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Ordinance of the Swiss Federal Banking Commission Concerning the Prevention of Money Laundering (SFBC Money Laundering Ordinance, MLO SFBC)

dated 18. December 2002

The Federal Banking Commission hereby issues the following Ordinance
based on Article 16 (1) and Article 41 of the Swiss Money Laundering Act of 10 October 1997¹.

1. General provisions

Art. 1 Definitions

In this Ordinance the following terms shall have the following meanings:

- a. Politically exposed persons:
 1. the following persons holding prominent public positions abroad: heads of state or of government, senior politicians on the national level, senior government, judicial, military or party officials on the national level, or senior executives of state-owned enterprises of national importance;
 2. Individuals or undertakings identified as having close family ties or personal or business connections to the aforementioned persons.
- b. Professional banknote dealers: non-banking institutions (individuals or undertakings) either within or outside Switzerland, which are engaged in buying and selling banknotes and earn significant income or revenues from such activity.
- c. Terrorist organizations: criminal organizations as defined under Article 260ter of the Swiss Penal Code².

¹ SR 955.0

² SR 311.0

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- d. Group companies: companies that pursuant to Capital Adequacy Regulations are included in the consolidated financial statements of a financial intermediary, as defined in Article 2 (1).

Art. 2 Scope

¹ This Ordinance applies to financial intermediaries as defined in Article 2 (2) (a), (b) and (d) of the Swiss Money Laundering Act ("Money Laundering Act")³, except for fund managers where responsibility for discharging the duties laid down in this Ordinance and the Money Laundering Act⁴ lies with the custodian bank.

² The Banking Commission may monitor any Swiss group company of a financial intermediary as defined in subparagraph 1, at its request, with respect to its compliance with the duties laid down in this Ordinance, provided that :

- a. It carries on a financial activity as defined under Article 2 (3) of the Money Laundering Act;
- b. It satisfies the conditions set out in Article 14 (2) of the Money Laundering Act;
- c. It acknowledges the Banking Commission's ability to take action against it, pursuant to Articles 19 and 20 of the Money Laundering Act;
- d. the Group undertakes to monitor compliance with the rules laid down in this Ordinance and to take action to enforce such rules;
- e. the Group undertakes to ensure that its external auditors verify compliance with this Ordinance and that they give an opinion in the Group auditor's report on each individual group company audited.

³ The Banking Commission publishes a list of group companies placed under its regulatory control in accordance with subparagraph 2 above.

Art. 3 Branch offices and group companies abroad

¹ Financial intermediaries shall ensure that their branch offices or group companies abroad, which operate in the financial sector, comply with the basic principles laid down in this Ordinance.

² They are obliged to inform the Banking Commission where:

- a. local regulations prevent compliance with the basic principles laid down in this Ordinance, or;
- b. they would suffer a serious competitive disadvantage as a result.

³ The reporting of suspicious transactions or business relationships as well as any freeze on assets shall be governed by the rules and regulations of the host country.

³ SR 955.0

⁴ SR 955.0

2. Basic principles

Art. 4 Bar on accepting the proceeds of corruption or other crimes

¹ Financial intermediaries are not permitted to accept assets that, they know, or are expected to know, are the proceeds of criminal activities, even if committed outside Switzerland.

² The proceeds of criminal activities include in particular any assets obtained through corruption, embezzlement of public funds, abuse of an official function, or dishonest dealings by a public officer.

³ The negligent acceptance of assets derived from criminal activity may cause financial intermediaries to no longer meet the fit and proper requirement.

Art. 5 Bar on business relationships with criminal and terrorist organizations

Financial intermediaries are not permitted to maintain business relationships with any individuals or undertakings which, they know, or are expected to know, constitute a terrorist or criminal organization, or which are affiliated to, or support or finance such an organization.

Art. 6 Relationships with correspondent banks

¹ The provisions of this Ordinance also apply to correspondent banking relationships.

