by IA Article 111 Paragraph (2):

(3) When specifying the extent of the qualified influence, consideration is to be made of the following:

- a) The voting rights of investment fund managers and of collective investment enterprises dealing with negotiable securities (ÁÉKBV) operating as the applicant’s controlled enterprises, if

the investment fund manager or the collective investment enterprise dealing with negotiable securities (ÁÉKBV) exercises the voting rights related to the managed securities portfolio on the basis of instructions received directly, indirectly or in any other way from the applicant or from another enterprise controlled by the applicant;

b) The voting rights of credit institutions and investment enterprises operating as the applicant's controlled enterprises, if the credit institution or the investment enterprise exercises the voting rights related to its managed portfolio on the basis of instructions received directly, indirectly or in any other way from the applicant or from another enterprise controlled by the applicant.

(4) When specifying the extent of the qualified influence, voting rights related to participations are to be considered as the voting rights of the applicant, if the voting rights related to the participation:

a) Are exercised by the applicant and by a third party on the basis of an agreement that enables the parties thereto to exercise their voting rights in a coordinated way;

b) Can be exercised by the applicant on the basis of an agreement for the temporary transfer of voting rights;

c) Can be exercised by the applicant on the basis of an agreement in relation to participations deposited with him/her as collateral;

d) Can be exercised by the applicant on the basis of a usufruct related to the participation;

e) Can be exercised by an enterprise controlled by the applicant on some basis as specified under sections a)-d);

f) Can be exercised by the applicant as a custodian subject to his own decision, short of specific instructions from the depositor;

g) Can be exercised by a third person in his/her own name and to the benefit of the applicant, based on an agreement made with the applicant;

h) Can be exercised by the applicant as an authorised entity subject to its own decision, short of specific instructions from the principal.

(5) When specifying the extent of the qualified influence, the voting rights of enterprises controlled by the applicant need not be considered if the applicant and its controlled enterprise declare in writing the following when acquiring the participation:

a) That it will not exercise the voting rights, or that the voting rights can be exercised by a third party independently of the applicant and of its controlled enterprise, and that it will sell the participation within a year from its acquisition;

b) That the voting rights can be exercised pursuant to specific instructions transmitted on paper or by electronic means by a third person, independent of the applicant and of its controlled enterprise;

c) That the financial institution (or investment enterprise) will not take part in making any decisions for the appointment or dismissal of the members of decision-making, executive or supervisory organs or bodies.

(6) When specifying the extent of the qualified influence the voting rights of a credit institution or investment enterprise operating as a controlled enterprise of the applicant need not be considered if the credit institution or the investment enterprise has a permit to engage in portfolio management activities, and if:

a) It exercises the voting rights related to the managed portfolio based on specific instructions issued on paper or by electronic means,

b) Independently of the applicant.

We call your attention to the fact that if the extent of the qualified influence calculated according to the new rules reaches the threshold already referenced (CMA), if it reaches 10% or if it exceeds 20, 33, 50% (ISA), or if it reaches and exceeds 10%, 20, 33, 50% (IA), then pursuant to the transitory provision of the Amendment Act the holder of the qualified influence must submit to the HFSA his/her request for a permit to acquire a qualified

influence by not later than 31 March 2009.

The mandatory annexes of the request for the permit are set forth under Article 37 of the CMA, Article 37 of the ISA, and under Article 111 Paragraphs (3) and (5) of the IA. In connection with this we call your attention to the following:

To certify the origin of the funds required for the acquisition (change in the extent) of the qualified influence, the adequate certification of the status at the time of the acquisition is required, of course specifically with regard to the part of the qualified influence that was acquired in a sale and purchase transaction /CMA Article 37 Paragraph (2) and Article 17 Paragraph (2) Section b); ISA Article 37 Paragraph (2) Section b); and IA Article 111 Paragraph (3) Section f)/.

The null certificate issued by the tax and customs and social insurance authorities is to be attached for the status at the time of the submission of the request /CMA Article 37 Paragraph (2) and Article 17 Paragraph (2) Section c); ISA Article 37 Paragraph (2) Section c); and IA Article 111 Paragraph (3) Section e)/.

An extract from the registry of corporations must be submitted to certify that the applicant is not subject to a liquidation or final settlement procedure, while a declaration by the chief executive of the financial institution or of the investment enterprise is required to certify that a bankruptcy procedure is not in progress /CMA Article 37 Paragraph (2) and Article 17 Paragraph (2) Section c); ISA Article 37 Paragraph (2) Section g); and IA Article 111 Paragraph (3) Section d)/.

Finally, we call your attention to the fact that pursuant to the provisions of IA Article 112 Paragraph (2) and of the essentially and substantially identical CMA Article 40, upon failure to submit a request for a permit, upon a rejection of the request, upon failure to meet the disclosure obligations, and upon a refusal to disclose data, the HFSA may prohibit the exercise of the voting rights that originate from the contract for the acquisition of the participation or for the benefit or from any other legal facts that may have occurred to ensure the benefit, for as long as the appropriate statutory conditions are not met. Pursuant to ISA Article 39 Paragraph (3): “If the condition for issuing a permit for the acquisition of the qualified influence is no longer met, the HFSA shall suspend the exercise of the voting rights of the holder of the qualified influence until the unlawful status is eliminated or until the condition for granting the permit is certified.”

Budapest, 16 February 2009

Kind Regards,

Dr. Péter SCHIFFER
Deputy Director General of the HFSA