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Recipient	Secretary, Public Company Accounting Oversight Board
Sender	Walter Hess, Secretary General, and Reinhard Oertli, Member of the Committee on Oversight over Accounting Firms and Chairman of the Subcommittee on Oversight over Accounting Firms by U.S. Authorities

PCAOB Release No. 2006-004, *Proposed Rules on Periodic Reporting by Registered Public Accounting Firms* (PCAOB Rulemaking Docket Matter No. 019) and
PCAOB Release No. 2006-005, *Proposed Rules on Succeeding to the Registration Status of a Predecessor Firms* (PCAOB Rulemaking Docket Matter No. 020)

Also by e-email: comments@pcaobus.org
PCAOB
Office of the Secretary
Mr. J. Gordon Seymour
1666 K Street, N.W.
Washington, D.C. 20006-2803
U.S.A.

Dear Mr. Seymour

The Swiss Institute of Certified Accountants and Tax Consultants (the "Institute") appreciates the opportunity to submit its general comments to the U.S. Public Company Accounting Oversight Board ("PCAOB") regarding the rules proposed in PCAOB Release No. 2006-004, ***Proposed Rules on Periodic Reporting by Registered Public Accounting Firms*** (PCAOB Rulemaking Docket Matter No. 019) and in PCAOB Release No. 2006-005, ***Proposed Rules on Succeeding to the Registration Status of a Predecessor Firms*** (PCAOB Rulemaking Docket Matter No. 020, both rules proposed therein the "Proposed Rules") by which the PCAOB proposes a system for updating the registration of registered public accounting firms periodically or after the occurrence of certain special events.

In our five previous letters to the PCAOB and the SEC dated March 27, 2003, July 2, 2003, August 18, 2003, January 20, 2004, and January 26, 2004 (collectively the "Letters"), we have provided comments as to how the Sarbanes-Oxley Act of 2002 (the "Act") and the registration, inspection and investigation system for foreign public accounting firms affects and will affect our members. Furthermore, in the Letters we highlighted areas where the PCAOB's proposed rules conflict with Swiss law.

We also refer to

(i) a copy of the relevant portion of the conflicting Swiss law;

(ii) a legal opinion issued by Baer & Karrer, attorneys-at-law, and dated April 15, 2004, that submitting the information would cause the applicant to violate the conflicting non-U.S. law; and

(iii) an explanation of the Swiss accounting firms' efforts to seek consents or waivers to eliminate the conflict, if the withheld information could be provided to the Board with a consent or a waiver, and a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict

(collectively the "Attachments"), that were submitted together with Form 1 as attachments 99.2 (i), (ii) and (iii) by the Swiss public accounting firms in the course of their initial registration.

We consider the Letters and Attachments to be integral parts of this submission, as many of our comments made herein repeat or refer to issues discussed in the Letters and/or the Attachments.

When dealing with conflicts of law, we refer to Swiss law as the law that applies to the majority of situations. We note, however, that several of the Swiss registered accounting firms are licensed to provide audit services in the Principality of Liechtenstein. We refer in that regard to the legal opinion provided by Marxer & Partner Rechtsanwälte, dated April 23, 2004, as submitted by certain Swiss public accounting firms in the course of their initial registration. In special circumstances, the laws of other jurisdictions may also be applicable. Thus any reference to Swiss law below should be taken as Swiss and/or for any other applicable non-U.S. law.

All capitalized terms used herein and not otherwise defined shall have the meaning as described in the Rules.

A. General Comments

We appreciate the reporting framework the PCAOB lays out in the Proposed Rules for registered accounting firms to update the information provided by them upon registration; the reporting would occur both on an annual basis and upon occurrence of certain events, and we support the general approach set out in the Proposed Rules.

This being said, we are of the opinion that the Proposed Rules do not take sufficiently into account the constraints and risks that Swiss registered public accounting firms are exposed to due to their being subject to two (or more) legal systems, with the ensuing risk of conflicting legal requirements between these jurisdictions. We have referred before to the substantial and concrete risk that a Swiss registered accounting firm, by complying without limitation to the information requests imposed by the Act and by the Rules and Forms issued by the Board, could be exposed to civil and criminal liability for violation of auditor's secrecy, banking and stock exchange and securities traders' secrecy, confidentiality obligations imposed by general penal law (violation of manufacturing or business secrets), company law and contract law, data processing law, employment law, the prohibition to commit illegal acts for a foreign state, economic espionage or similar public policy limitations imposed by Swiss or other applicable laws.