² Financial intermediaries shall not maintain any business relationship with banks that do not maintain a physical presence in the country under the laws of which they were established, unless they are part of a financial group subject to effective consolidated supervision.

3. Organizational measures

Art. 7 Higher risk business relationships

¹ Financial intermediaries shall formulate criteria to identify business relationships which involve higher legal or reputational risks.

² Depending on the type of operations conducted by the financial intermediary, the following criteria may be of particular relevance:

- a. the registered office, permanent place of residence, or nationality of the contracting partner and beneficial owner;
- b. the nature and location of the business activities conducted by the contracting partner and beneficial owner;
- c. the absence of personal contact with the contracting partner and beneficial owner;

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- d. the type of services or products requested;
 - e. the importance of the assets deposited;
 - f. the importance of incoming and outgoing funds;
 - g. the countries from which or to which frequent payments are made.

³ Business relationships with politically exposed persons shall always be deemed to involve higher risk.

⁴ Financial intermediaries shall identify any business relationships involving higher risk in accordance with subparagraphs 2 and 3 and label them as such for internal use.

Art. 8 Higher risk transactions

¹ Financial intermediaries shall formulate criteria for detecting transactions which involve increased legal or reputational risks.

² Depending on the type of operations conducted by the financial intermediary, the following criteria may be of particular relevance:

- a. the importance of incoming and outgoing assets;
- b. any significant divergence from the type, volume or frequency of transactions that would be normal in the context of the business relationship;
- c. any significant divergence from the type, volume or frequency of transactions that would be normal in comparable business relationships;

³ The following transactions shall always be deemed to involve higher risks,

- a. the physical deposit of assets exceeding CHF 100,000 in value, at the commencement of a business relationship, either involving a single or a series of deposits;
- b. transactions for which Indicators of Money Laundering are present (Schedule).

Art. 9 Global management of legal and reputational risks

¹ Financial intermediaries which have branch offices located outside Switzerland, or which control a financial group with non-Swiss group companies, are required to identify, mitigate and monitor the legal and reputational risks associated with money laundering or the financing of terrorism, on a global basis.

² Such financial intermediaries shall ensure that:

- a. the group's internal control bodies and external auditors are able to access information concerning specific business relationships in all group companies if needed. The creation of a centralized database of contracting partners and beneficial owners or a centralized access to local databases is not required;
- b. group companies supply to the Group's competent bodies the information necessary for the global management of legal and reputational risks.

³ If any financial intermediary notices that there is a bar or serious impediment to accessing information on contracting partners and beneficial owners in certain countries, on legal or practical grounds, it shall inform the Banking Commission without delay.

⁴ Financial intermediaries forming part of a financial group, either from Switzerland or abroad, shall allow the Group's internal control bodies and external auditors to access any information which may be required concerning specific business relationships, provided that such information is essential for the management of legal and reputational risks on a global basis.

Art. 10 Internal anti-money laundering directives

¹ Financial intermediaries shall adopt internal directives concerning the prevention of money laundering and communicate them to all client advisors and any other relevant staff.

² Such directives shall set out:

- a. The criteria to be applied in identifying business relationships which involve higher risk as defined in Article 7;
- b. The criteria which must be applied in detecting transactions which involve higher risk as defined in Article 8 (1) and (2);
- c. The procedures for identifying, mitigating and monitoring such increased risks;
- d. The basic principles of the transaction monitoring system described in Article 12;
- e. The situations in which the internal anti-money laundering body must be consulted and the senior executive body notified;
- f. The basic principles of staff training;
- g. The corporate policy on politically exposed persons;
- h. The responsibility to file reports to the Money Laundering Reporting Office;
- i. The threshold amounts referred to in Article 7 (2) (e) and (f) and Article 8 (2) (a).

³ Directives shall be adopted by the board of directors or senior executive body.

Art. 11 Staff training

Financial intermediaries shall be responsible for providing regular training to client advisors and any other relevant staff on aspects of money laundering prevention which are of relevance to them.

