Swiss Institute of Certified Accountants and Tax Consultants

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Recipient: Office of the secretary, PCAOB

Sender: Andreas Müller, Chairman, Walter Hess, General Secretary

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Subject: **PCAOB Rulemaking Docket Matter No. 001**

Comments to proposed Rules 1000, 1001, 2100 through 2105, 2300, and Form 1

PCAOB
Office of the Secretary
Attn. Mr. Gordon Seymor, Acting General Counsel
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We refer to the PCAOB Release No. 2003-1 dated March 7, 2003 that has been proposed by the Public Company Accounting Oversight Board ("PCAOB" the or your "Board") on March 4, 2003 with regard to its plan for a registration system for public accounting firms under the Sarbanes Oxley Act of 2002 (the "Act"). Therein you invite interested parties to submit comments in writing to the proposed PCAOB Rules 1000, 1001, 2100 through 2105 and 2300 (the "Rules") and the PCAOB Form 1 (the "Form"). In addition, you invite our comments to a series of questions relating to the registration of foreign public accounting firms (the "Questions").

We appreciate the opportunity to comment on the Rules and the Form and respond to the Questions on behalf of the Swiss Institute of Certified Accountants and Tax Consultants (the "Institute"), the organization, among others, of the Swiss accounting industry. The membership of the Institute comprises approx. 900 corporations and 4,500 individuals of various business sizes.

Of our members, the accounting firms referred to as the "Big Four" and a series of others will be affected by the Act. In their role as foreign public accounting firms issuing audit reports for issuers, or as accounting firms that play a substantial role in the preparation or furnishing of audit reports, they would be required to register under the Act, or as associated persons of a public accounting firm, they would have to give the required consents (all terms used in these comments and defined in the Act or the Rules are used with the meaning as so defined).

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I. Shared spirit and intentions

Our Institute fully supports the spirit and intentions that underlay the Act. In fact our Institute has been instrumental in implementing a system of auditor independence and quality control in Switzerland that is similar to the one to be instituted under the Act, and is presently actively engaged in consultations with the Swiss Federal Government regarding the current efforts to put in place a Swiss accounting oversight legislation. Our Institute is doing this with the goal to assure adherence by Swiss accounting firms to auditing standards regarding methodology, quality, ethical standards, personal and institutional independence, and compliance with all applicable laws in a way that is coherent with and equivalent to the standards and goals pursued by your Board and the Commission under the Act.

While we support in principle registration under and adherence to the Act by our members, we can only recommend that they do so if the Act is being implemented with regard to them in a way that allows them to continue to respect the laws of Switzerland. Otherwise , they would be exposed to conflicts and deadlocks that are not warranted by the spirit and intentions of the Act.

II. Conflicts between the obligations imposed bythe Act and Swiss law

Unless the necessary exemptions are granted, the obligations imposed by the Act, as implemented by the Rules and the Form on foreign public accounting firms will potentially cause serious, without such exemptions irresolvable conflic ts with Swiss law, in particular and without limitation regarding the following provisions (unofficial English translations attached for your convenience):

(1) Violation of secrecy obligations

(a) Swiss Penal Code ("SPC") Article 321: Violation of Professional Secrecy

Article 321 SPC protects information that accountants have acquired when acting under the secrecy obligation of Article 730 Swiss Code of Obligations ("SCO"). The criminal and penal secrecy obligation covers any information gathered in an auditing and assurance function with regard to an audited client and any third parties. Thus to allow disclosure of audit work papers and other related information to the Board or the Commission or any other third party, the consent of the audited company, and also of any third parties affected would be required insofar as secrets of such third parties are concerned. In practice, it would appear highly unlikely that such third party consents could be obtained.

(b) SPC Article 162 Violation of Production and Business Secrets

Article 162 covers information gained by an accounting firm in the course of assignments other than and outside of its audit assignment. The same principles and concerns apply as regarding SPC Article 321 (*cf.* section II(1)(a) above).

(c) Banking Act ("BA") Article 47: Banking Secrecy, and Federal Act on Stock Exchanges and Securities Trading ("SESTA") Article 43: Professional Secrecy Obligations of Securities Traders

The Articles of the BA and the SESTA protect the relationship between a bank or securities trader and its clients. As such, the Articles of the BA and the SESTA protect the related confidentiality interests of the audited banks that are issuers, and of their clients.