The Proposed Rules and forms also appear to deviate in several ways from principles set forth in the Rules applying for registration of non-U.S. accounting firms, and, more specifically, to

require more information from and grant less consideration to the specific situation of registered non-U.S. accounting firm than when these firms initially registered. We trust and assume that no substantial deviation from the registration Rules was intended, and that the PCAOB will continue to honor and reciprocate the willingness of the Swiss registered accounting firms to apply the principle of cooperation within the limits set by applicable law.

B. Main Topics of Concern regarding the Proposed Rules

The chief topics of concern to us are the following:

I. Limitation of Possibility to Assert Legal Conflicts
II. Limitation of Possibility to Claim Confidential Treatment
III. Insufficient Notification Period

I. Limitation of Possibility to Assert Legal Conflicts

There should be no limitations on information that can be withheld based on legal conflicts so long as the conflict can be supported. As outlined by us on several occasions, Swiss law prohibits disclosure of sensitive information not already publicly known, whereby in most circumstances consent by the issuer client does not cure the problem fully. It should suffice for the Swiss registered accounting firm to comply with proposed Rule 2207 with regard to the assertion of conflicts with non-U.S. laws, so as not to be exposed to civil and criminal liability for violation of Swiss laws.

II. Limitation of Possibility to Claim Confidential Treatment

There should be no absolute limitations on confidential treatment requests for certain types of information, as information that is proprietary and/or subject to applicable laws relating to the confidentiality of proprietary, personal or other information should be able to be kept confidential, so long as the requirement for confidentiality can be supported, in reliance on Section 102(e) of the Act.

III. Insufficient Notification Period

Forms 3 and 4 provide for a notification period of fourteen days after the occurrence of certain events. This notice period may be too short for verifying the necessary facts. Furthermore, this period will limit the time and possibility to obtain the consent and waiver of the issuer client and other third parties involved, a legal opinion and other evidence accompanying the assertion of a legal impediment or a confidentiality request as required in Proposed Rule 2207.

C. Comments to PCAOB Release No. 2006-004 and Forms 2 and 3

I. Rule 2203. Special Reports

The PCAOB proposes in its proposed Rule 2203 a period of fourteen days after the occurrence of certain events. Such period is extremely short and we are concerned that in more complex cases this timeframe would not allow for proper collection of the required information, verification, conclusive assessment of implications, and information to the Board in the form requested.

Within the same timeframe, the firm would have to seek consents from issuer clients and other persons affected and obtain copies of applicable laws and a legal opinion, what we expect will be necessary in many circumstances.

We have highlighted earlier that general consents obtained from clients in advance and without connection to a specific instance may not be valid under Swiss law, since such consents could only be given in a form that would be too general to cover a particular case that may come up much later and involving questions that were not contemplated at the time the consent was given.[1] In addition further consents of third parties with whom the accounting firm does not have any direct contacts may be necessary. Also, administration, updating and assuring completeness of such consents would be an unreasonable administrative burden for Swiss registered accounting firms, given the number of issuer clients including their subsidiaries and other third parties potentially affected.

In particular, the foreign public accounting firm must have available a legal opinion (proposed Rule 2207 (c) (3)) before submission of a Form 2 or Form 3. Such legal opinion must be focused on the particular case in question and must be current. Therefore, such legal opinion can only be prepared after the occurrence of an event. The instruction of the lawyer and the drawing up of the opinion will normally take more than fourteen days.

We propose either a longer notification period (*e.g.*, 45 days), or a staggered notification process, with an initial notification period during which the registered accounting firm would have to provide basic information only (in particular that a specific event occurred), followed by a subsequent notification period during which the registered accounting firm would have to provide details of the event, legal opinion, copies of applicable laws, etc.

Rule 2300 (a) (2) enables the Board to ignore the request for confidential treatment, if the firm requesting the confidential treatment fails to provide additional information on the background of the request. To mitigate consequences of technical failures or omissions during process of filing a form, we recommend – in the case that a request for confidential treatment is made, but no or insufficient supporting material is submitted – that the Board set a short timeframe for the firm to submit the missing supporting material to cure such omission.

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[1] We refer to item 65 page 31 of the Swiss legal opinion filed together with the initial registration documents.

