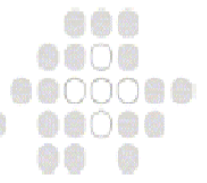
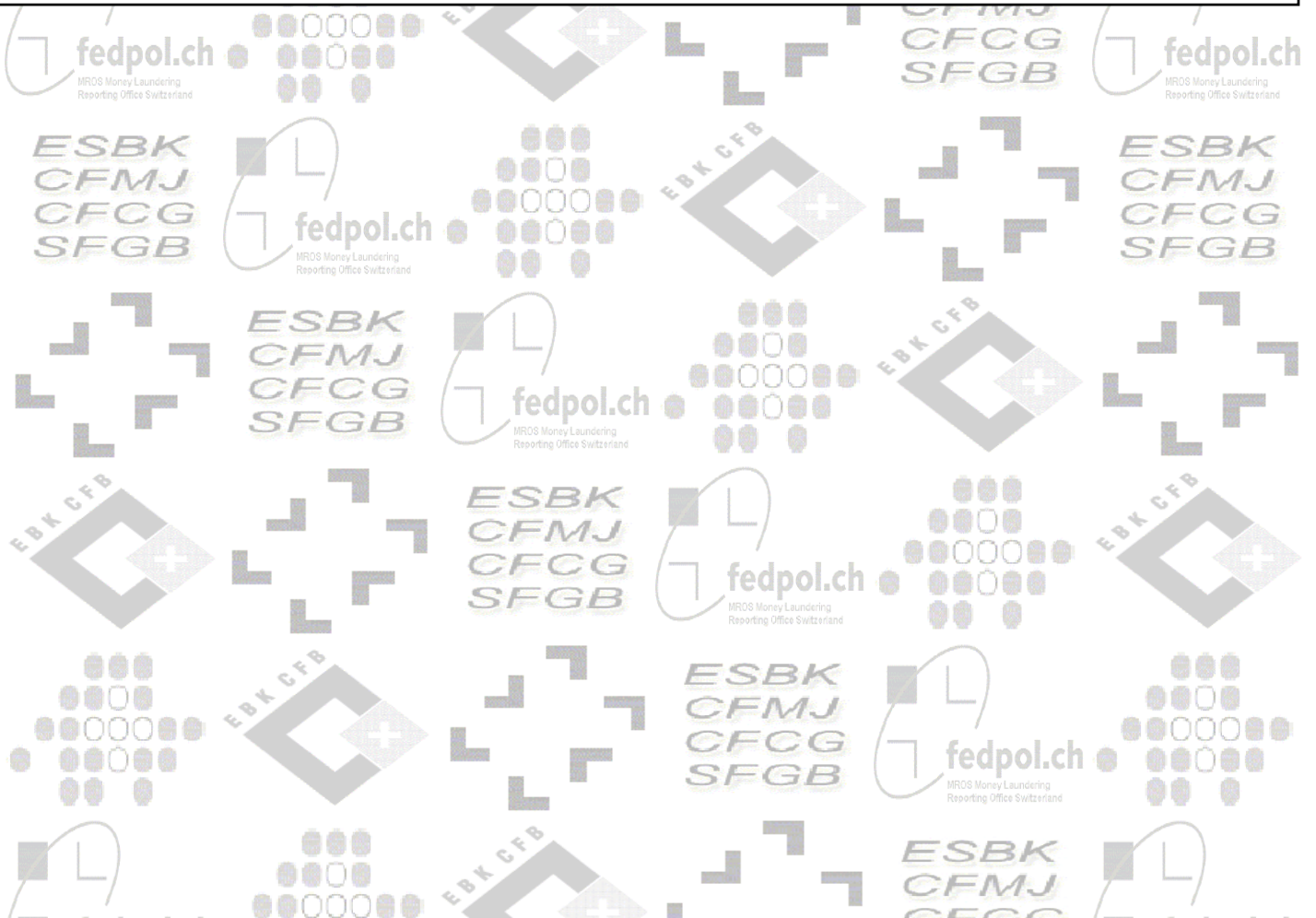


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Combating Money Laundering in Switzerland



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List of abbreviations

art.	article
BankA	Banking Act
BIS	Bank for International Settlements
CC	Classified Compilation of the Federal Law
CDB	Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence 1998 of the Swiss Bankers Association
Control Authority	MLCA
EU	European Union
FA	Federal Act
FATF	Financial Action Task Force on Money Laundering
FDJP	Federal Department of Justice and Police
f. / ff	following
FFD	Federal Finance Department
FIU	Financial Intelligence Unit(s)
FOPI	Swiss Federal Office of Private Insurance
FSAP	Financial Sector Assessment Program
GEWA	Data Processing System for Combating Money Laundering (managed by MROS)
IMF	International Monetary Fund
IFA	Investment Funds Act
let.	letter
MLCA	Money Laundering Control Authority
MLO	Ordinance of the Swiss Federal Office of Private Insurance on Combating Money Laundering
MLA	Money Laundering Act
MROS	Money Laundering Reporting Office Switzerland

MROSV	Ordinance on the Money Laundering Reporting Office
OC	Official Compilation of Federal Laws and Decrees
OCU-MLA	Ordinance of the Money Laundering Control Authority concerning the Financial Intermediation in the Non-Banking Sector as a Commercial Undertaking
OSFGB-MLA	Ordinance of the SFGB on Due Diligence Obligations of Casinos in Combating Money Laundering
p.	page
para.	paragraph
PC	Penal Code
PEP	Politically Exposed Persons
SBA	Swiss Bankers Association
SFBC	Swiss Federal Banking Commission
SFGB	Swiss Federal Gaming Board
SIA	Swiss Insurance Association
SRO	Self-Regulating Organisation(s)
SESTA	Stock Exchange Act

Table of Legislation and Implementing Regulations

Banking Act	FA of 8 November 1934 on Banks and Savings Banks (BankA, CC 952.0)
Gaming Act	FA of 18 December 1998 on Casinos and Gambling (CC 935.52)
Investment Funds Act	FA of 18 March 1994 on Investment Funds (IFA, CC 951.31)
Life Insurance Act	FA of 18 June 1993 on Direct Life Insurance (CC 961.61)
MLO	Ordinance of 30 August 1999 of the Swiss Federal Office of Private Insurance on Combating Money Laundering (CC 955.032)
Money Laundering Act	FA of 10 October 1997 on the Prevention of Money Laundering in the Financial Sector (MLA, CC 955.0)
SFBC ML Guidelines	Guidelines of 26 March 1998 on the Prevention and Combating of Money Laundering (Circ.-CFB (French) or EBK-RS (German) 98/1; published on the website of SFBC)
MROSV	Ordinance of 16 March 1998 on the Money Laundering Reporting Office (CC 955.23)
OCU-MLA	Ordinance of 20 August 2002 of the Money Laundering Control Authority concerning the Financial Intermediation in the Non-Banking Sector as a Commercial Undertaking (CC 955.20)
---	Ordinance of 25 November 1998 of the Money Laundering Control Authority concerning Obligations of Due Diligence of Directly Subordinated Financial Intermediaries (CC 955.033.2)
OSFGB-MLA	Ordinance of 28 February 2000 of the SFGB on Due Diligence Obligations of Casinos in Combating Money Laundering (CC 955.021)
Penal Code	Penal Code of 21 December 1937 (PC, CC 311.0)

Stock Exchange Act

FA of 24 March 1995 on Stock Exchanges
and Trading in Securities (SESTA, CC 954.1)

Combating Money Laundering: Switzerland in the front line

Money laundering is the most significant economic phenomenon concomitant of organised crime. The problem has become additionally accentuated with the increasing complexity of the financial markets. At the international level, combating money laundering is a key issue. In addition since the autumn of 2001, international bodies have been devoting their utmost attention to combating the financing of terrorism which is related to this problem area.

In order to avoid the misuse of the financial centres by criminal organisations and to contain money laundering and the financing of terrorism, worldwide uniform regulations and standards are needed which can be condensed into a comprehensive body of legislation on an international and national level. Therefore, the international community strives to close the loopholes in the existing regulations with more comprehensive rules on due diligence relating to financial transactions.

Switzerland supports international efforts and actively cooperates in these developments. It is a member of the most important international bodies dealing primarily with this topic, e.g. the Financial Action Task Force on Money Laundering and the Egmont Group. On the one hand Switzerland is engaged in elaborating regulations and strives for harmonised standards at the high level of Swiss legislation. On the other hand it also takes care of the enforcement of these rules, whether this is through the national supervisory and prosecution authorities or by supporting foreign authorities by means of legal or administrative assistance according to the applicable law. It should also be mentioned at this point that Swiss banking secrecy is not applicable when legal assistance is to be provided in the fight against crime.

Switzerland is one of the pioneers of client identification which in turn is one of the main pillars of combating money laundering. For this reason early international measures to combat money laundering were strongly influenced by Swiss solutions. In this way the Swiss Agreement on Professional Standards relating to due diligence in the banking sector in the 1970s was the basis for the 40 recommendations drawn up by the Financial Action Task Force on Money Laundering in 1990.

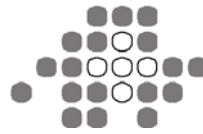
Swiss measures for preventing and combating money laundering are very ambitious and can also be judged as progressive. In 1997 Switzerland incorporated into law the obligations of due diligence relating to combating money laundering for all financial intermediaries. By extending the rules in the banking and non-banking sector, Switzerland was breaking new ground and the corresponding regulations compared to today are still far-reaching. In the summer of 2002 the International Monetary Fund, in the context of an

extensive examination of the Swiss financial sector, certified that Switzerland's anti money laundering system is broadly in line with international best practices.

The system to combat money laundering in Switzerland is a complex body composed of preventive components belonging to administrative law and repressive components contained in the criminal law. The preventive concept integrates not only four supervisory bodies, the self-regulating bodies recognised by the Control Authority and the Money Laundering Reporting Office but also the financial intermediaries of the banking and non-banking sector. The aims of combating money laundering can only be achieved if all financial intermediaries exercise due care in their financial operations, identifying clients and the beneficial owners and where necessary conduct more detailed clarification accordingly documented, which can be referred back to in the case of criminal proceedings. Another important aspect in the implementation of this concept at the supervisory level is a good and extensive coordination and cooperation between the different authorities.

The aim of this brochure is to provide an insight into the puzzle of the Swiss anti money laundering system. This information should also serve the purpose of enhancing interest and understanding of a wider public in this area.

Kaspar Villiger, President of the Swiss Confederation



The Obligations and the System of Supervision Established under the Money Laundering Act

1 Basic aspects

1.1 The objectives of the MLA

The objective of the Federal Law on the Prevention of Money Laundering in the Financial Sector of 10th October 1997 (Money Laundering Act, MLA) is to establish a complete set of operative provisions to thwart and combat money laundering. In practical terms, this law introduced two new aspects. It extended the obligations already imposed in the banking sector since 1977 to the professional financial intermediaries of the financial sector as a whole. The corresponding new supervisory role was assigned to the Money Laundering Control Authority which was set up by the same law. The MLA which came into effect on 1st April 1998 also introduced the obligation to notify where money laundering was suspected and created the Money Laundering Reporting Office Switzerland (MROS) to which notification is to be made.

1.2 Obligations of due diligence

The Money Laundering Act (MLA) defines the obligations of due diligence applicable to natural persons and legal entities subject to it. The obligations, whose aim it is to avert money laundering, deal with the verification of the identity of the contracting party and the identification of the beneficial owner, the renewed verification of identity and a particular obligation to clarify. Also covered is the obligation to establish and retain documents, organisational measures and the obligation to notify suspicions if they are based on reasonable grounds.

1.3 Supervisory system

The MLA is implemented by four Swiss Federal supervisory authorities, those being : the Swiss Federal Banking Commission (SFBC), the Federal Office of Private Insurance (FOPI), the Swiss Federal Gaming Board (SFGB) and the

Money Laundering Control Authority (MLCA). The first three simultaneously administer the specific supervisory laws governing their sector, so-called special laws¹ and the Money Laundering Act. As for the Money Laundering Control Authority (MLCA) which came into existence as a result of this law, its operation is directly governed by this Act as well as that of the self-regulating organisations (SRO) it recognises.

The Money Laundering Act is a framework law. This means that it sets out fundamental principles which have to be elaborated, an example of which would be obligations of due diligence. This is why the authorities administering the aforementioned law have to enact implementing regulations. This allows the administrative authorities to adapt detailed rules to the field of activity they are in charge of monitoring.