Art. 12 Transaction monitoring system

¹ Financial intermediaries shall be responsible for setting up effective procedures for monitoring transactions and shall operate computer systems to facilitate the detection of higher risk transactions, as defined in Article 8 (1), (2) and (3) (a).

² Transactions identified by such a monitoring system must be analysed within a reasonable period of time. If necessary, additional investigations shall be carried out in accordance with Article 17.

³ Financial intermediaries with few contracting partners, beneficial owners or transactions may forgo the use of a computerized monitoring system, provided that their external auditors are instructed to carry out an in-depth special annual assessment of the monitoring of transaction.

Art. 13 Internal anti-money laundering body

¹ Financial intermediaries shall appoint one or more qualified individuals as part of their anti-money laundering bodies. Such bodies shall advise and assist line managers and the senior executive body in implementing this Ordinance without relieving them from their respective responsibilities.

² The internal anti-money laundering body is responsible for

- a. preparing internal anti-money laundering directives;
- b. monitoring the implementation of internal anti-money laundering directives in line with internal and external auditors and line management;
- c. planning and overseeing internal anti-money laundering training;
- d. defining the parameters for the transaction monitoring system described in Article 12;
- e. initiating the analysis of information generated by the transaction monitoring system;
- f. initiating additional investigations in accordance with Article 17, or conducting its own investigations;
- g. ensuring that the executive body responsible for making decisions regarding the commencement or continuation of business relationships in accordance with Article 22 (1) is supplied with any information necessary to take such decisions.

³ Financial intermediaries, while remaining liable, may also appoint external experts to execute the tasks of the internal anti-money laundering body, where :

- a. they are not in a position to appoint their own body due to their size or organizational structure; or
- b. the creation of such a body would be inappropriate.

4. General due diligence obligations

Art. 14 Verifying the identity of contracting partners and establishing the identity of beneficial owners

¹ All financial intermediaries are bound to comply with the provisions dealing with the verification of the identity of the contracting partner and identification of the beneficial owner laid down in the "Agreement on the Swiss Banks' Code of Conduct With Regard to the Exercise of Due Diligence" of 2 December 2002 (CDB 2003) made between the Swiss Bankers Association and the banks.

² Any breach of CDB 2003 may cause financial intermediaries to no longer meet the fit and proper requirement.

Art. 15 Originator information on wire-transfers

¹ In case of cross-border wire-transfers, financial intermediaries are required to include the name, account number and domicile, or the name and an identification number.

² Financial intermediaries may forgo to indicate such information for legitimate reasons, for example in the case of recurring payments. Such reasons must be investigated and documented.

Art. 16 Professional banknote dealing

¹ Professional banknote trading may only be undertaken with banknote dealers which satisfy the requirements of a trustworthy correspondent bank relationship.

² Prior to commencing any business relationship, financial intermediaries are required to make enquiries into the nature of the business conducted by the banknote dealer and seek a commercial information and references.

³ Financial intermediaries shall set revenues and credit limits for their professional banknote dealing activities globally and for each counterparty. Financial intermediaries shall review the limits set at least once a year and monitor compliance to such limits on an ongoing basis.

⁴ Financial intermediaries which engage in professional banknote dealing shall issue directives in relation thereto, which must in principle be adopted by the senior executive body.

5. Enhanced due diligence obligations

Art. 17 Additional investigations in case of higher risk

¹ Financial intermediaries shall take measures proportional to circumstances to carry out additional investigations into business relationships or transactions involving higher risk.

² Depending on the circumstances, certain enquiries must be made, among others:

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- a. whether the contracting partner is the beneficial owner of the assets deposited;
 - b. the origin of the assets deposited;
 - c. the purpose of withdrawals of assets;
 - d. the rationale for large deposits;
 - e. the provenance of the assets of the contracting partner and beneficial owner;
 - f. the occupation or business activity of the contracting partner and beneficial owner;
 - g. whether the contracting partner or beneficial owner is a politically exposed person;
 - h. in the case of legal entities: who controls such entities.