Again, in order to permit access and disclosure of work papers and information to the Board and the Commission, consent of the audited issuer bank and of any third parties affected would be required.

(2) Violation of public interest laws

(a) SPC Article 273 Economic Espionage

Article 273 SPC renders it an offense to make a production or business secret accessible to a foreign organization. It protects all of the elements of Swiss economic life for which there is an interest of non-disclosure to foreign public officials or private organizations.

Para. 1 of Article 273 SPC would apply to and penalize any investigative activity conducted by agents of your Board, the Commission and any other foreign authority within Switzerland as well as to any person facilitating access to such secrets.

(b) SPC Article 271 Illegal Acts in Favor of a Foreign State

A Swiss accounting firm that permits an inspection or investigation of its files in Switzerland by representatives of the Board, the Commission, or any other foreign public authority, or collects information from third parties in Switzerland and sends this information to a non-Swiss auditing firm in order for this information to be made accessible to the Board, may be found guilty of violation of Article 271 SPC.

We have to assume that activities conducted by your Board and its agents, or by a Swiss public accounting firm in assisting such activities, would be considered to fall under this provision, because the qualification of the Board as a private entity pursuant to Sec. 102(b) of the Act would not change the inherent public nature of its activities.

(c) Data Protection Act ("DPA")

Personal data may not be transferred to the Board (without the explicit consent of the persons concerned) since it declares in advance that it will not treat the data confidentially (*cf.* Section 105(b)(5)(B) of the Act). For personal, highly sensitive data, as would be required in answering Part V of the Form (see section IV (5) To Part V below), consent of the persons concerned would be required in any circumstance. While we expect that consent of the audit client can be obtained, audit work papers may contain personal data of third parties whose consent may practically not be obtainable.

(3) Conclusion regarding conflicts with Swiss law

Although we are not in a position to give a final interpretation of Articles 271 and 273 SPC as they relate to disclosure of and granting access to work papers or other information in favor of the Board or rendering testimony before the Board, we could not recommend to our members to subject themselves unconditionally to the Act without these issues being clarified.

In addition, distinguishing between information and documents which would require third party consents for production to your Board and information and documents that would not, may be difficult, and it is unlikely that such third party consents could be obtained where necessary.

In our opinion, any Swiss public accounting firm that subjects itself to the inspection and investigation powers of the Board runs into a direct conflict with Swiss law and as a result exposes itself to criminal penalties and civil actions for damages that could put its very existence in peril.

This conflict is a matter of great concern to the entire accounting industry in Switzerland as well as to the Swiss Governmental Authorities. We trust that the Board and the Commission understands these concerns and will work with the Swiss Government and the Swiss accounting industry to find ways and means to implement the spirit and intentions of the Act while removing or minimizing the effects of any potential conflict with Swiss law.

III. Swiss legislation regarding accounting standards

(a) Present Swiss legislation

(i) Listing Rules of SWX Swiss Exchange

Issuers registered with SWX Swiss Exchange must appoint accounting firms registered with the SWX, whereby registration is granted upon request and is conditioned upon the respective accounting firm's agreement to become subject to the sanctioning rules and powers of the SWX. For violations of duties under the listing rules, sanctions can be imposed on the

auditors, *e.g.* reprimanding, replacement of the responsible accountant, imposing a fine, revocation of registration, publication of the violation and the sanctions imposed. Most Swiss issuers registered with the SEC have a primary listing with the SWX, and as such the oversight of the SWX applies to practically all of the Swiss accounting firms auditing issuers.

(ii) Swiss Statute on Banks and Savings Institutions

Audits of banks and savings institutions licensed to do business in Switzerland must be carried out by authorized bank auditors. The Swiss Federal Banking Commission ("SFBC") grants these authorizations and exercises an oversight over authorized bank auditors. Authorization to audit banks in Switzerland is granted by the SFBC if the auditors meet several conditions regarding, *e.g.*, adequate organization, reputation of management and auditors in charge, independence from the audited banks and the banking business in general. Most of the accounting firms auditing issuers registered with the SEC or Swiss subsidiaries of issuers in Switzerland are also registered bank auditors, so that this oversight by the SFBC over authorized bank auditors assures adherence to the respective standards over practically all of the Swiss public accounting firms affected by and subject to the registration and consent requirements of the Act.