1.4 Notification of suspicion to the MROS

1.4.1 Obligation to notify

The obligation to notify suspicions of money laundering constituted an innovation in the entire financial sector in 1998. It complemented the right to notify suspicions². Where there is reasonable ground to suspect that money laundering has occurred notification becomes compulsory. The obligation to notify is incumbent upon the intermediary who knows or presumes, on the basis of reasonable grounds, that assets implicated in a transaction or a business relationship originate from a crime as defined in the Swiss Penal Code³ or that a criminal organisation exercises the power to dispose of these assets⁴.

Notification is to be addressed to the MROS which acts as an intermediate body, providing an interface and filtering function between the intermediaries and the prosecuting authorities. The Reporting Office is attached to the Federal Office of Police.

1.4.2 The MROS and its filtering function

It is the task of the MROS to analyse the communications submitted by the financial intermediaries. In order to determine the subsequent action to be

¹ These laws include the BankA, the SESTA as well as the IFA for the SFBC, the Life Insurance Act for the FOPI and the Gaming Act for the SFGB.

² The type of suspicion a financial intermediary may have may range from mere doubt to certitude. The situation may arise whereby communication with the competent authorities may be justified but not completely necessary. The right to notify the criminal prosecuting authorities of indications fuelling suspicion that valuables originate from a crime is furthermore made provision for in the law (Art. 305^{ter} para. 2 of the Penal Code).

³ Art. 305^{bis} Penal Code.

⁴ Art. 9 MLA defines this concept with reference to Art. 260^{ter} section 1 of the Penal Code.

taken, it carries out appropriate research so as to analyse the communications and to decide whether or not they should be forwarded to the appropriate prosecuting authorities. Since 1st January 2002, the date when measures extending the prosecuting competencies of the Swiss Confederation⁵ came into force, the notifications are forwarded either to the Office of the Attorney-General or to the cantonal prosecuting authorities.

2 Intermediaries subject to the Money Laundering Act

Any financial intermediary not already subject to complete supervision from the SFBC, the FOPI or the SFGB must either join a SRO recognised by the Control Authority or must make a direct application to this Authority for a licence to exercise their activities.

2.1 Activities subject to complete supervision

The supervisory authorities instituted under Federal laws on supervising the activities of financial intermediaries (laws on banking, the Stock Exchange and securities trading, investment funds, life insurance institutions and gaming⁶) have the task of ensuring that those subject to these laws respect the obligations in the Law on the Prevention of Money Laundering as well as their primary responsibilities.⁷ The Law on the Prevention of Money Laundering does not restrict the competence of the supervisory authorities in any way. Thus a financial institution could find itself facing a withdrawal of recognition should it gravely violate anti-money laundering legislation.

2.1.1 Banks and securities dealing

Those supplying the following financial services are subject to supervision by the Swiss Federal Banking Commission. This authority implements the special laws on specific supervision as mentioned and the Money Laundering Act, when it is dealing with the supervision of :

- a) banks as defined in the Banking Act,
- b) fund managers insofar as they manage share accounts or offer and distribute shares in investment funds, or
- c) securities dealers as defined in the Stock Exchange Act.

⁵ Art. 340^{bis} of the Penal Code.

⁶ Cf. cross-reference of art. 2 para. 2 and art. 16 of the MLA to five special laws mentioned (BankA, SESTA, IFA, Life Insurance Act and Gaming Act).

⁷ Cf. in particular prudential supervision carried out by the SFBC on banks and securities dealers, as well as that carried out by the FOPI on life insurance companies.

2.1.2 Insurance Institutions

Insurance institutions which underwrite life insurance and other parties using financial services which are the object of supervision by the Federal Office of Private Insurance are also subject to the Money Laundering Act. This authority thus simultaneously implements MLA supervisory measures alongside supervisory laws specific to private insurance. Insurance institutions are subject to supervision of this kind if they underwrite life insurance directly or offer and distribute units in investment funds.

2.1.3 Casinos

Casinos come under the supervision of the Swiss Federal Gaming Board and are also subject to the Money Laundering Act. The Gaming Act additionally makes provisions for specific preventive measures, e.g. the payment of winnings as a cheque to the bearer is not permissible⁸.

2.2 The section of the financial market covered by the Control Authority

Any financial intermediary who is not already subject to one of the supervisory authorities instituted through a special law (Swiss Federal Banking Commission, Federal Office of Private Insurance and Swiss Federal Gaming Board) must either join a SRO recognised by the Control Authority or must make an application to the Control Authority for a licence to exercise its activities.

2.2.1 The activities covered

The financial activities covered by the Control Authority and the SRO are enumerated by the law⁹ in a non-concluding list by way of examples. The law mentions in general terms those persons who, on a professional basis¹⁰, accept, or hold in custody, assets belonging to third parties or assist in investing or transferring these, in particular persons who:

- a) undertake credit-granting activities, that is to say activities similar to banking activities but differing in that funds are not raised from the public and that refinancing of the intermediary stems from the group

⁸ Art. 28 Gaming Act.

⁹ Art. 2 para. 3 MLA.

¹⁰ If one of the following thresholds are crossed in a calendar year, the activity qualifies as being done on a professional basis (i.e. as a commercial undertaking): gross turnover of over CHF 20,000, business relations with more than 10 contracting parties, asset management for third parties amounting to more than CHF 5 million and transaction sums amounting to more than CHF 2 million (cf. art. 4 - 7 of the OCU-MLA). Money exchange activities carried out as an accessory business qualifies as activity on a professional basis if the financial intermediary carries out or is prepared to carry out one or several interlinked exchange operations amounting to more than CHF 5,000 (art. 8 of the OCU-MLA).

- to which they belong¹¹. In the same way factoring and finance leasing are also subject to this rule;
- b) provide payment transaction services, for example electronic transfers¹². This mainly concerns the significant area of activity of payment transaction services dealt with by the Swiss Post, as well as similar services such as those concerning credit cards, banker's drafts and traveller's cheques. The law is applicable each time these operations occur directly with clients, i.e. without using a bank;
 - c) trade in bank notes dealt with by non-banking companies, e.g. independent bureaux de change¹³;
 - d) distribute shares of an investment fund and who are not subject to the SFBC, which consequently come under the umbrella of the Control Authority¹⁴;
 - e) as natural persons or legal entities, are dealing with administering valuables without having authorisation from the SFBC as a bank or individual to manage securities¹⁵. The law is aimed at any person administering the valuables of others on a professional basis and who also has the authority to dispose thereof. The investment adviser authorised to deal on behalf of his client is also subject to the law¹⁶. However, the law is not directed at the pure financial adviser who has no power to manage the assets but who has an obligation of due diligence¹⁷. Holding in custody and managing securities on a professional basis are also covered¹⁸.

The intermediary engaged in one of these activities has a choice between two types of supervision.

2.2.2 The Control Authority and the SRO

The financial intermediaries not supervised by one of the three supervisory authorities mentioned¹⁹ may choose one of the following:

¹¹ Art. 2 para. 3 let. a MLA.

¹² Art. 2 para. 3 let. b MLA.

¹³ Art. 2 para. 3 let. c MLA.

¹⁴ Art. 2 para. 3 let. d MLA. Whereas the senior management of Swiss investment funds are subject to banking supervision, those distributing i.e. selling on a professional basis units in an investment fund and who are not part of the senior management or in the custodian bank are not subject to supervision by the SFBC although their operation depends on the authorisation of the latter.

¹⁵ Art. 2 para. 3 let. e MLA.

¹⁶ Art. 2 para. 3 let. f MLA.

¹⁷ Cf. art. 305^{ter} Penal Code and the Introductory Statement of the Federal Council to the Parliament on the Federal Act on the Prevention of Money Laundering in the Financial Sector of 17 June 1996 (Feuille Fédérale 1996 III 1063 ff, pp. 1072 and 1075).

¹⁸ Art. 2 para. 3 let. g MLA.

¹⁹ SFBC, FOPI and SFGB.

- they may become affiliated to one of the SRO recognised by the Control Authority, which henceforth will then be in charge of its supervision, or
- place itself under the authorisation and direct supervision of the Control Authority.

The legislator conferred a significant role on the SRO in the implementation of the MLA. The latter took the principle of self-regulation strongly into account by allowing the intermediaries to set up their own SRO, allowing them to act broadly substituting official supervision due to being recognised by the Control Authority.

The mission of the SRO as much as the Control Authority is to make sure that the obligations of due diligence are respected and to elucidate these obligations to the financial intermediaries directly affiliated. One major function of the Control Authority which differs from that of SRO is that the former must provide supervision of the latter. Whereas the Control Authority is an official body, the SRO are subject to private law as far as their organisation and also the relationship with their members is concerned even though they exercise a legal, supervisory function.

3 Obligations of due diligence

The Money Laundering Act defines the basic obligations natural persons or legal entities have subject to this law²⁰.

3.1 Identification

3.1.1 Verification of identity of contracting party

Prior to commencing business relationships, the financial intermediary must identify the contracting party on the basis of a conclusive document. In the case of cash transactions with a contracting party who has not yet been identified, the duty of identification shall exist only if one or more transactions which appear to be inter-connected reach a considerable value defined by the supervisory authority concerned²¹. In practical terms, if the contracting party is a natural person who comes forward personally, the financial intermediary must check their identity by examining and photocopying the

²⁰ Art. 3 - 9 MLA.

²¹ The considerable values dealt with under art. 3 para. 2 and 3 MLA is set for example :
 a) at CHF 5,000 for exchange operations carried out by financial intermediaries directly subordinated to the Control Authority (Art. 14 Ordinance of 25th November 1998 of the MLCA concerning Obligations of Due Diligence of Directly Subordinated Financial Intermediaries), and
 b) at CHF 25,000 for bank cash transactions (art. 2 of the Agreement of the Swiss Banks' Code of Conduct as crossed-referenced in section 5, annotation 20 of the SFBC Money Laundering Guidelines 98/1) as well as for life insurance with a single premium (or involving periodic premiums of more than CHF 25,000 per contract within 5 years, art. 5 MLO).

official document (passport, identity card or similar document), as well as noting the surname, the first name, the date of birth, the nationality and the home address.

3.1.2 Identification of beneficial owner

The financial intermediary must obtain from the contracting party a written declaration as to who the beneficial owner is whenever:

- a) the contracting party is not identical to the beneficial owner or doubt exists in this regard;
- b) the contracting party is a domiciliary company;
- c) a cash transaction of considerable value is undertaken²².

In the case of collective accounts or collective custody accounts, the financial intermediary must require that the contracting party produces a complete list of the economic beneficiaries and that every change to the list is reported without delay.

3.1.3 Renewed verification of identity of contracting party and particular obligation to clarify

Renewed verification of identity of the contracting party or of the identity of the beneficial owner must be carried out by the financial intermediary during the course of the business relationship should doubts arise as to the identity of the contracting party or beneficial owner. This is why for example, in the case of an insurance contract whose value can be repurchased, the insurance institutions must establish anew the identity of the beneficial owner when the rightful claimant in case of a claim or repurchase is not identical with the person at the time of consummation of the contract.

The financial intermediary has a particular obligation to clarify if:

- a) the transaction or business relationship appears unusual, unless its legality is apparent;
- b) indications exist that valuables originate from a crime or that a criminal organisation exercises the power of disposition thereover.

3.2 Obligation to establish and retain documents

The obligations mentioned above regarding identification would have only little strength if the intermediary was not bound to record the results of his examinations and to retain them. The financial intermediary must establish documents concerning the transactions undertaken and concerning the investigations in a manner that the supervisory authorities, the SRO and the prosecuting authorities can extract the necessary information to assist in their clarification. Under the scope of the MLA the financial intermediary must

²² Cf. preceding note and art. 4 para. 1 let. c MLA.

retain the documents for at least ten years after the cessation of the business relationship or after consummation of the transaction.

3.3 Organisational measures

The financial intermediaries shall take the organisational measures necessary to prevent money laundering and administer comprehensively the MLA. The measures taken by the intermediary must be commensurate with the extent and nature of the profession. They shall ensure in particular that their personnel is adequately instructed.

3.4 Obligation to notify suspicion

The obligation to notify the MROS is incumbent upon any financial intermediary who knows or who has a reasonable ground to suspect that the valuables implicated in a transaction or a business relationship originate from a crime as defined in the Swiss Penal Code. The financial intermediary must block immediately the valuables entrusted to him and which are in connection with the communication and this until he receives a decree from the competent judicial authority but for no longer than five working days. During this period, he may inform neither those affected nor third parties of the notification²³.

The financial intermediary who makes a notification and blocks valuables may not be prosecuted for violation of official, professional or commercial secrecy nor made liable for breach of contract if he has acted with due care dictated by the circumstances. Should a mistake be attributable to the authorities, the responsibility of the State is governed by existing legal provisions.