Art. 18 Means of Investigation

¹ Depending on the circumstances, investigations shall include, among others:

- a. obtaining information in written or oral form from the contracting partner or beneficial owner;
- b. visits of the places of business of contracting partner and beneficial owner;
- c. consultation of publicly accessible sources and databases;
- d. information from trustworthy individuals, where necessary.

² Any investigations shall respect the privacy of the individual concerned.

³ Financial intermediaries shall review the results of the investigations carried out with a view to their plausibility and keep records of such investigations and their results.

Art. 19 Delegation of additional investigations to third parties

¹ Financial intermediaries may appoint individuals or undertaking to carry out additional investigations under written agreement, provided that the financial intermediary concerned

- a. ensures that such party exercises the same due diligence in carrying out its investigations as would be exercised by the financial intermediary itself;
- b. issues specific instructions to such party regarding the duties delegated;
- c. is in a position to verify that such investigations are carried out with due diligence.

² The party appointed shall not be permitted to further delegate the concerned duties.

³ Records relating to investigations carried out must be left with the financial intermediary.

⁴ Financial intermediaries shall review the results of the investigations carried out with a view to their plausibility.

Art. 20 Timing of additional investigations

As soon as it becomes evident that a business relationship entails higher risk, financial intermediaries shall initiate the additional investigations required and complete such investigations as quickly as possible.

Art. 21 Commencement of business relationships involving higher risks

No business relationship which involves increased risk may be commenced without the approval of a person or body of a superior level of authority.

Art. 22 Responsibilities of the most senior executive body

¹ The most senior executive body, or at least one of its members, shall be responsible for making decisions:

- a. regarding the commencement, and on an annual basis the continuation of business relationships with politically exposed persons;
- b. on initiating regular reviews of all business relationships involving higher risk and monitoring and evaluating such relationships.

² Financial intermediaries engaged in extensive asset management operations and with multilevel hierarchical structures may assign such responsibilities to the management of a business unit.

6. Record-keeping requirements

Art. 23 Availability of information

Financial intermediaries are required to set up a record-keeping system which would enable them to inform and supply the relevant documents to the prosecuting authorities, or any other competent authority, within a reasonable period of time and to provide information on undertakings or individuals who:

- a. are the contracting partners or beneficial owners;
- b. have carried out a cash transaction necessitating identification of the person concerned;
- c. have a permanent power of attorney over an account or custody account, unless such power of attorney is recorded in a public register.

7. Course of action in case of indications of money laundering activity or connections to terrorist organizations

Art. 24 Filing a report at commencement of the business relationship

If a financial intermediary terminates negotiations aimed at concluding business relationship because of substantiated reasonable grounds to suspect money

laundering activity or links with a terrorist or other criminal organization, it shall report the matter to the Money Laundering Reporting Office promptly.

Art. 25 Links with terrorist organizations

Where the investigation of the background of an unusual transaction reveals links to a terrorist organization, the financial intermediary shall report the matter to the Money Laundering Reporting Office promptly.

Art. 26 Course of action to be taken in the absence of any decision by the authorities

If the financial intermediary has not received any official order authorizing it to continue freezing the assets, within the statutory limit of five working days after filing a report with the prosecuting authorities, it may decide at its discretion whether, or under what conditions, it wishes to continue the business relationship.

Art. 27 Dubious business relationships and the right to file a report

¹ Financial intermediaries which have no clear evidence for suspecting money laundering activity, but have information suggesting that assets are derived from criminal activities, are entitled to file a report with the prosecuting authorities and the Money Laundering Reporting Office, based on the reporting right conferred by Article 305^{ter} (2) of the Swiss Penal Code⁵.

² In case of business relationships involving significant assets, financial intermediaries shall specifically assess whether to exercise their right to report and document the outcome of such assessment.

