**POLICY OF THE FINANCIAL SUPERVISION COMMISSION ON THE IMPLEMENTATION OF § 27, § 28 AND § 29 OF THE TRANSITIONAL PROVISIONS OF THE LAW ON AMENDMENTS TO THE FINANCIAL SUPERVISION COMMISSION ACT (PROMULGATED IN STATE GAZZETTE № 43 FROM 2010)**

Based on art.9 of the Financial Supervision Commission Act in connection with some questions raised regarding the provisions of the latter, and taking into account that their answer requires disclosing of actual owners of affiliated persons, the Financial Supervision Commission (FSC) proclaims the following policy to be observed, in order to achieve uncontradicted and consecutive implementation of the provisions of §27, § 28 and § 29 of the Transitional provisions of the Law on amendments to the Financial Supervision Commission Act:

1. In relation to the legal entities which are subjects of the obligation for submission list of persons, who are actual owners directly or indirectly possessing 5% or more of the voting rights in the general assembly or of the capital of the respective company, as well as for submission declaration of the actual owners:

1.1. The provisions of § 27, § 28 and § 29 of the Transitional provisions of the Law on amendments to the Financial Supervision Commission Act will be observed in the future practice of the FSC as obliging the persons envisaged therein, who have been granted license by the FSC to perform activity as regulated market, investment firm, managing company, insurer, reinsurer, insurance broker, health insurance company and supplementary social insurance company. The provisions of § 27, § 28 and § 29 do not bind over the respective addressees to disclose actual owners of entities, who have been granted license by competent authority of other member state to perform the activity in question on the territory of the Republic of Bulgaria, based on the right to establish a business, or on the right to freely provide services. Such an approach through setting the extent to which the subjects of the obligation upon §27, § 28 and § 29 are enclosed is in compliance with the provisions of the respective special laws (Insurance Code, Social Insurance Code, Markets in Financial Instruments Act, Law on Public Offering of Securities and Health Insurance Act), which restrict the Commission’s powers and the applicability of the Bulgarian legislation in the banking and non-banking financial sector, as regards the activity of entities established in other member states, acting on the territory of the Republic of Bulgaria too.

1.2. The rule of § 27 of the Transitional provisions of the Law on amendments to the Financial Supervision Commission Act requiring actual owners to be disclosed by the investment intermediaries will be observed in the Commission’s practice as being compulsory only as regards investment intermediaries licensed by the FSC, but not in case of banks providing investment services and performing investment activities by virtue of license granted by the Bulgarian National Bank. This approach is fully compliant with the provisions of the Markets in Financial Instruments Act and particularly with § 3 of the transitional provisions of the latter restricting the application of its rules and of the Commission’s supervisory functions with regard to credit institutions acting as investment intermediaries, only in reference to the provisions setting requirements in connection with the investment intermediaries activity, but not as regards those regulating the way in which an entity has to be recognized as satisfying the prerequisites for performing investment activity and providing investment services. According to § 3 of the Transitional provisions of the Markets in Financial Instruments Act credit institutions performing one or more investment activities and/or offering one or more investment services shall not notify the Commission of the acquisition or transfer of qualified participation by their shareholders. Credit institutions are also obliged to disclose their actual owners in accordance with the Credit Institutions Act. The Bulgarian National Bank is the authority empowered to supervise the fulfilment of this obligation, as well as to identify the persons and entities which are actual owners of credit institutions.

**1.3.** According to § 27, n.4 of the Transitional provisions of the Markets in Financial Instruments Act, the requirement for disclosure of actual owners has not to be met in case of public companies upon the Law on Public Offering of Securities, thus in the Commission’s practice it will be treated as an explicit exclusion of the public companies from the circle of entities supervised by it, from the obligation to disclose the actual owners according to the Markets in Financial Instruments Act, as well as an exemption of the persons envisaged in 27, § 28 and § 29 from the obligation to divulge information about the actual owners of their shareholders, in case where the latter are public companies, but not as an exoneration from the obligation for disclosure of the actual owners of entities according to § 27, n.1 which act not only as regulated market, investment intermediary or managing company, but in their capacity of public companies too. Such an approach fully complies with the motives set in the law and ensures equal treatment of all persons supervised by the Commission which are subject of the obligation for disclosure of their actual owners.

2. The Commission’s policy concerning the implementation of the provisions of § 27, § 28 and § 29 of the Transitional provisions of the Law on amendments to the Financial Supervision Commission Act foresees that the list of persons being actual owners, who possess directly or indirectly 5% or more of the voting rights in the general assembly, or of the capital of the respective company has to contain the following information: name/denomination of the natural or legal person, direct or indirect participation, as well as the general percentage of participation possessed by the respective person. The whole participation of the actual owner shall be assessed as an accumulation of direct and indirect participation.

3. The Commission’s policy on the implementation of § 27, § 28 and § 29 of the Transitional provisions of the Financial Supervision Commission Act concerning the evaluation of indirect participation of persons representing each class of the ownership chain, in order to assess the indirect participation of the actual owner in the respective entity supervised by the Commission, has to be compliant with the following principle: in case where one person owns 50% or more of the share capital of an immediate preceding class of the chain, its indirect participation in the supervised entity shall be evaluated using the presumption of being equal to the participation of an entity of such class in the same entity.

This policy has been adopted by the FSC through decision published in the protocol № 45 from 08.09.2010.