4 The system of supervision

4.1 Supervision : authorisation and control

The financial intermediaries subject to complete supervision by the SFBC, the FOPI or the SFGB are in this way authorised and then comprehensively supervised in the fight against money laundering within a similar process of authorisation and supervision. Other financial intermediaries covered by the MLA must join a SRO or apply for a licence to the Control Authority. An audit report specially drawn up by an auditor approved by the Control Authority must be submitted. Once the authorisation has been obtained, the financial

²³ Art. 10 para. 3 MLA, so-called “no tipping off” rule.

intermediary must have drawn up annually an audit report for the purposes of verifying the observance of the obligations as laid down in the MLA.

4.2 Measures and sanctions if the law is violated

Should the Control Authority learn of an authorised financial intermediary no longer respecting the conditions of authorisation or violating its legal obligations, e.g. the obligations of due diligence or the obligation to notify, the Control Authority may take the necessary measures to restore legality. It ensures as well that the principle of proportionality is observed.

The MLA provides for sanctions under administrative criminal law in the event of its provisions not being upheld, to be distinguished from the situation whereby acts constitute money laundering within the scope of the Swiss Penal Code²⁴. The penal provisions of the MLA specifically cover engaging in an unauthorised activity and the violation of the obligation to notify²⁵.

4.3 Coordination between the authorities

The MLA requires coordination from the federal authorities in charge of combating money laundering. Generally speaking this law generates constructive dialogue between the intermediaries, the SRO and the supervisory authorities, as well as between the authorities themselves. In this way it still additionally reinforces the effectiveness and suitability of the anti-money laundering provisions set up by the different parts of the financial sector.

²⁴ Art. 305^{bis} Penal Code. Moreover conventional penalties may be imposed by a SRO. This is notably the case concerning the CDB, a system which has been in operation for a quarter of a century.

²⁵ Art. 36 and 37 MLA.

International Developments in the Fight against Money Laundering and the Role of Switzerland

1 Objectives

Switzerland plays an active role at the international level in the fight against and prevention of money laundering. It is involved in the development of international standards and negotiations on international agreements related to the fight against money laundering and terrorism, and works closely with other countries within the framework of international cooperation.

Important aims behind Switzerland's commitment at the international level are

- to use international cooperation to render the fight against money laundering and against the financing of terrorism more efficient,
- to harmonise international standards at the high level set by Switzerland in order to maintain a level playing field internationally and
- to promote the reputation of Switzerland's financial centre as a well regulated financial centre which complies with international standards aimed at preventing the abuse of financial centres for the purposes of money laundering and financing terrorism.

A brief introduction to the main international bodies and instruments is set out below.

2 Financial Action Task Force (FATF)

The FATF is the most important body in international cooperation against money laundering. Established during the G7 Summit in Paris in 1989, it now has 29 members¹. The role of the FATF is to identify money laundering methods, issue recommendations for effective anti-money laundering measures and harmonise money laundering policies at the international level through the formulation of minimal international standards.

¹ The FATF is an independent international body whose Secretariat is housed at the OECD. The 29 member countries and governments of the FATF are: Argentina, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, China, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. Two international organisations are similarly members of the FATF: the European Union and the Gulf Co-operation Council.

2.1 The Forty Recommendations of the FATF (1996)

The FATF's Forty Recommendations² on money laundering, first approved on 7 February 1990 and subsequently revised on 28 June 1996, today constitute an internationally recognised standard for the measures a country must implement in order to combat money laundering effectively. The Recommendations set out the minimal requirements for customer identification, the keeping of appropriate records, due diligence in the identification and reporting of suspicious transaction reporting, as well as measures for conducting business with countries which do not have sufficient provisions in place for combating money laundering.

2.2 Review of the Forty Recommendations (2002 – 2003)

The FATF intends to revise its Recommendations by mid-2003 and published a Consultation Paper³ in May 2002. Switzerland had already played a role in the drawing up of the FATF's Forty Recommendations as early as 1990. Many of the Recommendations were structured along the lines of Swiss measures. Within the framework of the review of the Forty Recommendations, the Swiss FATF delegation is actively advocating international standards at the same high level of Swiss provisions. For example, it is Switzerland's position that no transactions may be carried out for a client if the client has not been satisfactorily identified⁴. On this issue, other FATF members would like to see an option allowing for subsequent verification of a client's identity⁵.

2.3 FATF Recommendations on Terrorist Financing (2001)

The terrorist attacks against the United States on 11 September 2001 broadened the scope of the fight against money laundering. The FATF issued eight Special Recommendations on Terrorist Financing⁶ in October 2001. These Special Recommendations envisage that all countries implement the United Nations resolutions against terrorist financing immediately, ratify the International Convention for the Suppression of the Financing of Terrorism, criminalise the financing of terrorism and oblige all institutions operating in the financial sector to report suspicions of terrorist

² SFBC Bulletin 31, p. 19 ff, see also http://www1.oecd.org/fatf/pdf/40Rec_en.pdf.

³ Review of the FATF Forty Recommendations Consultation Paper, 30 May 2002, available on the Internet at http://www.fatf-gafi.org/pdf/Review40_en.pdf.

⁴ See the various options listed under annotation 122 of the Consultation Paper.

⁵ Ibidem.

⁶ Available on the Internet http://www1.oecd.org/fatf/SRecsTF_en.htm.

financing⁷. These recommendations from the FATF will be incorporated into the Swiss legal system with the proposed amendment to the Criminal Code and further federal laws⁸ as well as with the new money laundering ordinance from the Swiss Federal Banking Commission⁹.

3 Basel Committee for Banking Supervision

The Basel Committee for Banking Supervision was established at the Bank for International Settlements by the central bank governors of the Group of Ten countries at the end of 1974¹⁰. It provides a forum for regular cooperation between the member countries on issues related to banking supervision. The Committee formulates general supervisory standards and guidelines, but does not hold any formal, supranational supervisory powers.

3.1 Basel Committee for Banking Supervision “Customer Due Diligence Paper” (October 2001)

At the end of 2001, the Basel Committee for Banking Supervision issued the minimum standards for client identification¹¹ drawn up by a working group of representatives of the Basel Committee itself and the Offshore Group of Banking Supervisors. These are the latest due diligence standards for banks, and supplement the principles for effective banking supervision issued in September 1997 (in particular, principle 15, which deals with the verification of the client's identity)¹².

Switzerland was heavily involved in the formulation of these standards. It was on Switzerland's initiative that the rule specifying that business relationships with politically exposed persons, or PEP, could only be entered into with the express approval of senior management was incorporated into the Basel

⁷ The FATF has published special information for use in identifying links with terrorist organisations and terrorist financing (“Guidance for Financial Institutions in Detecting Terrorist Financing”). It is available on the Internet at http://www1.oecd.org/fatf/pdf/GuidFITF01_en.pdf.

⁸ See footnote 24.

⁹ See “Combating Money Laundering: an Important Task for the Swiss Federal Banking Commission”, SFBC contribution, section. 5, p. 39 ff.

¹⁰ The Committee is made up of representatives of central banks and banking authorities in the following 13 countries: Belgium, Germany, France, Italy, Japan, Canada, Luxembourg, the Netherlands, Sweden, Switzerland, Spain, the United Kingdom and the United States.

¹¹ Basel Committee on Banking Supervision, Customer due diligence for banks, October 2001, available on the Internet at <http://www.bis.org/publ/bcbs85.htm>.

¹² SFBC Bulletin 33, p. 73 ff.

standards¹³ and will now be included in the revision of the FATF's Forty Recommendations¹⁴.

The Basel Committee is currently reviewing the subject of combating terrorism and is working on guidelines aimed at improving the management of legal and reputational risks on a global, consolidated basis.

4 G 7 + Switzerland: "Supervisors' PEP working paper 2001"

The problem of conducting business with politically exposed persons has also been recognised at the international level as being in need of regulation, due in no small part to the publicity surrounding the Abacha case. Upon Switzerland's initiative, a first meeting of representatives from judicial and banking supervisory bodies in the G7 countries and Switzerland took place in Lausanne in November 2000. The meeting focussed on the PEP issue and discussed what had been learned from the Abacha case. The recommendations on the handling of accounts linked to PEPs drawn up subsequent to the meeting ("Supervisors' PEP working paper 2001"¹⁵) are intended as a basis for regulations governing business relationships with PEP.

5 International Monetary Fund (IMF)

In November 2001, the International Monetary Fund launched an action plan aimed at expanding the IMF's mandate in respect of combating money laundering and terrorist financing. A central pillar of this action plan is the formulation of a comprehensive methodology and procedure for assessing compliance with international money laundering standards in all IMF countries. The Financial Sector Assessment Program (FSAP) is an important evaluation procedure, which can also be used to assess a country's anti-money laundering provisions.

5.1 FATF AML / CFT¹⁶ methodology

The methodology developed jointly by the IMF, the World Bank and the FATF in conjunction with the Basel Committee, the International Organisation of

¹³ Basel Committee on Banking Supervision, Customer due diligence for banks, October 2001, annotation 41– 44, available on the Internet at <http://www.bis.org/publ/bcbs85.htm>.

¹⁴ See Consultation Paper, footnote 3, annotations 42-47.

¹⁵ Available on the Internet at <http://www.ebk.admin.ch/f/aktuell/neu090702-03f.pdf>.

¹⁶ Anti-Money Laundering / Combating Financing of Terrorism.

Securities Commissions (IOSCO) and the Egmont Group¹⁷, contains criteria for assessing compliance with and implementation of anti-money laundering provisions, in particular the FATF's recommendations. It is intended as an aid in the assessment of anti-money laundering systems in individual countries within the framework of the FSAP as well as the FATF's country assessments, and to ensure that the assessments carried out are of equal value, even if they are carried out by different institutions. The methodology was approved by the FATF Plenary at the beginning of October.

5.2 Financial Sector Assessment Program (FSAP)

The IMF's FSAP is an important procedure for assessing compliance with minimum international standards. Although the FSAP is geared primarily to analysing and reinforcing the stability of the financial system at the national and international levels, anti-money laundering measures also fall within the scope of the FSAP's assessment. The IMF conducted an FSAP evaluation of Switzerland in 2001¹⁸. The IMF rated the Swiss banking sector's anti-money laundering provisions as adequate and in compliance with international standards. The IMF's assessment of securities dealers was less clear-cut, although the securities sector basically applies the same regulations as the banking sector. A point which came in for particular criticism in the report was the fact that the identification of the beneficial owner does not have to be routinely verified. A comprehensive report on Switzerland's FSAP assessment was published in June 2002¹⁹.

6 The Wolfsberg Group – international self-regulation

In 2002, a group of leading international banks established a body whose objective is to develop global guidelines for combating money laundering in private banking. The big Swiss banks played a major role in this international initiative²⁰.

¹⁷ See "The Money Laundering Reporting Office Switzerland: Organisation, Role and Activities", section 3, p., MROS, section 3, p. 59.

¹⁸ See FFD press release from 3 June 2002, available on the Internet at <http://www.efd.admin.ch/e/dok/medien/rohstoff/2002/06/iwf.pdf>.

¹⁹ Report available at http://www.efd.admin.ch/d/dok/berichte/2002/06/iwf_stabilitaetsbericht.pdf.

²⁰ The following international banking groups are members: ABN Amro N.V., Banco Santander Central Hispano, S.A., Bank of Tokyo-Mitsubishi Ltd., Barclays Bank, Citigroup, Credit Suisse Group, Deutsche Bank AG, Goldman Sachs, HSBC, J.P. Morgan Chase, Société Générale and UBS AG. The banks work closely with international anti-money laundering experts and Transparency International, an international NGO active in the fight against corruption.

6.1 Wolfsberg Principles (October 2000)

The Wolfsberg Principles²¹, approved in October 2000, deal with various aspects of the “know your customer” principle in transactions between wealthy private clients and the private banking departments of financial institutions as well as with the identification of and follow-up on unusual or suspicious activities. These principles were revised for the first time in May 2002.

6.2 Wolfsberg Statement on the Suppression of the Financing of Terrorism (January 2002)

In January 2002, the group of banks decided to extend the Wolfsberg Principles to include combating terrorism. In a special statement, the Wolfsberg Group declared that it was committed to working closely with government agencies in the fight against terrorism and called upon authorities to support them in the identification of activities aimed at financing terrorism²².