Art. 28 Terminating dubious business relationships

¹ If a financial intermediary terminates a dubious business relationship without filing a report because of the absence of specific evidence justifying suspicion of money laundering activity, it may only permit withdrawal of large amounts of assets in a form which would allow the prosecuting authorities to track such funds by means of a paper trail.

² Financial intermediaries may not terminate a dubious business relationship, or permit the withdrawal of substantial amounts of assets, if there are concrete indications that action by the authorities to impound the assets is imminent.

Art. 29 Continuation of dubious business relationships

Where a financial intermediary decides to continue a dubious business relationship, it shall monitor such relationship carefully and assess whether any indicators of money laundering are present (Schedule).

⁵ SR 311.0

Art. 30 Informing the Banking Commission

Financial intermediaries shall inform the Banking Commission of any business relationship involving significant assets, which have been reported to the Money Laundering Reporting Office, or if, given the circumstances, there are reasons to believe that the events giving rise to such report could affect the reputation of the financial intermediary and that of the financial center.

8. Audit review

Art. 31 Review by external auditors

The external auditors of the financial intermediary or the group company subject to the supervision of the Banking Commission in accordance with Article 2 (2), shall monitor the compliance with the provisions of this Ordinance and give opinions regarding such matter in the auditors report.

9. Final provisions

Art. 32 Transitional provisions

¹ Financial intermediaries shall satisfy the requirements stipulated in Articles 3, 6 to 13, 15 and 17 to 22 of this Ordinance by 30 June 2004. The Banking Commission may extend this period upon request and provided that legitimate reasons are shown.

² Financial intermediaries are required to identify internally all existing business relationships presenting higher risks by 30 June 2004. As a general principle, financial intermediaries may rely on current data and are not required to analyse transactions retrospectively.

³ The transaction monitoring systems described in Article 12 of this Ordinance must cover transactions carried out after 30 June 2004.

⁴ Financial intermediaries are required to submit an action plan and timetable to their external auditors for review and report to the Banking Commission by 30 September 2003.

⁵ In their auditor's report for the financial year 2004, external auditors shall

- a. describe the ways in which financial intermediaries have implemented this Ordinance;
- b. comment on whether such measures satisfy the requirements of this Ordinance.

⁶ Group companies which are carrying on a business, as defined in Article 2 (3) of the Swiss Money Laundering Act⁶, on the date on which this Ordinance takes effect,

⁶ SR 955.0

and wish to be regulated by the Banking Commission pursuant to Article 2 (2) of this Ordinance, or are already subject to its control by reason of Banking Commission Circular 98/1, shall file a motivated request with the Banking Commission by 30 September 2003. Applications may be made centrally by the financial group.

Art. 33 Entry into force

This Ordinance takes effect on 1 July 2003.

Schedule: Indicators of Money Laundering

For and on behalf of the Swiss Federal
Banking Commission

Chairman: Kurt Hauri

Director: Daniel Zuberbühler

Schedule: Indicators of Money Laundering

I. Significance of indicators

A1

The indicators for potential money laundering activity set out below are primarily intended to raise awareness among the staff of financial intermediaries. These indicators enable identification and the reporting of higher risk business relationships or transactions. A single indicator may not in itself be sufficient grounds for suspecting that a illegal money laundering transaction has been carried out, but the existence of more than one such factor may be indicative of money laundering activity.

A2

The plausibility of the client's explanations regarding the background to such transactions must be assessed. In this connection, it is important that explanations provided by the client (e.g. by citing tax or exchange regulations as reasons) are not necessarily accepted at face value.