II. Rule 2207. Assertion of Conflicts with Non-U.S. Laws

We note and agree with the fact that the new proposed Rule 2207 does not contain a *per se* limitation of items for which legal conflict cannot be asserted.

While most of the areas the Board identifies in item IV.C of PCAOB Release No. 2006-004, Page 21, are not likely to present problems, we respectfully ask the Board to avoid creating any possibility of a conflict which might arise, *e.g.*, under Part IV, item 4.1 of Form 2, Parts III and IV of Form 3, or Part IV, item 4.2 of Form 4, by omitting the respective limitation from the instructions with respect to the three proposed forms.

III. Rule 2300. Public Availability of Information Submitted to the Board; Confidential Treatment Requests

As stated above, we view an absolute exclusion of confidential treatment requests for certain types of information not to be in compliance with Section 102(e) of the Act, provided the Swiss registered accounting firm provides the detailed and valid explanations as requested in proposed Rule 2300 para. (c)(2).

While most of the areas the Board identifies in item III of PCAOB Release No. 2006-004, Pages 16-17, are not likely to present problems, we respectfully ask the Board to avoid negative consequences for the registered accounting firms by treating as non-confidential all confidential information provided as part of the proposed forms (*e.g.*, also under Parts III and IV of Form 2, or Parts III, IV and V of Form 3, or Part IV of Form 4).

IV. Rule 4000. General

It has been outlined on several occasions that the Swiss registered accounting firms may not provide information the provision of which would violate Swiss (and/or other applicable) laws. Some of this information may be able to be inspected, once the Swiss Accounting Oversight Act (the "AOA") has come into force, by the Swiss Accounting Oversight Authority, which may make it available to the PCAOB through the mechanism of international assistance and information exchange, as further outlined in the AOA. Until that time, inspections by the PCAOB may be carried out in coordination with and through the channels established with the Swiss Federal Government for exchange of information by using the traditional means of judicial and administrative assistance.

V. Form 2 – Annual Report Form

(1) Part III Item 3.2

This would be proprietary information of the registered Swiss Accounting firm, for which it should be allowed to ask for confidential treatment.

(2) Part IV Item 4.1

The requirement to identify each report issued during the reporting period appears to be an excessive burden on registered firms that audit a large number of issuers or audit large issuers that have extensive audit needs. The information requested here is already known and available to the PCAOB through the SEC reporting system and publicly known through the electronic SEC Filings & Forms system EDGAR.

We understand that the focus of the Proposed Rules should be oversight over accounting firms, and not duplication of oversight over issuers, what could lead to conflicts and frictions.

(3) Part VII Item 7.1 Certain Sanctioned Individuals and Item 7.2 Individuals Connected With Certain Sanctioned Firms

As a consequence of Swiss employment law, under certain circumstances the names of such employees cannot be provided to the PCAOB. This is generally true in all situations where the connection between the name of the person and the sanction is not already publicly known. Consent of the employee to such disclosure would not cure the situation, since it may be invalid or insufficient under Swiss law.

This requirement goes beyond what had been requested in Form 1, where the questions in items 5.1.a.(3), for foreign registered accounting firms, were limited to any applicant and any proprietor, partner, principal, shareholder, officer, or manager of the applicant who provided at least ten hours of audit services for any issuer during the last calendar year, whereas items 7.1 and 7.2 ask for information on all persons, irrespective of whether they were personally involved in the sanctioned behavior (item 7.2), and irrespective of whether they have been or will be involved in the provision of audit services to issuer clients. We do not understand the reason for this extension of the reporting requirement, and do not consider it warranted, given the fact that within the registered Swiss accounting firms, a large number of partners and employees are engaged in audit services for non-issuers, or in non-audit services.

(4) Part VII Item 7.4 Certain Arrangements to Receive Consulting or Other Professional Services

Item 7.4 requires the Swiss registered accounting firms to indicate details on arrangements to receive consulting or other professional services with third parties meeting certain criteria. This requirement in our opinion should be limited to arrangements relating to audit services, and should have a materiality threshold, so as to spare the registered accounting firms from making statements on arrangements that have no impact, or only a minimal impact, on their providing

audit services. The requirement pursuant to the form as proposed would lead to an administrative burden on the Swiss registered accounting firms that does not seem justified.