7 United Nations

The United Nation’s Convention on combating terrorism and the Resolutions of the Security Council provide the framework under international law for the fight against money laundering and against the financing of terrorism. Below is a brief description of the two most important conventions:

7.1 Terrorist financing convention (December 1999)

The International Convention for the Suppression of the Financing of Terrorism of 9 December 1999²³ states that terrorist financing constitutes an offence in its own right; in other words, it can be punished regardless of whether a terrorist act is actually perpetrated or not. In addition, the Convention sets out measures aimed at facilitating international cooperation and thwarting the preparation and implementation of financial activities to be used for the purposes of terrorism. The Swiss Federal Council decided to ratify the Convention in November 2001, and presented to the Parliament a

²¹ “Global Anti-Money-Laundering Guidelines for Private Banking” (Wolfsberg AML Principles) available on the Internet at <http://www.wolfsberg-principles.com/>.

²² “Wolfsberg Statement on the suppression of the financing of terrorism”, January 2002, available on the Internet at <http://www.wolfsberg-principles.com>.

²³ International Convention for the Suppression of the Financing of Terrorism A/RES/54/109 <http://untreaty.un.org/English/Terrorism/Conv12.pdf>.

corresponding proposal in the summer of 2002²⁴. It is intended that the International Convention for the Suppression of Terrorist Bombings of 15 December 1997²⁵ be ratified at the same time.

7.2 United Nations Convention against Transnational Organized Crime²⁶

Switzerland was one of the 121 countries which signed the United Nations Convention against Transnational Organized Crime in Palermo on 12 December 2000. With the Convention, the signatories undertook to recognise as an offence membership of a criminal association, money laundering, corruption and the obstruction of justice, and to amend their national laws accordingly. In addition, the Convention set out principles governing mutual assistance and extradition.

8 The Council of Europe

At the European level, the conventions of the Council of Europe²⁷ in respect of the fight against money laundering and criminal activities as well as in the area of international mutual assistance are of significance to Switzerland.

8.1 The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime²⁸, 8 November 1990

Switzerland ratified the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990 on 2 March 1993. Along with the law governing mutual assistance in criminal matters, this Convention allows Switzerland to cooperate effectively at the international level in the fight against transnational crime.

²⁴ Message presented to Parliament in connection with the international conventions on the suppression of the financing of terrorism and the suppression of terrorist bombings as well as in connection with the amendment of the Criminal Code and further federal legislation; available in German, French and Italian at www.ofj.admin.ch/themen/terror/bot-d.pdf.

²⁵ Available on the Internet at <http://untreaty.un.org/English/Terrorism/Conv11.pdf>.

²⁶ United Nations Convention against Transnational Organized Crime, http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_eng.pdf.

²⁷ The Council of Europe was established on 5 May 1949 and today has 44 member states.

²⁸ Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg, 8 November 1990. Available on the Internet at <http://Conventions.coe.int/treaty/en/Treaties/Html/141.htm>.

8.2 Council of Europe Convention on Mutual Assistance in Criminal Matters²⁹, 20 April 1959

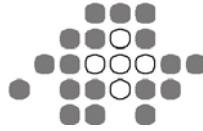
Switzerland ratified this Convention on 20 December 1966. It came into force on 20 March 1967. In accordance with the provisions of the Convention, contracting parties undertake to afford each other the widest measure of mutual assistance in proceedings in respect of offences the punishment of which falls within the judicial authorities of the requesting party.

Switzerland also provides mutual assistance in criminal matters on the basis of bilateral mutual assistance agreements (such as that concluded with the United States on 25 May 1973)³⁰. In addition, Switzerland has signed supplementary agreements with Germany, Austria and France which allow judicial and administrative authorities to address the appropriate authorities in the respective country directly³¹.

²⁹ Available on the Internet at <http://conventions.coe.int/treaty/en/Treaties/Html/030.htm>.

³⁰ Available on the Internet, in German, French and Italian, at www.admin.ch/ch/d/sr/c0_351_933_6.html.

³¹ For Germany, see www.admin.ch/ch/d/sr/c0_351_913_61.html, for Austria, see www.admin.ch/ch/d/sr/c0_351_916_32.html and for France see www.admin.ch/ch/d/sr/c0_351_934_92.html.



Money Laundering Control Authority: Role, Organisation and Activity

1 Role and activity of the Control Authority

1.1 Financial intermediaries affected

In addition to banks, securities dealers, investment fund managers, life insurance companies and casinos, financial intermediaries who, on a professional basis, accept, hold in deposit or assist in the investment or transfer of assets belonging to others are subject to the Money Laundering Act and consequently to supervision. The law and the practice of the Control Authority apply this in particular to asset managers, credit institutions, namely those conducting financial leasing, commodities brokers, bureaux de change, investment fund distributors and representatives, securities dealers not subject to the Stock Exchange Act, directors on non-operative companies domiciled in Switzerland or in a foreign country, as well as lawyers managing funds in addition to their usual activities.

These financial intermediaries can either affiliate themselves to a self-regulating organisations (SRO) recognized and supervised by the Control Authority or submit to direct supervision by the Control Authority. They are therefore subject to supervision, however, unlike financial intermediaries subject to special supervision¹, this supervision limits its focus on the obligations set out in the MLA.

1.2 Recognition and supervision of self-regulation bodies

SRO are generally associations governed by private law, which assume supervision functions according to the MLA on the basis of a delegation of powers. When it affiliates itself to an SRO, a financial intermediary places itself under the SRO jurisdiction and commits itself to observe the statutes and internal regulations.

¹ These laws are the BankA, the SESTA, the IFA, the Life Insurance Act and the Gaming Act.

It is incumbent upon the Control Authority to recognize and supervise the SRO. It has recognized 12 SRO to date. The Control Authority approves the regulations set by the SRO as well as any modifications made to these regulations, and checks that the SRO enforces the regulations. Supervision is based on an annual report drawn up by the SRO and on an annual audit of the SRO conducted by the Control Authority.

In the event that an SRO no longer fulfils the conditions for recognition, or in the event that it violates its legal obligations, the Control Authority may withdraw the SRO's recognition, after having clearly informed the SRO of its intention to take such a measure. In this case, the financial intermediaries affiliated to the SRO in question come under the direct supervision of the Control Authority, unless they seek membership in another SRO within a period of two months.

In principle, any SRO is entitled to recognition by the Control Authority, as long as it fulfils the conditions laid down by the law and that it has a sufficient number of qualified staff to carry out its tasks without creating a conflict of interests. The SRO must guarantee that the financial intermediaries affiliated to it will observe their legal obligations on a long-term basis.

1.3 Authorisation and supervision of the financial intermediaries directly subordinated to the Control Authority

Any financial intermediary neither subordinated to a supervision authority under special law nor affiliated to an SRO may not engage in activities falling under the MLA unless it has been granted a licence by the Control Authority. The Control Authority therefore fulfils the same tasks with regard to the financial intermediaries directly subordinated to it as the SRO do with regard to their affiliated members.

The Control Authority grants a licence as soon as the financial intermediary fulfils all the legal requirements and the related implementation provisions. In addition, continuous observance of the licensing conditions must be subject to an annual audit conducted by one of the audit agencies recognized by the Control Authority.

When the Control Authority discovers that a financial intermediary no longer observes the conditions of its licence or violates the obligations laid down by law, namely the obligations of due diligence and notification, it will take the necessary corrective measures, being careful, nevertheless, to observe the principle of proportionality.

1.4 Definition of the financial intermediaries' obligations of due diligence

As the Money Laundering Act is a framework law, the Control Authority has specified in an Ordinance the obligations of due diligence for the financial intermediaries directly subordinated to it². For their part, the SRO have specified the obligations of due diligence laid down in the MLA for the financial intermediaries that are affiliated to them in their respective regulations.

1.5 Market supervision

The Control Authority identifies the financial intermediaries engaging in their activity illegally. When an illegally active financial intermediary is discovered, the Control Authority takes the necessary corrective measures and requires cessation of the activities in the event that the licensing conditions are not fulfilled. When the illegal activity constitutes the financial intermediary's main or exclusive activity, these measures can extend to the financial intermediary's liquidation.

This market supervision is however limited to determining whether or not an activity falls under the MLA's scope of application, and consequently whether or not such activity is authorized. It does not focus on the way in which the financial intermediaries provide their services or honour their obligations in relation to their clients.

1.6 Accreditation of audit agencies

The Control Authority can conduct on-site inspections of directly subordinated financial intermediaries or give an audit agency a mandate to conduct these inspections. The Control Authority therefore proceeded to accredit audit agencies requesting accreditation and fulfilling the strict conditions established in the terms and conditions.

Every financial intermediary licensed by the Control Authority is obliged to choose an MLA control body from the accredited audit agencies to conduct the annual audit. The Control Authority has an influence on the auditing process by providing the appropriate documentation and detailed requirements with regards to the MLA audit report.

² Ordinance of 25 November 1998 of the Money Laundering Control Authority concerning Obligations of Due Diligence of Directly Subordinated Financial Intermediaries.

2 Organisation of the Control Authority

The Control Authority is a division of the Federal Finance Administration. The Control Authority is divided into four sections reflecting the nature of its tasks.

2.1 “Self-regulating organisations” (SRO) Section

The main tasks of the SRO Section include the recognition and supervision of SRO. It can also, if necessary, withdraw this recognition. In addition, it approves the SRO statutes, regulations, directives and training programmes, including any modifications, as well as internal management changes. The SRO Section examines the SRO annual reports and checks that the corresponding regulations are applied. In addition, it advises the SRO on organisational issues and provides assistance in response to any general problems or questions.

In order to ensure the smooth functioning of self-regulation, the Control Authority and the SRO must continuously exchange information. For this reason, meetings between the Control Authority and the SRO are held on a regular basis.

It is not within the Control Authority’s jurisdiction to intervene directly when a financial intermediary affiliated to an SRO violates the obligations stemming from the law. In such a case, the Control Authority passes any information it has on to the SRO in question who then sets in motion the sanctioning procedure based on the regulations. If this procedure results in the exclusion of the financial intermediary, the latter comes under the direct supervision by the Control Authority who may take any necessary measures, including liquidation of the financial intermediary.

2.2 “Directly Subordinated Financial Intermediaries” Section

The main tasks of this section include the licensing of financial intermediaries directly subordinated to the Control Authority as well as their continuous supervision. The yearly reports drawn up by the external MLA auditors provide an outline of the financial intermediary’s application of the obligations contained in the Money Laundering Act and represent an important part of the supervision procedure. In the case of violation of the Money Laundering Act, orders are given by this section to take measures in order to restore legality. These measures include the withdrawal of the operating licence and the liquidation of the financial intermediary.

2.3 Audit Section

The Audit Section works closely with the three other sections on all MLA audits, whether these audits are conducted by Control Authority staff or by accredited auditors.

MLA audits of financial intermediaries licensed by the Control Authority are generally entrusted to accredited auditors. These agencies take on the Control Authority's task of conducting an annual audit to check if licensed financial intermediaries observe the legal obligations stemming from the Money Laundering Act and its application provisions. The Audit Section supervises MLA auditing activities conducted by these external auditors, in particular it examines reports filed by these auditors, and conducts audits of the licensed financial intermediaries of its own by carrying out on-site inspections.

Control Authority staff, on the other hand, systematically conducts SRO audits, directly. This enables it to ensure that each SRO continues to fulfil the conditions for recognition.

General supervision tasks of the Audit Section also include continuously evaluating and developing supervision policies applicable to the SRO and to the financial intermediaries.

2.4 Market Supervision Section

The Market Supervision Section is responsible in particular for identifying the financial intermediaries operating illegally, to put them under supervision or prohibit them from engaging in illegal activity. In the event that the illegally active financial intermediary does not cease its activities, the Control Authority will oblige it to do so, if necessary by liquidating the field of activity in question or by liquidating the entire company if the financial intermediation constitutes the major part of its activity.

The starting point for the survey generally includes active research conducted by the section staff (e.g. Internet filtering), and the information provided by the financial intermediaries, the SRO or other authorities, or information provided by private individuals or broadcast by the media.

3 New developments relating to the Control Authority

3.1 Issue of subordination

3.1.1 Professional activities

The Money Laundering Act covers all activities carried out by financial intermediaries on a professional basis (i.e. as a commercial undertaking), but

does not define the scope of the notion of “on a professional basis”. The Control Authority has recently published an implementing ordinance, in order to clarify the extent to which an activity falls into this category³.

According to this text, activities carried out on a professional basis include all activities subject to the provisions of the MLA having a gross annual turnover in excess of 20,000 Swiss francs. This category also includes financial intermediaries having long-term business relations involving more than ten contracting parties, financial intermediaries holding financial assets belonging to others and amounting to over five million Swiss francs or financial intermediaries transferring assets amounting to a total volume exceeding two million Swiss francs in the course of a calendar year. These criteria are alternative, which means that if a financial intermediary fulfils one criterion obligation to be licenced by the Control Authority or seek membership in an SRO applies.