II. General indicators

Particular money laundering risks are inherent in transactions

A3

– where the structure indicates some illegal purpose, their commercial purpose is unclear or appears absurd from a commercial point of view;

A4

– involving a withdrawal of assets shortly after funds have been deposited with the financial intermediary (pass-through accounts), provided that the instant withdrawal of such assets cannot be accounted for on the basis of the client's business activity;

A5

– where the client's reason for selecting this particular financial intermediary or branch to carry out its transactions is unclear;

A6

– resulting in significant, but unexplained, activity on an account which was previously mostly dormant;

A7

– which are inconsistent with the financial intermediary's knowledge and experience of the client and the stated purpose of the business relationship.

A8

Clients who supply false or misleading information to financial intermediaries,

or refuse for no credible reason to provide information and documents which are required and routinely supplied in relation to the relevant business activity, must be treated with suspicion.

A8bis

There may be grounds for suspicion if a client regularly receives transfers of funds from a bank domiciled in a country deemed to be uncooperative by the Financial Action Task Force (FATF), or makes repeated transfers to such a country.

III. Specific indicators

1. Over the counter transactions

A9

The exchange of a large amount of small-denomination banknotes (foreign and domestic) for large-denomination banknotes;

A10

The exchange of large amounts of money without crediting a client account;

A11

Cashing cheques for large sums, including travellers' cheques;

A12

The purchase or sale of large amounts of precious metals by occasional clients;

A13

The purchase of banker's drafts for large amounts by occasional clients;

A14

Instructions to make a transfer abroad by occasional clients, without apparent legitimate reason;

A15

The execution of multiple cash transactions just below the threshold for which client identification is required;

A16

The acquisition of bearer instruments by means of physical delivery.

2. Bank accounts and custody accounts

A17

Frequent withdrawals of large amounts of cash which cannot be explained by reason of the client's business;

A18

Use of loan facilities that, while normal in international trade, is inconsistent with the known activity of the client;

A19

Accounts through which a large number of transactions are routed, though such accounts are not normally used, or only used to a limited extent;

A20

The structure of the client's business relationships at the bank lacks a logical rationale (large number of accounts at the same bank, frequent transfers between accounts, excessive liquidity, etc.);

A21

Provision of security (pledges, guarantees) by third parties unknown to the bank, who have no obvious affiliation to the client and who have no credible and apparent reasons to provide such guaranties;

A22

Making transfers to another bank without supplying details of the beneficiary;

A23

Accepting funds transferred from other banks when the name or account number of the beneficiary or remitter has not been supplied;

A24

Repeated transfers of large amounts of money abroad with instructions that the sum be paid to the beneficiary in cash;

A25

Transfers of large amounts, or frequent transfers, to or from countries producing illegal drugs;

A26

Providing surety bonds or bank guarantees by way of security for third party loans, which have not been agreed on market terms;

A27

A large number of different individuals make cash deposits into a single account;

A28

Unexpected repayment of a non-performing loan without any credible explanation;

A29

Use of pseudonym or numbered accounts to carry out commercial transactions for trading, manufacturing or industrial concerns;

A30

Withdrawal of funds shortly after these have been credited to the account (pass-through account).

3. Fiduciary transactions

A31

Fiduciary loans (back-to-back loans) for which there is no obvious legal purpose;

A32

The holding of shares in unlisted companies in a fiduciary capacity, where the bank has no knowledge of the business conducted by such companies.

4. Other

A33

Client tries to evade attempts by the financial intermediary to establish personal contact.

IV. Indicators giving rise to particular suspicion

A34

Client requests accounts to be closed and to open new accounts in his own name, or in the name of a family member, without leaving a paper trail;

A35

Client requests receipts for cash withdrawals or deliveries of securities which in effect never took place, followed by the immediate deposit of such assets at the same bank;

A36

Client requests payment orders to be executed with incorrect remitter's details;

A37

Client requests that certain payment be routed through nostro accounts held by the financial intermediary or sundry accounts instead of its own account;

A38

Request by the client to accept or record in the accounts loan collateral which is inconsistent with commercial reality, or grant fiduciary loans for which notional collateral is recorded in the accounts.

A39

Client of financial intermediary has been prosecuted for a criminal offence, corruption or misuse of public funds.