(5) Part IX Item 9.1.a Affirmation of Understanding of, and Compliance with, Consent Requirements

As in the course of the initial registration, Swiss public accounting firms may not be able to give the requested affirmations. We refer to the legal opinion of April 15, 2004 and the cover letter submitted by the Swiss public accounting firms together with their Form 1, which highlight in detail that complying with the affirmation would expose the Swiss registered accounting firm to civil and criminal liability for violation of auditor's secrecy, banking and stock exchange and securities traders' secrecy, confidentiality obligations imposed by general penal law (violation of manufacturing or business secrets), company law and contract law, data processing law, employment law, the prohibition to commit illegal acts for a foreign state, economic espionage or similar public policy limitations imposed by Swiss or other applicable laws. Also giving the affirmation could be subject to penal sanctions as a preparatory measure. We point out once again that client consents sought and obtained in advance would not cure the situation fully, since they might be invalid and could not serve as basis of reliance for the Swiss registered accounting firms when complying with the affirmation.

(6) Part IX Item 9.1.b Securing Consents from Associated Persons

We take this opportunity to draw your attention to the fact that consents from associated persons would be subject to (at least) the same limitations as would be the consent that could be given by the Swiss registered accounting firm. The Proposed Rules, in the same way as the registration Rules with regard to the consent in Form 1, do not provide for an alteration of the wording of the affirmation, but allow the Swiss registered accounting firm to withhold the consent for legal conflict reasons. This should not, however, alter anything with respect to the willingness of the Swiss registered accounting firms and their associated persons to cooperate and comply with the Board to the extent permitted by Swiss and other applicable laws.

We also draw your attention to the fact that making such consent a condition for continued employment may not in all circumstances be compatible with Swiss employment law.

VI. Form 3

(1) Part II

Several items of this Part II refer to the registered accounting firms becoming aware. It should be made clear that an accounting firm is deemed to be aware once the persons responsible for reporting requirements have become aware of the details of the facts and persons involved, and have had the opportunity to inspect and verify the facts internally, assuming of course an appropriate internal controlling and reporting structure and everybody's acting with all due efficiency and speed. Knowledge of the person whose acts or omissions are subject to the reporting requirement should clearly not be considered awareness on the part of the firm.

(2) Part II Item 2.5 through 2.8 and Part V Item 5.1

This requirement goes beyond what had been requested in Form 1, where the questions in items 5.1.a.(2) and 5.1.a.(3) were limited to proceeding in connection with an audit report, and for foreign registered accounting firms only with regard to an applicant and any proprietor, partner, principal, shareholder, officer, or manager of the applicant who provided at least ten hours of audit services for any issuer during the last calendar year, whereas item 2.8 asks for information on all persons, irrespective of whether the behavior that is subject to the relevant proceeding relates to audit services, and items 2.6 and 2.8 would apply irrespective whether the relevant persons have been or will be involved in the provision of audit services to issuer clients. We do not understand the reason for this extension of the reporting requirement, and do not consider it warranted, given the fact that within the registered Swiss accounting firms, a large number of partners and employees are engaged in audit services for non-issuers, or in non-audit services.

We also take this opportunity to highlight that Swiss employment law would not allow employees of Swiss registered accounting firms to be asked for information that would not relate to their ability to provide audit services, and would not allow this information to be provided for an employee of a Swiss registered accounting firm except where all of the facts are already publicly known (*cf.* item C.V(3) above).

(3) Part II Item 2.11 and 2.12

This would require the consent of third parties, who are under no obligation to provide their consent.

(4) Part II Item 2.14 and 2.15

We understand this requirement to relate to licenses that have been granted to the registered accounting firms only, to the exclusion of licenses granted to individual partners or employees, as is presently the case in Switzerland. (The AOA, upon its coming into force, will set in place a uniform system of licenses being granted to accounting firms.) The PCAOB should additionally consider asking for this information only as part of the annual registration process *in lieu of* within 14 days of obtaining the license.

(5) Part III Item 3.1 Withdrawn *audit reports* and consents

The withdrawal of an audit report may be information that cannot be provided under Swiss law, irrespective of the consent of the issuer client, unless the issuer client has complied with the respective SEC reporting requirements or the withdrawal and the facts surrounding it have otherwise become publicly known. Where the issuer client has not complied with the respective SEC reporting requirements, there will most likely be a dispute situation, where client consent would not be available, and the Swiss accounting firm should be able to assert a legal conflict on that ground.