Special rules have been provided for investment fund distributors. These rules have been aligned with the practice of the SFBC.

Financial intermediaries changing from a non-professional activity to a professional activity have two months to become affiliated with an SRO or to request a licence from the Control Authority. The financial intermediary is not allowed to establish new business relations until this membership or licence are granted.

3.1.2 Activities carried out in the financial sector

The legal definition of activities subject to the provisions of the MLA is so imprecise that it has been an issue for the Control Authority ever since its creation. The Control Authority continuously receives requests from potential financial intermediaries from the non-banking sector who would like to find out whether or not the activity in which they are engaged falls under the scope of the MLA.

In some cases, the answer is simple because it is taken directly from the legal text itself. It would never occur to anyone to question whether or not asset managers are subject to the provisions of the MLA because it specifically refers to them⁴. The same holds true for credit institutions⁵ and investment fund distributors⁶.

³ Ordinance of 20 August 2002 of the Money Laundering Control Authority concerning Financial Intermediation in the Non-Banking Sector as a Commercial Undertaking (OCU-MLA).

⁴ Art. 2 al. 3 let. e MLA.

⁵ Art. 2 al. 3 let. a MLA.

⁶ Art. 2 al. 3 let. d MLA.

The situation is different for many other activities. That is why the Control Authority has had to specify the scope of the MLA for bodies of domiciliary companies and commodities brokers. Further clarification is in progress. When the Control Authority makes a decision in principle that could affect numerous financial intermediaries, it puts the new practice on its website⁷ to make it accessible to the greatest number of people possible.

3.2 Contacts with the self-regulating organisations

3.2.1 Annual audits and inspection of annual reports

SRO activities are subject to an annual audit conducted by Control Authority staff. During this audit, the Control Authority examines the way SRO fulfil their legal obligations and observe their own provisions and regulations. Each audit also provides the Control Authority with the opportunity to meet SRO managers and to discuss possible improvement, planned changes and specific issues connected to the interpretation of the MLA.

Another opportunity for meetings and discussions arises every year after the Control Authority's examination of the SRO annual report on its activities.

3.2.2 Coordination conference and SRO forum

To improve the general knowledge of SRO managers and to give them the opportunity to personally meet Control Authority staff, the Control Authority organizes a coordination conference at least once a year, in which all SRO are invited to participate. In 2002, this conference will be dedicated to criminal law issues, in particular the offence of money laundering and the new federal responsibilities as regards organised and economic crime.

In addition, the SRO organise a joint meeting several times a year, called the SRO forum, allowing them to discuss issues of general interest among themselves. Control Authority and MROS representatives regularly attend this SRO forum, which is yet another opportunity for authorities and SRO to communicate and exchange points of view.

⁷ <http://www.gwg.admin.ch>



Combating Money Laundering: an Important Task for the Swiss Federal Banking Commission

1 Supervisory aims of the Swiss Federal Banking Commission (SFBC)

The SFBC is entrusted with the autonomous surveillance of banks, securities dealers, stock exchanges, investment funds and mortgage bond issuers¹. In executing this task, it applies Swiss federal legislation governing banks², stock exchanges³ and securities trading, and investment funds⁴. Since 1998, it has also acted as a "supervisory authority under specific surveillance legislation" monitoring compliance with the Money Laundering Act. The SFBC's activity has a number of aims:

1.1 Protection of creditors and investors

The SFBC's task is, wherever possible, to prevent depositors from incurring losses due to the collapse of a bank. Investors are protected through adherence to the regulations of the Stock Exchange and Investment Funds Acts.

1.2 Functional and system protection

The supervisory authority is to help stabilising the financial markets and prevent the collapse of individual institutions from triggering contagion problems and chain reactions throughout the financial markets.

1.3 Protection of trust and reputation: includes combating money laundering

Finally, the supervisory authority is responsible for maintaining and promoting public confidence in the Swiss financial sector and the individual financial intermediaries while safeguarding and strengthening their good reputation.

¹ Art. 23 para. 1 BankA.

² Banking Act.

³ Stock Exchange Act.

⁴ Investment Funds Act.

To this end, it is important to prevent financial intermediaries from being misused by money launderers or even acting as their accomplices.

2 The SFBC's fight against money laundering began well before 1998

In fact, the SFBC was combating money laundering long before the Money Laundering Act came into force in 1998.

2.1 Practice regarding irreproachable business conduct (since 1972)

Since being authorized to do so following a partial amendment of the Banking Act in 1972, the SFBC has repeatedly taken action against banks who failed in the duty to exercise due diligence imposed on them by the provisions of the Banking Act. In a number of decisions, it developed the concept of a special obligation on the part of banks to investigate in greater detail the background and purpose of any unusual transactions which have no visible lawful purpose. The Swiss Federal Supreme Court has supported the SFBC's practice in various decisions⁵.

2.2 Participation in the elaboration of the FATF Recommendations (1989 – 1990)⁶

Amongst other things, the SFBC introduced the concept of special investigative duty into the consultations leading to the "Financial Action Task Force" (FATF)⁷ recommendations. It was incorporated into recommendation 14, on which Article 6 of the Money Laundering Act is itself based. The current Director of the SFBC Secretariat headed the Swiss delegation to the FATF during this decisive phase.

2.3 SFBC Money Laundering Guidelines (1991/1998)

The SFBC implemented the FATF Recommendations in the Money Laundering Guidelines⁸ addressed to the banks in 1991, which were adapted in 1998 to comply with the new Money Laundering Act. This circular does not constitute formal law. When necessary however, the SFBC enforces its interpreta-

⁵ For example: Swiss Federal Supreme Court Decision 111 Ib 126.

⁶ For further explanations on FATF, see "International Developments in the Fight against Money Laundering and the Role of Switzerland", section 2, p. 19 ff.

⁷ SFBC Bulletin 31, p. 19 ff, see also http://www1.oecd.org/fatf/pdf/40Rec_en.pdf.

⁸ Official texts exist only in French (<http://www.ebk.admin.ch/f/publik/rundsch/98-1.pdf>) and German (<http://www.ebk.admin.ch/d/publik/rundsch/98-1.pdf>).

tion of the Money Laundering Act as presented in its circular by issuing orders against banks and securities dealers („soft law, hard enforcement”).

2.4 Practice regarding politically exposed persons "PEP" (since 1986)

Following the Marcos affair in 1986, the SFBC publicly stated for the first time its expectation that decisions on business relationships with politically exposed persons should be taken at a bank's top management level. Even before the new provisions of the Swiss Criminal Code on corruption came into force, the SFBC also announced in 1994 that accepting assets, which are identifiably the proceeds of corruption, was not compatible with the guarantee of irreproachable business conduct as required by the Banking Act. It reinforced this stance with its investigations and rulings in the Montesinos and Abacha cases⁹. In this area too, an international standard has been developed in recent years, which the SFBC expressly welcomes and wholeheartedly endorses.

3 The SFBC supervises a core area of the financial sector

The SFBC as the money laundering supervisory authority responsible for banks and securities dealers covers a key section of the Swiss financial market. Although the SFBC's money laundering supervisory role only encompasses around 400 out of a total of some 7,000 financial intermediaries who are subject to the Money Laundering Act, they are (together with the insurers) the most important in economic terms.

3.1 Central role of the banks and securities dealers in asset management

In 2001, the banks maintained custody accounts with a total combined value of some 3,300 million Swiss francs, which represents the largest share of all the assets under management in Switzerland. They maintained around 19.5 million savings and investment accounts in 2001 (compared to Postfinance with 2.2 million).

3.2 Only banks and securities dealers may manage assets in their own name

In addition, all Swiss asset managers may only open an account with a bank or a securities dealer in the name of their client. If they do this in their own name, they become securities dealers and require an SFBC licence in accor-

⁹ <http://www.ebk.admin.ch/e/archiv/2000/neu14a-00.pdf> and <http://www.ebk.admin.ch/e/archiv/2001/m1113-01e.pdf>.

dance with the Stock Exchange Act. This means that the clients of independent asset managers are usually also clients of a bank, which has to comply with all the due diligence obligations on their behalf. In other words, the current regulation provides for two identification obligations concerning the same client: one imposed on the asset manager and the other on the bank. In this connection, the bank may rely on the information provided by the asset manager. However, as the bank bears the final responsibility, it must be in possession of all relevant documents.

4 Regulatory framework for the SFBC's fight against money laundering

4.1 Banking, Stock Exchange and Investment Funds Act

Under the Banking Act and Stock Exchange Act, the Board of Directors and top management of a bank or securities dealer must "ensure irreproachable business conduct". The Investment Funds Act contains a similarly formulated requirement for the executives of fund management companies. This requirement for the conduct of business is called into question when the persons responsible violate the due diligence provisions designed to combat money laundering.

4.2 Penal Code

As a result, the provisions of the Swiss Penal Code in general and those on money laundering¹⁰ and on the failure to exercise due diligence in financial transactions¹¹ are also relevant for the SFBC's supervisory function. During the preliminary stage of its administrative proceedings, the SFBC determines whether these provisions have been violated. It is not tied to the interpretation of the criminal courts, but can set more stringent regulatory standards. In addition, its proceedings are not primarily aimed at natural persons, but concentrate on preventative measures for banks and securities dealers.

4.3 Money Laundering Act

The same thing applies to all the obligations contained in the Money Laundering Act as applies to the provisions of the Penal Code, like the due diligence obligations (of which the special duty to investigate unusual transactions referred to above is an important example), organizational obligations or the obligation to report where there are reasonable grounds to suspect that money is being laundered. Pursuant to the Money Laundering

¹⁰ Art. 305^{bis} Penal Code.

¹¹ Art. 305^{ter} Penal Code.

money is being laundered. Pursuant to the Money Laundering Act, the SFBC as a supervisory authority instituted by a specific specific surveillance legislation is entrusted to giving concrete form to the due diligence obligations.

4.4 Money Laundering Guidelines or (in future) SFBC Money Laundering Ordinance

The task of defining the due diligence obligations is achieved via the guidelines issued by the SFBC, currently in the form of a circular and in future in the form of a statutory ordinance, on combating money laundering. For example, they stipulate in detail when special investigations must be carried out into unusual transactions, define organizational requirements and the action to be taken when money laundering is suspected.

4.5 Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB) as self-regulation

In contrast, the "Swiss banks' code of conduct with regard to the exercise of due diligence"¹², concluded by the banks in the form of an agreement under civil law, deals exclusively with the issue of how the banks should verify the identity of their contracting partners and of any other beneficial owners of invested assets. These norms are also relevant for the SFBC as a preliminary question and as minimum standards. The SFBC is informed of all the decisions made by the CDB Supervisory Board, which can impose "civil fines" of up to 10 million Swiss francs on banks (but not on the employees concerned). The SFBC determines whether additional measures are necessary under administrative law, although it is usually already aware of the most serious cases anyway.

5 The forthcoming SFBC Money Laundering Ordinance

In line with its intention published at the time of its investigation into the Abacha affair in the autumn of 2000, the SFBC has initiated an amendment procedure to the current Money Laundering Guidelines. A working group set up and headed by the Commission, with representatives from the banks, securities dealers and the authorities concerned presented a draft SFBC Money Laundering Ordinance in June 2002¹³. The ordinance should be passed by the SFBC at the end of 2002 following a public consultation procedure and should enter into force by mid-2003. It will increase the standards of due diligence in various areas.

¹² http://www.swissbanking.org/en/110_e.pdf.

¹³ For the time being, only available in German (<http://www.admin.ch/d/aktuell/neu090702-01d.pdf>) and French (<http://www.ebk.admin.ch/f/aktuell/neu090702-01f.pdf>).

5.1 Additional investigations of higher-risk business relationships

The draft ordinance requires different levels of due diligence depending on the risk involved. For instance, all clients will in future still need to be identified in the same way (with a copy of an official identity document). In the case of higher-risk business relationships, however, banks and securities dealers must carry out additional investigations, for instance into the origin of the assets. This means that they must first define risk categories for their particular business activity and use them to identify and flag all existing and new higher-risk business relationships. For such higher-risk business relationships, the bank must obviously verify more than the client's identity. Where necessary, additional investigations must be carried out, checked for plausibility and documented.

5.2 Electronic transaction monitoring systems

With the exception of very small institutions, all banks and securities dealers will in future have to use electronic systems to monitor transactions. This will help to identify unusual transactions, which must then be evaluated within an appropriate period of time and should, where necessary, lead to additional investigations into the relevant business relationships.