(b) Envisaged Swiss legislation

Talks are under way between representatives of the private sector and the Swiss Government regarding a Swiss public accounting oversight system, involving legislation as basis for a Swiss accounting oversight board (the "Swiss PCAOB") and a mechanism that assures the application of a set of accounting standards regarding, *e.g.*, quality, ethical standards and independence. It is too early to set forth any details of the envisaged legislation and the position, duties and powers of the Swiss PCAOB within the envisaged accounting oversight system.

In these discussions, our Institute is guided by the following ideas:

(i) The Swiss public accounting oversight system will be aimed at assuring standards and principles for the Swiss accounting industry that are similar, in many ways identical, and in all instances at least equivalent to those of the Act;

(ii) the Swiss PCAOB will be independent of the accounting industry;

(iii) the Swiss PCAOB will have duties and powers necessary and appropriate to implement and enforce the standards and principles of the respective Swiss legislation; and

(iv) one of the tasks of the Swiss PCAOB will be to act as the counterpart of your Board and the Commission in an ongoing dialogue and interplay.

The details of all of this would need to be worked out.

Without giving due consideration to the equivalence of U.S. and Swiss legislations and to the necessity of a dialogue and interplay between oversight authorities, however, we believe that Swiss applicants would face a system of double oversight that would very likely result in conflicting requirements for and double jeopardy to them to the detriment of the Swiss accounting industry and the Swiss issuers, and without any benefit to the U.S. securities market.

IV. Response to Questions raised in Release No. 2003-1 Part B.2

Q1: *Is it feasible for foreign public accounting firms to register within 180 days of the date of the Commission's determination that the Board is capable of operating?*

Compiling the information and documentation necessary for registration within the timeline set forth by your Board is not in itself impossible, with the exceptions and exemptions discussed below where compilation and delivery would be impossible, and our members are committed to devote the necessary attention and resources to this task. For the reasons set forth in section II above, however, it would be impossible for our members to subject themselves unconditionally to the inspection and investigation (testimony and document production) power of the Board over registered public accounting firms pursuant to Sec. 104 and 105 of the Act without certain exemptions being granted pursuant to Sec. 106(c) of the Act. Such exemptions may be granted on a temporary and conditional basis, as more fully set forth in our response to Q6 below.

Should foreign public accounting firms be afforded some longer period (e.g., an additional 90 days) within which to register?

For the above reasons, we ask that the timeline for the registration, and in particular for (a) submitting the information and documentation, (b) submitting the consents required pursuant to Part VIII of the Form, and (c) submitting to and application of the investigation, inspection and disciplinary powers of the Board by and to Swiss applicants be extended by at least one more year. This extension would allow for the time necessary to work out an understanding between the Board, the Commission and the Swiss Government and the Swiss accounting industry regarding the scope and nature of the proposed exemptions and the complementary measures to be put in place in Switzerland, and would give the necessary time to the Board and the Commission to grant and implement these exemptions and to the Swiss legislator to adopt the corresponding legislative measures.

The practical impact of such extension should not be too great, since no Swiss public accounting firm would audit more than 100 issuers, so that inspections can be expected to be conducted in a rhythm closer to three years than one year (*cf.* Section 104(b)(1)(B) of the Act).

The same extended timeline should apply for the consents by Swiss accounting firms that have to be provided by U.S. applicants as part of their own application for registration.

Q2: *Are there any portions of Form 1 that are inapplicable, or that should be modified, in the case of non-U.S. applicants?*

We will here comment on the Form, following the order of items in the Form. Further comments to the Form and the Rules are contained in section V below.

(1) To General Instructions, Item 5:

We refer to our separate comments in section V(6) regarding confidential treatment.

(2) To Part I, Item 1.6 (*Associated Entities* of Applicant):

This requirement should relate to entities associated otherwise than through the network of which the respective Swiss accounting firm is a party (that means for practically all Swiss Applicants associated entities in Switzerland only), in order to avoid double notifications.

(3) To Part II, Item 2.4 (Issuers for which Applicant *Played, or Expects to* Play, a *Substantial Role in* Audit):

This requirement should relate to issuers for which the applicant knows or has reason to believe that he plays a substantial role. An accounting firm may not in all circumstances know the share of its work in comparison to the overall audit work. Accordingly, the accounting firm that has primary responsibility for the audit should be responsible for notification and compliance with the Act and the Board's requirements. Further, the information should be treated confidentially.

