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Media Release

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Embargo

Banking Commission issues money laundering ordinance for consultation

The Swiss Federal Banking Commission (SFBC) releases to the public a draft money laundering ordinance, drawn up by a mixed working group. The draft calls for stricter clarification obligations in order to prevent money laundering and the financing of terrorism as well as more detailed due diligence regulations in dealing with assets held by politically exposed persons. It takes due consideration of the current state of play with regard to the international debate on the issues.

July 8, 2002 - The draft money laundering ordinance issued today for consultation by the SFBC was drawn up by a mixed working group comprising representatives of banks, securities dealers, auditors, criminal and supervisory authorities and headed by SFBC Vice-Director Urs Zulauf. The draft is based on the Money Laundering Act and calls for stricter obligations of due diligence for banks and securities dealers compared with current guidelines on combating and preventing money laundering (SFBC circular 98/1). The changes are based on the experiences acquired by the SFBC in connection with the Abacha and Montesino cases. The main changes include:

- the systematic recording of – new and existing – business relationships presenting higher reputational risks
- comprehensive and more in-depth investigations into these business relationships and
- electronic monitoring of transactions.

Further investigations into business relationships with increased reputation risks

Taking a risk-oriented approach, the draft does not require banks and securities dealers to carry out in-depth investigations of all clients – including millions of small clients. It will be enough to adhere to the identification rules, which require compliance with the minimum standards set by the Swiss Bankers Association (Agreement on the Swiss Banks' Code of Conduct with regard to the Exercise of Due Diligence, CDB 98), as recognized by the SFBC.
However, banks and securities dealers are now required to investigate in greater depth the higher-risk business relationships. To this end they must develop risk categories

against which new and existing business relationships can be assessed and record those with increased risk. The criteria for defining risk categories set out in the draft include the client's residence, business activity or type of transaction, the amount of assets held, inflows and outflows of funds, and the country or origin and destination of regular payments. When investigating business relationships presenting higher risks, banks or securities dealers must not be satisfied with information provided by the clients or by their representatives but must check these relationships on the basis of inquiries and publicly available sources.

Obligations of due diligence in dealing with assets held by PEPs

The above-mentioned investigations will also serve to record previously unknown business relationships with politically exposed persons (PEPs). Once they have been identified as such, PEP relationships must be dealt with in accordance with existing regulations, i.e. the senior management must not only take the relevant decisions with regard to these relationships but also monitor them regularly.

Systematic and electronic monitoring of transactions

The draft also requires banks and securities dealers to systematically monitor transactions which stand out due to their size or type in order to identify those with increased risks. If they do not already do so, financial intermediaries will have to use electronic monitoring systems for this purpose. As introducing the relevant software is costly, an appropriate transition period is allowed for.

Combating the financing of terrorism

The Swiss system for combating money laundering also allows for the detection of transactions and assets of terrorist origin and report them to the responsible authorities. The Money Laundering Act stipulates that the Money Laundering Reporting Office must be called in as soon as a financial intermediary has reason to believe that a criminal organization, as defined by the Criminal Code, is exercising power of disposition over assets. As the draft ordinance – like the recently published announcement by the Federal Council on the implementation of the UN Convention on the Financing of Terrorism – equates terrorist organizations with criminal organizations, any bank or securities dealer investigating an unusual transaction that discovers a link to a terrorist organization, to terrorism or to the financing of terrorism, must report their suspicions immediately to the Money Laundering Reporting Office. This also applies if the client is on a list of persons and organizations suspected of terrorist activities.

Global monitoring of reputation risks

With the aim of combating money laundering and the financing of terrorism the draft ordinance requires international finance groups registered in Switzerland to record, limit and monitor reputational risks globally. If necessary, the monitoring unit of the group's head office must have access to the business relationships of all group companies in Switzerland and abroad. However, centrally held client databases are not necessary.

Consultation procedure

The draft of the money laundering ordinance is now being sent to the participating associations for consultation. The consultation procedure will last until the end of September 2002, then the SFBC will seek to push through the ordinance by the end of the year and implement it by mid-2003 – at the same time as the agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence which is to be revised by the Swiss Bankers Association.

Position of the Banking Commission

The Swiss Federal Banking Commission considers the working group's draft to be a sound basis for combating money laundering, the financing of terrorism and dealing with politically exposed persons. The proposals meet current international standards and are thus already stricter – in some cases considerably so – than valid rules in other key financial centers. However, the Banking Commission feels that the money laundering ordinance could be even stricter in some areas. It therefore requires that greater weight be given to the personal meeting between the financial intermediary and the client. With regard to this and other requirements for effectively combating money laundering, the Banking Commission calls upon the consultation partners to make their position clear.

Additional information for the media

Duties of the SFBC in the fight against money laundering

The SFBC is required to ensure that the institutions under its supervision adhere to the obligations set down in the Money Laundering Act. If they do not comply with the legal provisions or guidelines for combating and preventing money laundering (SFBC circular 98/1), the SFBC can take regulatory measures against individual governing bodies and, for example, ban them from performing duties and assuming responsibilities of a similar nature in the banking sector. If the SFBC identifies organizational weaknesses with regard to the compliance activities of institutions under its supervision, it instructs them to correct these weaknesses as soon as possible under close supervision. If the obligation to exercise due diligence is systematically violated and if there is a serious lack of organization, which is not rectified, the SFBC may take away the institution's licence.

Links

- Draft of the **SFBC Money Laundering Ordinance** by the Know Your Customer (KYC) Working Group:
  http://www.ebk.admin.ch/e/regulier/consult.htm

- **Report** of the KYC Working Group:
  http://www.ebk.admin.ch/e/regulier/consult.htm

- **Position of the SFBC** on the draft by the KYC Working Group:
  http://www.ebk.admin.ch/e/regulier/consult.htm

- **Abacha Report** (Abacha money at Swiss banks):
  http://www.ebk.admin.ch/e/archiv/2000/neu14a-00.pdf

- **Montesinos Communiqué** of 13 November 2001:
  http://www.ebk.admin.ch/e/archiv/2001/m1113-01e.pdf