5.3 Rules on politically exposed persons and the fight against corruption

The ordinance will expand on the existing rules regarding business relationships with politically exposed persons. The decision on whether to begin, continue or terminate such a relationship must be taken at top management level. The acceptance of any assets derived from criminal activity, which includes corruption and misuse of public funds, either in Switzerland or abroad, is clearly prohibited.

5.4 Misuse of the financial system by terrorists

Banks and securities dealers may not maintain business relationships with persons or organizations that they suspect of having links to terrorist organizations. If they discover such a business relationship, they must notify the Money Laundering Reporting Office Switzerland (MROS) immediately.

5.5 Global monitoring (also) of reputational risks

International banks must also record, limit and monitor all their risks on a global level, and this includes reputational risks arising from business relationships that are not investigated with due diligence. For this reason, the new

rules will also apply *mutatis mutandis* to domestic and foreign branches. Swiss banking groups could be at a competitive disadvantage if the Swiss rules do not correspond to local law or practices. In such cases, the SFBC must find a solution together with the authorities and institutions concerned in each individual case.

6 The SFBC's guiding principles in its fight against money laundering

In connection with its investigation into Abacha, the SFBC summarized the principles guiding its efforts to combat money laundering in its 2000 annual report¹⁴.

6.1 Compliance with due diligence obligations is key

The SFBC does not view a violation of the due diligence obligations contained in the Money Laundering Act and its own Money Laundering Guidelines (or in future the Money Laundering Ordinance) as a peccadillo or gentlemen's' offence. On the contrary, compliance with them is essential with regard to maintaining confidence in and safeguarding the reputation of Switzerland's financial services industry as mentioned above. The SFBC views any violation of due diligence obligations clearly as regulatory relevant and take the necessary sanctions in this regard. The SFBC does not leave this to the criminal prosecution authorities, who are generally only able to act after the fact and in a repressive rather than preventative way.

6.2 Serious violations of obligations are pursued consistently with regulatory measures

Accordingly, the SFBC consistently pursues all serious violations of obligations, either by initiating proceedings itself (within the scope of application of its Money Laundering Guidelines and in future the Money Laundering Ordinance) or by notifying the criminal justice or due diligence authorities responsible for pursuing such cases. Parallel proceedings are also possible in accordance with overlapping sanction rules.

6.3 Responsible managers risk sanctions

Under the Banking Act and the Stock Exchange Act, the Board of Directors and top executive management of a bank or securities dealer must "ensure irreproachable business conduct". If the Board of Directors and top manage-

¹⁴ Only available in German (<http://www.ebk.admin.ch/d/publik/bericht/jb00.pdf>, p. 22) or French (<http://www.ebk.admin.ch/f/publik/bericht/jb00.pdf>, p. 164).

ment of a bank or securities dealer are responsible for serious violations of due diligence obligations or organizational inadequacies in combating money laundering, they risk punishment by administrative order from the SFBC prohibiting them from performing their functions in their current position or in similar positions with other companies under the supervision of the SFBC for a set period.

6.4 Organizational weaknesses must be rectified quickly and effectively

If the SFBC identifies organizational weaknesses, it issues where necessary an order prescribing their speedy and effective rectification. This order may be accompanied by a requirement for an examination by a statutory auditing firm or the SFBC itself.

6.5 Withdrawal of licence in the event of ongoing organizational weaknesses

If a bank does not comply with such an order, or repeated or ongoing serious organizational weaknesses are apparent, it risks having its licence withdrawn.

6.6 International harmonization of due diligence standards is required

Not least to ensure global competitiveness, the SFBC supports all efforts towards international harmonization at the high level on which it is active. To this end, it is involved in international committees and bilateral negotiations and also actively initiates discussion on any regulatory discrepancies between countries.

The responsibilities of the Federal Office of Private Insurance in relation to the money laundering act

1 The area of supervision of the FOPI

The Federal Office of Private Insurance (FOPI) is part of the Federal Justice and Police Department (FJPD) and makes sure that private insurance companies are able to fulfil their obligations towards policyholders at all times.

To this end the FOPI monitors the business activity of the private insurance institutions which are subject to state supervision, that is to say life, accident and property insurers and reinsurers. State insurance institutions such as AHV, SUVA and military insurance, and also certain pension funds and foreign reinsurers are excluded. Health insurance schemes are subject to FOPI supervision only in respect of supplementary health insurance.

The fight against money laundering also plays a part in insurance supervision. Of the total premium volume of just over 50 billion Swiss francs (of which 30 billion Swiss francs relate to life insurance policies), some 20 billion Swiss francs are relevant for supervisory purposes aiming at combating money laundering. In enforcing the Money Laundering Act, inspections of the insurance companies play a central part in the supervisory activity of the office. Therefore the battle against money laundering is a point which is checked in every inspection. In working out the annual inspection plan the capital investment section responsible defines the appropriate points to be checked.

In addition, the Office participates in the preparation of legislation and also in working out money laundering rules at international level, and provides information in response to relevant enquiries.

2 Action to combat money laundering by the FOPI

2.1 Purpose and area of application of the Money Laundering Act in relation to the insurers

In accordance with the Money Laundering Act¹ the FOPI monitors the measures taken by the life insurance companies to prevent money laundering. The duties of the life-insurance companies include in particular identification of the contracting party and determining the economic beneficiary; clarifying the purpose of an insurance transaction which seems unusual or if grounds exist for suspicion that the assets concerned stem from a crime or are subject to the power of disposition of a criminal organisation; the safe custody of documents which support the investigations undertaken; and in addition the duty to ensure adequate training of staff and proper checks.

If a life insurer knows or has a reasonable ground to suspect that money laundering is present in a business relationship, the insurer must submit a report to the competent money laundering reporting office (MROS) in the Federal Police Office.

2.2 The principle of self-regulation

The Money Laundering Act leaves room for the development of a system of self-regulation by the financial intermediaries affected. The life insurance institutions have made use of this possibility. In 1998 the Swiss Insurance Association (SIA) created a self regulating organisation, the SRO-SIA. However, a system of self regulation does not exempt the supervisory authorities specially designated by law, i.e. in this case the FOPI, from fulfilling their duties of supervision towards the financial intermediaries placed under their control. Thus in accordance with the Money Laundering Act supervision of compliance by the insurance institutions with the obligations imposed by the MLA (i.e. the due diligence duties and the reporting obligation in case of suspicion of money laundering) lies with the FOPI, irrespective of whether an insurance institution is affiliated to the SRO-SIA or not. The FOPI monitors the insurance institutions not affiliated to the SRO-SIA which are subject to the Money Laundering Act, exclusively and directly. Such institutions are required to provide information about their activities in the field of combating money laundering, by completing an annual questionnaire. The majority of life-insurance companies which have their registered office in Switzerland are affiliated to the SRO-SIA. Only three companies have not joined this organisation.

¹ Art. 12 MLA.

2.2.1 The Swiss Insurance Association self regulating organisation (SRO-SIA)

The SRO-SIA sets out in detail in a set of regulations the duties which are defined in the Money Laundering Act². The regulations require the affiliated companies to set up a specialist office within the company for combating money laundering. They provide for a system of controls and sanctions. If for example a company is in breach of the duties incumbent upon it, then the SRO-SIA management board can impose sanctions, which can range from a warning to a fine of up to 1 million Swiss francs

Insurance company self-regulation organisations - currently only the SRO-SIA already referred to exists - must be recognised by the FOPI and are also subject to its supervision. They must maintain a register of the affiliated companies. The FOPI must be informed annually about the activities of the SRO. If the SRO is in breach of the relevant regulations, the FOPI can in an extreme case withdraw its recognition.

2.3 FOPI directive on combating money laundering

The FOPI has set out in concrete terms the duties imposed by the Money Laundering Act by issuing an official directive and has laid down how these are to be fulfilled by the insurance institutions³. The FOPI Directive on Combating Money laundering (MLD) came into force on 30 August 1999. It also forms the basis for the SRO regulations.

This directive makes clear the duties of the insurance institutions, defines the basic conditions for self-regulation in the insurance sector, describes the responsibilities of the FOPI in the area of money laundering, and lists the measures available to it to fulfil these responsibilities. The directive applies to all insurance institutions within the meaning of the Insurance Supervision Act⁴ which exercise an activity in the area of direct life insurance, or offer or sell shares in investment funds. The provisions are set out as minimum provisions; the SRO can provide for additional or more stringent provisions.

² Identification of the contracting party, determining the economic beneficiary, determining the payee, clarification of the background and purpose of a transaction, duty of documentation.

³ Art. 16 MLA.

⁴ Federal Law of 23 June 1978 concerning the supervision of private insurance institutions (Insurance Supervision Act, ISA; SR 961.01).

2.3.1 Definition of obligations imposed by Section 2 of the Money Laundering Act

2.3.1.1 Identification of the contracting partner

The directive in particular lays down the sum above which identification of the contracting party is obligatory, i.e. it expresses in concrete terms the concept of “substantial value”. Identification must take place, when a single-life insurance contract is concluded, if the single premium or the periodical premiums exceed the sum of 25'000 Swiss francs per contract within a period of five years. A duty of identification also arises in the case of a payment of over 25'000 Swiss francs into a premium account for the benefit of a single-life insurance, where no insurance contract yet exists, and also in the case of the sale of shares in investment funds⁵.

2.3.1.2 Establishing the economic beneficiary

The insurance institution must obtain from the contracting party a written declaration stating who the economic beneficiary is, particularly if the contracting party is not the economic beneficiary or if doubts arise in this respect, especially if the contracting party is acting as the authorised agent of a third party.

2.3.1.3 Duty of documentation

The life-insurance institutions must prepare documentary evidence about the insurance contracts which have been concluded, and about the identifications and investigations. Third parties with a knowledge of the subject - the FOPI in particular - are therefore able at any time to form a reliable judgement on how the insurance institution is fulfilling the provisions of the Money Laundering Act and of the Directive and is identifying the policyholder and the establishing the identity of the economic beneficiary (documents to be kept for at least 10 years).

2.3.1.4 Reporting duty

The duty to report irregularities is governed by the provisions of the Money Laundering Act. The insurance institutions are required to inform the FOPI of reports made to the MROS.

2.3.1.5 Organisational measures

Every insurance institution subject to the Money Laundering Act must appoint a responsible body within the company, which has responsibility for monitoring the provisions of the Money Laundering Act and the FOPI

⁵ Art. 5 MLD.

Directive, and for adequate training of its staff in relation to the measures to combat money laundering.

2.3.2 Defining the legal framework for the private insurance companies' SRO

The SRO must be recognised by the FOPI. They are subject to the supervision of the FOPI and must maintain a register of the affiliated companies. They must inform the FOPI of changes to this list. The FOPI is to be informed annually about the activities of the SRO.

2.3.3 Specifying the responsibilities and measures of the FOPI to combat money laundering

The FOPI approves the regulations issued by the SRO. It monitors the effective application of these regulations by the SRO and that the insurance institutions which are not affiliated to an SRO are fulfilling the duties imposed by the 2nd section of the Money Laundering Act. In addition, the FOPI communicates the decisions of the Financial Action Task Force on Money Laundering (FATF) to the SRO-SIA and to the life insurance institutions directly subject to its authority by circular letter for implementation.

The FOPI can carry out on-site inspections or instruct audit boards to carry out the checks. If the case of contraventions of the Directive the FOPI, in addition to the measures available to it in accordance with the legislation on the supervision of insurance activity, can also resort to measures to restore the proper situation in accordance with the Money Laundering Act⁶. It can withdraw an insurance institution's licence, if it is repeatedly or grossly in breach of its legal obligations in accordance with money laundering law.

2.4 Current activities - permanent tasks

The legal provisions give rise to a series of permanent tasks for the FOPI in the battle against money laundering:

- Scrutinising the annual SRO report;
- Updating the list of members of the SRO-SIA and the list of non-members;
- Training events (active and passive);
- Examining the measures specific to the company on the occasion of inspections at the company offices;
- Continuous updating of the provisions of the law and directive;
- Answering questions from associations, companies and third parties concerning the application of MLA provisions.

⁶ Art. 20 MLA.

Combating Money Laundering in and through Casinos

1 Money Laundering Risks in Casinos

1.1 Three Levels of Abuse Risks in Casinos

There are basically three ways in which casinos can be misused for money laundering purposes.

1.1.1 First Level: Risk at Player Level

At the first level playing in a casino is used as a front for dubious increases in assets. A money launderer who wants to channel an unusually high sum of money back into circulation through a bank can pass off the transaction by saying that he won it in a casino.

Casinos also act as bureaux de change. Original notes originating from a kidnap ransom, for example, can be exchanged for unsuspecting notes, although any business which offers a bureau de change service runs this risk.