(4) To Part III (Applicant Financial Information):

The demarcation line between items (b) through (e) is difficult to draw when using historic data that had not been gathered in light of these criteria, so some of our members may have to take recourse to estimates when it comes to allocating revenues to the different items of clause 3.1.

This type of information has never been made public, as all of our member firms concerned are private entities that are not required to release financial information. The information should be treated as confidential.

(5) To Part V (Proceedings involving the Applicant's Audit Practice):

Compiling this information and disclosing it to the Board poses an extraordinary burden on our members and may in some instances even be impossible.

Information of the type sought has not been centrally collected and kept by our members and is considered confidential by all of the accounting firm, its associated person or persons and the third party or parties affected. Also the fluctuation of personnel typical for our industry would require a search through archives of third-party firms or firms now defunct, what would practically not be possible to execute. Obtaining consent form third parties affected, which would be necessary for confidentiality and data protection purposes, might be difficult if not impossible to obtain. We also would like to draw your attention to the fact that this type of information has never been made public, and public disclosure of information of this type would be a novelty for Swiss businesses.

Public disclosure of this type of information would *de-fact* lead to a discrimination of Swiss registered accounting firms against other accounting firms in Switzerland not subject to the Act, and might also expose them to the risk of law suits (of an imitative or consequential nature) that otherwise would not have been brought against the respective Swiss firm.

Given the practical difficulty if not impossibility of gathering the information sought, the conflict with Swiss criminal provisions against economic espionage and acting in favor of a foreign state, and the potentially serious practical consequences for a Swiss public accounting firm that may audit only one or two issuers with a secondary listing in the U.S., we propose that disclosure under items 5.1 through 5.4 be limited to (i) procedures pending (as stated in section 102 (b) (2) (F) of the Act), and (ii) being in connection with issuers or the U.S. securities market in general, and in relation to such procedures limited to (iii) information and documents at hand with the respective applicant and their associated entities or persons associated with such public accounting firm, and (iv) information and data whose release would not require consent from third parties other than the associated entities of or persons associated with such public accounting firm or conflict with the Swiss criminal provisions referred to above except where information and documents can be submitted on a no-name basis.

The Swiss public accounting firms also would have to receive in advance assurance of confidential treatment of the respective information (see section V(5) To Rule 2300 (c) below).

The information should at any rate be treated as confidential.

(6) To Part VII, Item 7.2 (Listing of *Accountants* Associated with Non-U.S. Applicants):

We consider it incommensurate and not warranted by the spirit and intentions of the Act to disclose information on all persons associated with the public accounting firm, whether or not active on the audit engagement for any issuer.

We propose to restrict the list to:

(a) all partners of the public accounting firm who provide audit, review or attest services for any issuer;

(b) all persons which are members of the audit engagement team and provide more than ten hours of audit, review or attest services for any issuer p.a. (*cf*. Release No. 33-8183, SEC Final Rule Strengthening the Commission's Requirements Regarding Auditor Independence, Part II.A);

(c) but (b) not extending to persons engaged only in clerical and ministerial tasks (*cf.* Sec. 2(a)(9)(B) of the Act).

(7) To Part VIII, Item 8.1 (Consents to Cooperate with the *Board*):

As indicated above, the required consents and statements can only be provided once a common understanding of the scope and nature of the exemptions and the complementary measures to be put in place in Switzerland has been reached and these exemptions have been granted.

Q3: *In addition to the information required by Form 1, is there any additional information that should be sought from non-U.S. applicants?*

The Board should seek detailed information of the laws of such jurisdiction that could potentially conflict with the Act and its implementation as envisaged, of the accounting oversight system in the home country of the foreign public accounting firms, and of ways and means to collaborate with national oversight authorities and Governments in view of implementing the spirit and intentions of the Act without conflicts and deadlocks.

Q4: *Do any of the Board's registration requirements conflict with the laws of any jurisdiction in which foreign public accounting firms that will be required to register are located?*

Regarding the general conflicts of legal systems caused by the requirements of the Act, we refer to section II above.

As noted above, the consents required in Part VIII of the Form can only be provided and the powers of inspection and investigation of the Board can only be implemented once a common understanding of the scope and nature of the exemptions and the complementary measures to be put in place in Switzerland has been reached and these exemptions have been granted.