We understand that the focus of the Proposed Rules should be oversight over accounting firms, and not duplication of oversight over issuers, what could lead to conflicts and frictions.

Furthermore, the Swiss registered accounting firms must be permitted to submit a confidentiality request unless the fact has become publicly known.

(6) Part IV Item 4.1 Unauthorized Use of Firm Name

Any act of unauthorized use of the name of an accounting firm is most likely to occur in a dispute situation, where client consent would not be available.

Furthermore, the Swiss registered accounting firms must be permitted to submit a confidentiality request unless the fact has become publicly known.

(7) Part VI Item 6.1 New Relationship with Person Subject to Bar or Suspension

We refer to what has been said above to Item 7.1 of Form 2 (Clause C.V(3)).

(8) Part VII Certain Relationships

This requirement should be limited to persons who are providing services related to audit reports.

D. Release No. 2006-005 and Form 4

I. Form 4

(1) Part III Item 3.2.a.1.

If the predecessor firm has to file a request for leave to withdraw from registration on Form 1-WD before the acquisition or combination has become effective, there may be a registration "gap" for one of the predecessor registered firms as they would need to apply to withdraw their registration prior to legally combining with the new registered entity (unless withdrawal could be made effective upon the closing of the transaction). It should be possible to make the request of withdrawal contingent upon the closing and non-revocation of the transaction. Alternatively, it should be possible for the succeeding firm to make this request for withdrawal on the behalf of the predecessor firm between the date of the combination and the 14 day filing date; or to make a statement similar to the one in item 3.2.b.

(2) Part III Item 3.2.b.

This may not be practical in those cases where none of the persons that were members of the predecessor registered firm becomes a member of the new firm.

(3) Part III Item 3.2.e.1 in combination with Item 3.2.f

In connection with the reference to items 5.1.a or 5.2.a of Form 1, we refer to the fact that a "no" answer could not be given by a Swiss accounting firm, since in principle Swiss employment law prohibits it from collecting the necessary information in an encompassing way.

Furthermore, in a transaction involving a party which is not a registered public accounting firm that, if registering with the PCAOB, would have to give a positive response to questions 5.1.a or 5.2.a, the requirement that the resulting firm has to re-register with a complete Form 1 appears to be overly punitive, particularly for large registered accounting firms that combine with smaller firms. It would seem to be more appropriate to impose a special filing requirement that relates to the disciplinary history or civil proceedings only, *i.e.*, that is limited to items 5.1 and/or 5.2 of Form 1.

The answer to this question should also be able to be subject to a confidentiality request, since it may allow third parties to draw conclusions that could expose the firm or its associated persons to liability claims, or an increased risk of such claims.

(4) Part IV Item 4.1 Continuing Consent to Cooperate

We refer to what has been said in items C.V(5) and C.V(6) above with regard to Form 2.

(5) Part IV Item 4.2 Continuing Responsibility for Previous Conduct

It should be made clear that this affirmation related to reporting, testimony and document production obligations towards the PCAOB (insofar as not conflicting with Swiss and other applicable laws), but does not relate to civil or criminal liability for acts of the predecessor firm except insofar as such liability is explicitly transferred and assumed by way of contract or law (other than the Act and the Rules issued thereunder). It is not the intention of the Act, and cannot be the intention of the PCAOB, to increase the liability exposure of accounting firms.

E. Conclusions

We trust that the Board will take into consideration the concerns that arise from the special situation of non-U.S. registered accounting firms, both with regard to the items referred to above and as part of its general policy, and refrain from imposing any requirements that would increase and accentuate the exposure to conflicts between the different legal regimes that are applicable to them.

This is even more warranted in a situation where the AOA has been approved by both houses of the Swiss Parliament and is expected to enter into force in 2007.

We appreciate this opportunity to express the continuing interest of our members to work towards a well balanced reporting and registration system, and look forward to continuing discussions with the PCAOB regarding these matters. The goal should be to establish a reporting framework that achieves our common goal on the basis of the principles set forth in the Proposed Rules, but gives all due consideration to the conflicting legal requirements to which Swiss registered accounting firms are exposed, and allows for the necessary coordination with the Swiss authorities, in particular with the Swiss Oversight Authority once the AOA has come into force.

Respectfully submitted,

Swiss Institute of Certified Accountants and Tax Consultants

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Dr. Reinhard Oertli
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