1.1.2 Second Level: Casinos offering financial services

At the second level casinos offering actual financial services, whether in the form of deposits or accounts for the players, can also be appealing to money launderers. Casinos can also serve as international transport agents where, for example, it is possible to play in Vienna, have the winnings (or other assets) credited to an account, carry on playing in Zurich and there collect the money at the casino or transfer it to another casino in Las Vegas. This would create an additional non-banking network through which funds could illegally be transferred quickly, and through relatively unknown routes. It is also conceivable that a casino which has payments to make to a player does so by directly paying a bank transfer into the player's account rather than paying him in the form of cash or a signed cheque, thereby opening up an additional channel for dirty money to enter the financial system.

1.1.3 Third Level: Casino as a front company

Abuses of casinos are conceivable at the third level by using the management or an employee in a key position. It is to be expected that employees in the casino milieu are subjected to corruption advances. If money launderers can make use of the financial channels of the casino business, they have created the perfect front company. It is particularly important, therefore, to examine the interests of the casino operators. It must also be possible to assess licencees in a thorough manner, participations must be disclosed, and transparency regarding the financial ownership of the casino operation must be the rule.

2 Legislation to minimise money laundering risks

2.1 Subordination of casinos under the Money Laundering Act

In order to deal with risks at the first and to some extent the second level, the Gaming Act lays down¹ that casinos in Switzerland are subject to the Money Laundering Act. Casinos are bound to the same duties of due diligence as banks, insurance institutions and other financial intermediaries.

2.2 Special legal provisions

The risks outlined above were already known when the legislative work on the Gaming Act was in progress as were the regulations in the Money Laundering Act.

Specific money laundering risks, particularly at the third level, have already been taken into account under special provisions in the Gaming Act.

2.2.1 Licence provisions

Licence provisions are key and there is a need to know the interests behind the casino operators and the financial ownership of the casino.

A licence can only be issued to a public limited company under Swiss law if its share capital is split into registered shares and its Board members are resident in Switzerland.

A further requirement is that the applicant and the main business partners and their beneficial owners as well as shareholders and their beneficial owners have sufficient equity, have a good reputation and can give a guarantee of irreproachable business activity. In addition, the applicants and shareholders must have proved the legitimate origin of the money available.

¹ Art. 34 Gaming Act.

People with a direct or indirect participation in excess of 5% in the capital and people or groups of people with voting rights whose share is in excess of 5% of the total voting rights are deemed to be beneficial owners. People who hold such a participation must, inter alia, make a declaration to the board as to whether they hold the shares on their own behalf or on behalf of third parties and whether they have granted option facilities or similar rights for these participations.

This should bring transparency into relations and possible dependencies disclosed and reduced to a minimum.

2.2.2 Taxation of casinos

Over and above standard business taxes, casinos are also liable for tax on their gross gaming revenue. Gross gaming revenue is calculated as the difference between the game stakes and the winnings paid out. This tax revenue is earmarked as revenue for the equalisation fund of the Swiss old age and surviving dependants insurance (AHV). The tax rate is between 40% and 80%. This additional tax burden on casinos makes it far less attractive to use the casino for laundering dirty money on a grand scale.

2.2.3 Further provisions relating to money laundering risks

The Gaming Act and its Ordinance also stipulate that winnings can only be registered if the casino is able to check the origin of the stakes and the actual winnings. The casino may not accept or issue any personal cheques. If the casino writes out a cheque to a player, the following note is added: "This document does not confirm either stakes or winnings", thereby making the front for dubious asset increases more difficult. The casino may not provide loans or advance payments, and players' deposit account credits may not receive interest. Only "in-house" tokens, i.e. tokens that the casino itself has distributed, may be used in the casino. No foreign tokens will be exchanged for cash either. When setting up a guest account, close attention will be paid to compliance with the duties of due diligence. The money to be paid into a player's guest account can only be paid through a bank in a FATF country. No cash payments or payments by third parties into the guest account may be made. Any eventual reimbursement of any remaining balance may only be made into a player's account at the branch from which the payment into the guest account originated.

3 Revision of the FATF's Forty Recommendations

Revision of the FATF Recommendations aims to formalise the validity of the recommended measures to combat money laundering in a gaming context. Worldwide minimum standards for combating money laundering should be

set up for casinos. Switzerland has already set a high standard with its Money Laundering Act.

4 Activities of the Swiss Federal Gaming Board (SFGB)

4.1 SFGB's tasks

4.1.1 Introduction

The SFGB with its competent secretariat is an independent administrative authority of the Swiss Confederation which is affiliated for administrative purposes to the Federal Department of Justice and Police (FDJP). It began operating when the Gaming Act came into force on 1 April 2000. The Gaming Act regulates gambling for money, licensing, operation and the taxation of casinos.

When the Gaming Act came into force, Switzerland had no actual casino with table games such as roulette or black jack. Only the new Act made it possible to issue licences to operate the "Grand Jeu". Prior to that, the SFGB's main activity had been to check and assess licence applications. Great attention was paid to the risk of casinos being used by money launderers as the good reputation, the guarantee of an irreproachable business activity and the legitimate origin of funds could be checked very carefully. The first casino to obtain a definite licence started operating at the end of June 2002. The latest development is that the opening of the 21st casino is planned for autumn 2003. The SFGB's focus will now shift to supervisory activities.

4.1.2 Tasks

As with the SFBC the SFGB's remit consists of monitoring casinos' compliance with the legal provisions. This consists mainly of the following:

- Surveillance of the management and gaming operation of casinos
- Casinos' compliance with obligations under the Money Laundering Act
- Implementation of security and social policy in casinos.

In the frame of its security concept, the casino must indicate with which measures it will ensure compliance with the Money Laundering Act. The security concept must also demonstrate how unauthorised operations and incidents can be detected timely.

In addition the SFGB Secretariat carries out its own criminal checks relatg to breaches of the Gaming Act. The Board is the judging authority under Swiss administrative criminal law. Proceedings are mainly directed against illegal gaming taking place out of casinos.

5 Surveillance of casinos

5.1 Supervision by the SFGB

The SFGB directly supervises casinos and carries out its own on-site inspections. As part of its tasks it may nominate the auditor to carry out specific assignments.

Casinos must by law have their accounting audited each year by a financially and legally independent auditing body. The nominated auditor must produce a concluding report as part of this audit. The auditor then submits the audit report to the SFGB. As part of this audit the auditor has to comment on the suitability of the casino's agreed measures to prevent criminal behaviour in general and to combat money laundering in particular.

Alongside this, the SFGB will also monitor compliance with the Money Laundering Act and the provisions of the Gaming Act as part of their on-site inspections.

5.1.1 SFGB sanctions

As part of its supervisory role, the SFGB may ask casinos, trade and manufacturing concerns with gaming facilities and their audit agencies for the necessary information and documentation. In the event of breaches of the Gaming Act or other such abuses, the Board can implement the necessary measures for restoring the appropriate legal conditions and eliminating the abuses. It can order the implementation of precautionary measures for the duration of the investigation such as the suspension of the operating licence. Legal proceedings can in serious cases lead to a restriction or withdrawal of the licence.

5.2 The SFGB as a special supervisory authority in the field of money laundering

The Money Laundering Act assigns the supervisory authorities instituted through a special law the task of elaborating detailed texts relating to the due diligence duties for financial intermediaries audited by them. Consideration can then be given to due diligence provisions of self regulating nature.

A self regulating organisation organised by the Swiss Casino Association has been in existence since 1999. In view of the fixed licences for casinos, the SRO existing regulations were completely revised with a view to ensuring that the regulations, organisation and supervisory and training programmes met the standard of the self regulating organisation recognised by the Control Authority. The SRO has been in constant contact with the SFGB. The Board was able to give its approval to the SRO SCA regulations in June 2002.



The Money Laundering Reporting Office Switzerland: Organisation, Role, and Activities

1 Organisation of the Money Laundering Reporting Office Switzerland (MROS)

1.1 Creation of MROS: 1998

The Law on the Prevention of Money Laundering in the Financial Sector (Money Laundering Act) entered into force on 1 April 1998 thereby introducing for the first time into Swiss Law the obligation to report¹ to complete the former right of notification enshrined in the Swiss Penal Code². While the latter merely invited financial intermediaries to report any suspicion of money laundering to the criminal prosecution authorities, the new Money Laundering Act drafted in 1997 made it an obligation under the sanctions of law for financial intermediaries to report their reasonable grounds to suspect money laundering to MROS (The Money Laundering Reporting Office Switzerland).

Attributed upon its creation with a four-member staff hailing from the world of finance, MROS was allotted an additional two members in 2002, and plans are to increase the staff to a total of eight within the year 2003. Taking into account the substantial increase in the number of incoming reports (see section 6) along with the diverse categories of financial intermediaries who are affected by the obligation to report, MROS has with the passage of time included into its ranks the know-how of specialists from among the prosecuting authorities, the banking sector, insurance institutions, and the legal profession.

¹ Art. 9 MLA.

² Art. 305^{ter} Penal Code, in force as of 1 August 1994.

MROS is part of the Services Division of the Federal Office of Police within the Federal Department of Justice and Police. This organizational incorporation, however, vests it neither with the status of a prosecuting authority, nor with that of the police. Instead, it assures MROS the status of independence, as was the lawmakers' intention. Thus, within this structure, it is designated as an administrative authority whose role is that of a hub between financial intermediaries and the criminal prosecution authorities.

1.2 The Three Pillars within the Federal Office of Police for the Combat of Money Laundering

As of 1 January 2002, new competencies were conferred upon the Swiss Confederation in terms of white-collar crime, organized crime, and money laundering. In function with this, the Federal Office of Police established an appropriate structure based on three distinct pillars:

- The Money Laundering Reporting Office
- The Federal Criminal Police / Money Laundering Division
- The Analysis and Prevention Service.

The Money Laundering Division within the Federal Criminal Police is in charge of investigating cases of money laundering under the auspices of the Swiss Attorney General's Office. Divided into nine commissariats, it comprises a staff of 25 members.

The Analysis and Prevention Service, already existing before the 1 of January 2002, now boasts experts in criminology who have been tasked with analyzing the money-laundering phenomenon and establishing typological paradigms to facilitate the work of all those authorities engaged in the combat of money laundering.

2 The Processing of Reports within Five Days

2.1 The Chronological Order

To enhance procedural efficiency and rapidity, a form has been placed at the disposal of financial intermediaries at the MROS website³. It is an absolute requirement that this questionnaire be filled out. It facilitates the integral processing of a report without subsequently having to importune the financial intermediary for additional information. The report will be first forwarded by fax and then confirmed by surface mail.

³ www.admin.ch/bap.

The processing of a report is conducted within the extremely limited time frame of five working days set down in the Law⁴. The financial intermediary is obliged to freeze the assets linked to his report from the moment that he has notified MROS. Once the deadline of five working days has elapsed, the financial intermediary is authorized to free the assets, as long as he has not received a legal injunction to freeze.

This implies that MROS must ensure that the report is processed, i.e., that a decision is made – should it prove necessary – to transmit the report for follow up to the criminal prosecution authorities, within a suitable lapse of time (between three and four days). The latter, in turn, undertake a routine assessment of the facts and notify the financial intermediary of any eventual legal injunction to freeze.

This first step impacts on all further actions undertaken. At the same time, they serve to portray the efficacy of the anti-money-laundering measures which Switzerland has deployed.

The operations involved in processing a report begin with pertinent research, including consultation of the following databases:

- VOSTRA criminal records
- RIPOLE wanted persons
- AUPER requests for international assistance in criminal matters
- JANUS organized crime

in order to verify whether or not there is any information on record concerning the persons and companies mentioned in the report of the financial intermediary. Should it be deemed useful, MROS also consults public-domain databases such as Reuters and Dun & Bradstreet.

All of the reports received are entered into a specific database managed by MROS which goes by the name of GEWA. The same holds true for any requests for information sent to MROS by its international counterparts⁵, as well as the verdicts pronounced by Swiss courts with respect to money laundering cases.

Should it happen that the report contains even one or several references to connections abroad, for instance the nationality of the persons or the domicile of the companies implicated, not to mention events related to the money laundering which took place abroad, MROS's status as a member of the Egmont⁶ Group enables it to question its foreign colleagues.

⁴ Art. 10 MLA.

⁵ See section 3 below.

⁶ See section 3 below.

2.2 Reasonable grounds to suspect

One of the principal characteristics of Swiss legislation on money laundering is the requirement that there exist reasonable ground to suspect money laundering⁷ as a condition – by means of a report to MROS - for the initiation of a criminal investigation.