Q5: *In the case of non-U.S. firms that are required to register because they play a substantial role in the preparation or furnishing of an audit report on a U.S. issuer, is the definition of "substantial role" in Rule 1001(n) appropriate?*

In our view it is appropriate.

In particular, should the 20 percent tests for determining whether a foreign firm's services are material to the audit, or whether the foreign firm performs audit procedures with respect to a significant subsidiary, be changed? Would a 10 percent threshold more realistically capture firms that materially participate in the preparation or furnishing of an audit report?

No change should be made. The 20 percent test is realistic. We refer to our response to Q2 (3), To Part II, Item 2.4 of the Form (primary responsibility for the lead accounting firm to determine substantial role).

Q6: *Should the requirements to register be different for foreign public accounting firms that are "associated entities" (as defined in the Board's rules) of U.S. registered public accounting firms than for foreign firms that are not associated with U.S. registered firms?*

There should not be any differentiation. See our response to Q2 (2) To Part I, Item 1.6.

Q7: *Should registered foreign public accounting firms be subject to Board inspection?*

In our view, Swiss accounting firms, even if registered, should not be subject to the inspection and investigation powers of the Board, including the power to hear testimony, to request document production and to impose disciplinary sanctions. In particular the Board could not conduct any evaluation and testing or inspections in Switzerland through its agents and staff, and could not request any agent or other representative of a Swiss registered public accounting firm to appear before the Board to render testimony.

Could the Board, in some cases, rely on home-country regulation in lieu of inspection of foreign public accounting firms?

The Board could and should rely on Swiss actual and prospective legislation in lieu of direct inspection, investigation and sanctioning.

If so, under what circumstances could this occur?

We refer to section III above. In the period until the new Swiss accounting oversight legislation is put in place, this could be done on the basis of a temporary exemption and in reliance on the present Swiss legislation. Our Institute and, we trust, the competent bodies of the administration of the Swiss Government would be willing to share with you information on the methodology applied to assure professional standards regarding quality ethical standards, independence etc. of the Swiss accounting industry. Information concerning individual cases of misconduct could be shared on the basis of existing mechanism of information exchange (between SEC and SFCB in the banking sector, through judicial assistance mechanisms, etc.).

After the Swiss accounting oversight legislation has been put in place, your Board could do this on the basis of a partial exemption and in reliance on the accounting oversight system put in place by Swiss legislation.

Q8: *Aside from Board inspection, are there other requirements of the Act from which foreign public accounting firms should be exempted? If so, under what circumstances?*

In our opinion, the nature and scope of the exemptions that are necessary for Swiss registered public accounting firms can only be determined through a process of discussion between your Board, the Commission, the Swiss Governmental Authorities, and the Swiss accounting industry. At any rate the exemptions must be of a nature to take into consideration the legal conflicts and practical problems set forth in these comments.

Q9: *Are there requirements different from those the Act imposes on all registered public accounting firms that the Board should apply to foreign public accounting firms?*

We refer to our response to Q6 and Q8. The Board should not apply any other requirements to Swiss registered public accounting firms.

Q10: *Should the Board's oversight of foreign registered public accounting firms that are "associated entities" (as defined in the Board's rules) of U.S. registered public accounting firms be different than its oversight of foreign public accounting firms that are not associated entities of U.S. registered firms?*

In principle we refer to our response to Q6 above, but note that a non-U.S. accounting firm not associated or affiliated with a U.S. accounting firm is not subject to the provisions of the SEC Practice Section of the American Institute of Certified Public Accountants relating to international firms and international associations of firms, in particular AICPA SEC Practice Section Manual § 1000.08(n) regarding inspection procedures to be carried through by an expert in U.S. accounting, auditing, and independence requirements. The fact that such review is being conducted should facilitate the granting of an exemption from the inspection and investigation powers of the Board to the respective Swiss firms.

Should the U.S. registered firm have any responsibility for the foreign registered firm's compliance with the Board's rules and standards?

No, we refer to our response to Q2, item 2.4, Q5 and Q6 above.

V. Comments to Rules not addressed in section IV above.

(1) To Rule 1001 Item (a)(Accountant) (2) and (3)

In a Swiss, and continental-European, context, a reference to an undergraduate degree is not meaningful. We propose to refer to "higher professional or university degrees".