This condition is fulfilled either right from the start based on the facts contained in the financial intermediary's report, or at a later point as a function of the results obtained by MROS from its analysis of the facts and consultation of databases. It may also be the result of the two happening simultaneously.

The notion of “reasonable grounds to suspect” is not a legally completely defined notion. Its interpretation is left to the criminal prosecution authorities. This is the reason why MROS bases its decision to transmit a report upon the analysis conducted and the indications accumulated, leaving to the criminal prosecution authorities the task of establishing the formal proof of money laundering. In case of doubt, the decision to transmit prevails over that of dropping the matter.

2.3 Filing the Report in the Database

In the event that the report together with the analysis and the research carried out by MROS are unable to substantiate the suspicion, the report is filed away after having been entered into the GEWA database (approximately 10 to 15% of reports received are not passed on to the prosecuting authorities). It is essential that all of the individual elements of a closed case be included into the database since this will make it possible, should need arise, to review the decision to close the matter and to revive the case if, later on, new elements should emerge in connection with another case or with the receipt of a tip coming in from any of the authorities.

2.4 Transmission to the Prosecuting Authorities

With the advent of new articles in the Criminal Code vesting the Confederation with enhanced authority with respect to money laundering and organized crime⁸, MROS forwards to the Attorney General's Office (Public Prosecutor) some 40 to 50% of the reports it receives. Previously, all reports had been transmitted to the cantonal prosecuting authorities by virtue of the rules of jurisdiction.

⁷ Art.9 MLA.

⁸ Art. 340^{bis} Penal Code, in force as of 1 January 2002.

The implementation of the various criteria in terms of attribution of competence is discussed at regular meetings held between MROS and the Attorney General's Office.

It is important to point out that if the competence of an authority to which MROS has submitted a report is later denied, the same authority remains nonetheless obliged to take the first steps regarding seizure, namely a court order to freeze the assets, before declining jurisdiction for a given case.

3 MROS: Financial Intelligence Unit (FIU)

As mentioned above, considering the international dimension of Switzerland's financial center, the phenomenon of money laundering often reveals a cross-border aspect. This explains why MROS, being the Swiss Financial Intelligence Unit (FIU), must cooperate closely with its foreign counterparts. Lawmakers have provided a legal basis⁹.

The different national FIUs are united within an international meeting forum called the Egmont Group comprising 69 members. MROS represents Switzerland in Egmont, participating in the plenary meetings as well as in the special working groups¹⁰.

The nature of the information transmitted via a protected network are only related to money laundering. The disclosure of information exchanges can take place only if the FIU which transmitted the information has mentioned its expressed agreement. In 2001, this privileged information channel enabled MROS to reply to requests of foreign FIUs concerning approximately one thousand persons and companies. This information network is very important for MROS in performing its task. The network is in constant expansion as, little by little, new States join up in the combat of money laundering by creating their own FIUs.

4 Typology of Money Laundering

4.1 National Typology

The prosecuting authorities are obliged to inform MROS of all investigations pending in connection with money laundering and organized crime and provide judgements and dismissal for lack of evidence¹¹.

⁹ Art. 32 MLA.

¹⁰ Such as the legal working group and the "outreach working group".

¹¹ Art. 29 para. 2 MLA.

This information is then entered into the GEWA database, thus placing at the disposal of MROS an overall survey of the money-laundering phenomenon in Switzerland.

At present, MROS has – in cooperation with the cantonal prosecuting authorities – undertaken to update the data contained in the database so as to be able to produce a complete situation update on verdicts and procedures underway.

4.2 International Typology

As a member of the Financial Action Task Force on Money Laundering (FATF), Switzerland also participates in the annual workshops on typology organized by the typology working group. MROS, as a member of the Swiss delegation to FATF, plays an active role in developing typology models based on its own experience, and in this same way has access to the contributions which other members make in the field of money-laundering typology.

5 MROS and the Phenomenon of Terrorism

Above and beyond those assets proceeding from crime, the obligation to report also targets those assets over which a criminal or terrorist organization¹² exercises the power of control.

In this way, at the time the 11 September 2001 events took place in the United States, Switzerland already disposed of a legal framework obliging financial intermediaries to notify MROS about the existence of assets being held by terrorists or destined to serve as funding for terrorist acts.

Taking into consideration the fact that the Federal Public Prosecutor had initiated criminal proceedings within the context of these terrorist attacks, all of the reports received from financial intermediaries were transmitted to this Authority. Here are some statistics on the notifications received in 2001 in relation to the events of 11 September:

- a) Source of the reports (financial intermediaries concerned):
 - transfer of payments 35%
 - banks 34%
 - asset managers 25%
- b) Total amount frozen at the moment of reporting: 37 million francs.

¹² Art. 260^{ter} section 1 Penal Code.

6 Evolution and Trends

6.1 Volume of Reports

While the yearly increase in the number of reports statistically represented something close to 5 % during the initial phase of MROS operation, ever since 2001 the increase registered has been quite significant:

- 1999 303 reports
- 2000 311 reports
- 2001 417 reports (+34%).

Notwithstanding the fact that the significant number of reports received in 2001 was in a large part due to reports relating to terrorism (95 reports), the manner in which reports have been progressing during the first nine months in 2002 (reports already exceeding 400 in number) confirms the tendency observed in 2001.

This evolution is the result of raised awareness on the part of financial intermediaries with respect to the combat of money laundering.

6.2 Banking and Non-banking Sectors

While the banking sector remains in the lead in terms of the number of reports¹³, the proportion in relation to the non-banking sector is tending to decrease¹⁴.

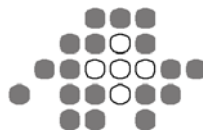
Reports sent in by financial intermediaries from the non-banking sector are on a significant up-rise¹⁵, a trend which is eloquently backed up by the provisional statistics for 2002. Payment-transfer service-providers (+13%) and asset managers (+9,1%) have contributed particularly to such increase. During the first half of 2002, the former's share of reports grew even further, notably in connection with the services of Western Union furnished by the Swiss Post and the Swiss Federal Railways.

This observation leads to the assertion that, as opposed to the banking sector whose experience in combating money laundering dates back to over 20 years, financial intermediaries hailing from the non-banking sector have been slowly but surely making the anti-money-laundering norms their own. Their ever-growing participation in implementing the Law on Money Laundering can indeed be looked on as source of gratification.

¹³ 233 reports in 2001.

¹⁴ 75,2% of the reports in 2000 came from banks, vs. 61,2% in 2001.

¹⁵ 99 reports in 2001, vs. 77 in 2000.



Statistical Information¹

Of the 12 Self-Regulating Organisations (SRO) recognised by the Control Authority, 7 are sector-related, 3 are general SRO, the others are the SRO Swiss Post and the SRO Swiss Federal Railways SBB.

Affiliated / authorised financial intermediaries in the non-banking sector:

– SRO affiliations (as of 31st August 2002):	6244
– Authorisations granted by the Control Authority ² :	149
– Applications for authorisation pending at the Control Authority:	168

Approximate subdivision of financial intermediaries according to sector³:

– Asset Management:	34%
– Fiduciaries:	29%
– Attorneys and Notaries:	24%
– Financial Planning and All Finance:	8%
– Bureaux de Change:	2%
– Distributors of shares in Investment Funds:	1%
– Other:	2%

Liquidation of illegally operating financial intermediaries by the Control Authority: 3.

Auditors accredited by the Control Authority: 84. A new accreditation procedure has been in operation since 9th September 2002.

Audits carried out by the Control Authority :

– SRO audits:	8
– Market supervision audits:	35
– Audits of intermediaries directly authorised by the Control Authority:	30

Personnel: 25 full time jobs, all filled.

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- ¹ If not otherwise mentioned, the numbers refer to the status as of 30th September 2002.
- ² Of the 894 applications submitted to the Control Authority since the start of 2000, 577 applications were settled (parallel applications / giving up of financial intermediation / non-professional financial intermediation). 168 applications are currently under examination whereby approximately 90 applications will be granted authorisation. In the case of approximately 60 dossiers open questions as to the applicability of the MLA or other questions have to be clarified before a decision can be taken on authorisation.
- ³ In view of the fact that categorisation of the Self-Regulating Organisations has not been standardised these figures are only approximate.



SFBC: statistical information

Number of financial intermediaries subject to the MLA supervision of the SFBC (source: SFBC 2001):

- Banks: 375
- Securities dealers: 71
- Fund management companies 48

Total value of securities and fiduciary investments held at Swiss banks (source: SFBC 2001): CHF 3,300 million.

Total number of savings and investment accounts at Swiss banks (source: *The banks in Switzerland 2001*, Table 20.4, Swiss National Bank): 19.495 million.

Total number of staff in SFBC's Secretariat (as at 1 September 2002): 123, with approximately 46 members of staff involved in AML monitoring

Number of persons employed by banks in Switzerland (source: *The banks in Switzerland 2001*, Table 51, Swiss National Bank): 120,414.

Statistical data from the insurance sector

Supervisory activity in the insurance sector

Of the total premium volume of just over CHF 50 billion, CHF 30 billion relate to life insurance policies. Of this in turn CHF 20 billion are relevant for supervisory purposes aiming at combating money laundering.

In 2001, 30 companies in Switzerland were conducting life insurance business (of which 2 had their head office abroad). In respect of the battle against money laundering, the Federal Office of Private Insurance supervises directly 3 companies; the Self Regulating Organisation of the Swiss Insurance Association (SRO-SIA) supervises the others.

SRO-SIA

Reporting

The duty of reporting of the members under the regulations serves to check fulfilment of the duties of care by the member companies. In 2001 all member companies complied with their reporting duty.

Statistics

In 2001 the specialist offices within the companies received 121 notifications (number in the previous year not reported) in accordance with Art. 9 para 3 of the SRO regulations (reports of irregularities by company employees).

In 64 cases (2000: 61) of dubious behaviour the specialist offices felt obliged to carry out in-depth investigations in accordance with Article 6 MLA. A total of 6 (2000:3) reports to the money laundering reporting office Switzerland were made.

Statistical information

Number of staff at SFGB Secretariat	32
Number of casinos under supervision per 31.10.02	8
per 2003	21
Number of “recognised” audit firms	8
Gross gambling revenue 2001 (in millions CHF)	300
Taxes on casinos 2001 (in millions CHF)	100
Number of casinos employees per 2003	about 2,100



MROS Statistics 2001 (2000)

Total Number of Reports	417 (311)
Number sent to Prosecuting Authorities	380 (240)

Category of Financial Intermediary:

Banks	255 (234)
Payment Transfer Services (Swiss Post)	55 (33)
Fiduciary / Trust Companies	33 (17)
Investment Counselors, Asset Managers	38 (12)
Insurance Institutions	6 (2)
Law Firms	9 (7)
Currency Exchange Bureaus	2 (1)
Credit Card Companies	7 (2)
Casinos	8 (2)
Other	4 (1)

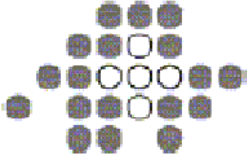
Total Amount (in CHF) of Financial Assets linked to the Reports: 2.7 bln (655 mln)

Geographic Origin of the Reports:

Zurich	32% (40%)
Geneva	32% (26%)
Bern	15% (13%)
Ticino	9% (7%)
Other	12% (14%)

Weblinks

BIS	e	www.bis.org
FOPI	d,f,i,e	www.bpv.admin.ch
SFBC	d,f,e	www.ebk.admin.ch
Federal Authorities	d,f,i,e	www.admin.ch
SFGB	d,f,i,e	www.esbk.admin.ch
EU	d,f,i,e	www.europa.eu.int
FATF	f,e	www.fatf-gafi.org
IMF	d,f,e	www.imf.org
Control Authority	d,f,i,e	www.gwg.admin.ch
MROS	d,f,i,e	www.bap.admin.ch/d/themen/geld/i_index.htm
SBA	d,f,e	www.swissbanking.org
CC	d,f,i	www.admin.ch/ch/d/sr/sr.html



Eidg. Finanzverwaltung EFV
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<http://www.efv.admin.ch>

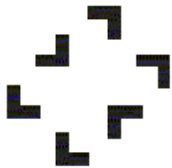
Kontrollstelle GwG
Autorité de contrôle LBA
Autorità di controllo LRD

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<http://www.gwg.admin.ch>



Eidgenössische Bankenkommision EBK
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Commissione federale delle banche CFB
Swiss Federal Banking Commission SFBC

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Eidgenössische Spielbankenkommission ESBK
Commission fédérale des maisons de jeu CFMJ
Commissione federale delle case da gioco CFCG
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fedpol.ch
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