(2) To Rule 1001 Item (c)(Associated Entity)

See our comments at IV(2) above.

(3) To Rule 1001 Item (q)(Rules or Rule of the Board)

As a very limited number of Rules of the Board have been published so far, our comments may need to be modified or elaborated upon after publication of further Rules of the Board.

(4) To Rule 2001 (Application for Registration)

The Board should confirm receipt of the application immediately.

(5) To Rule 2005 Item (c)(Requests for More Information)

This Rule should only apply if the Board requests additional information because the application is deemed incomplete. If the application is complete in regard of the Rules and Form, a request for further information should not cause the date of submission of the application to be postponed or the application to be deemed not received.

(6) To Rule 2300 Item (c)(Confidential Treatment Request) and (d) (Application Procedures)

Certain types of information provided by Swiss Applicants should be granted confidential treatment on a global basis, given that certain information has not been made publicly available before and publication may trigger negative and harmful consequences for the applicant (see sections II, IV(4) and IV(5) above). There should be a procedure by which the applicant can receive a binding response on whether information of a certain type will be treated confidential or not before the applicant has submitted such information.

(7) To Rule 2300 Item (h)

Also the Commission should treat information as confidential that has been granted confidential treatment by the Board.

VI. Conclusions.

(1) Timeline

The timeline should be extended by at least one more year for the registration by Swiss public accounting firms.

(2) Exemptions

The Board, the Commission and the Swiss Governmental Authorities and the Swiss accounting industry, considering the complementary legislative measures to be put in place in Switzerland, should seek an understanding on the scope and nature of the exemptions to be granted to Swiss applicants from the requirements

(a) to furnish certain types of information otherwise required for registration that cannot be collected and provided by Swiss accounting firms for legal reasons, third party consent requirements or practical difficulties (see section IV Q2(5) To Part V above)

(b) to furnish the consents required under part VIII (see section N Q2 (1) to Part VIII above) of the Form, and

(c) to subject to the investigation (testimony, work paper production), inspection and disciplinary powers of the Board.

(3) Dialogue and interplay

Your Board, the Commission and the Swiss Governmental Authorities should establish an appropriate mechanism of dialogue and interplay between your Board and the envisaged Swiss PCAOB.

We appreciate the opportunity you offer for a discussion regarding the ways and means how to implement the Act, and we hope to be able to continue this discussion until a solution is being found that takes into consideration its different, at times even conflicting, aspects.

Yours sincerely

Swiss Institute of Certified Accountants and Tax Consultants

Andreas Müller	Walter Hess
Chairman	General Secretary

Enclosures

- mentioned

Unofficial translation of the provisions of Swiss law

referred to in the Comments by the Swiss Institute of Chartered Accountants and Tax Advisers, dated March 26, 2003

Swiss Code of Obligations (SCO)

Article 321a Employee's Duty of Care and Loyalty

1 The employee must carefully perform the work assigned to him, and loyally safeguard the employer's legitimate interests.
2 …
3…
4 In the course of an employment relationship, the employee shall not make use of or inform others of any facts to be kept secret, such as, in particular, manufacturing or business secrets that come to his knowledge while in the employer's service. Also, after termination of the employment relationship, he shall continue to be bound to secrecy to the extend required to safeguard the employer's legitimate interests.

Article 730 Violation of Professional Secrecy of Auditors

1 When reporting and giving information, the auditors shall safeguard the business secrets of the Company.

2 Auditors are prohibited from communicating to individual shareholders or third parties any observations they have made while carrying out their duties. The duty to inform a special auditor remains reserved.

Swiss Federal Act on Data Protection (DPA)

Article 6 Transborder data flows

1 No personal data may be transferred abroad if the personal privacy of the persons affected could be seriously endangered, and in particular in cases where there is a failure to provide protection equivalent to that provided under Swiss law.

2 Whoever wishes to transmit data abroad must notify the Federal Data Protection Commissioner beforehand in cases where:
a) there is no legal obligation to disclose the data and
b) the persons affected have no knowledge of the transmission.

3 The Federal Council shall regulate the notification procedure in detail. It may provide for a

simplified notification procedure or exemptions from the duty to notify in the event that the processing does not endanger the privacy of the persons affected.

Article 35 Breach of Professional Secrecy

1 Whoever willfully and without authorization discloses confidential and sensitive personal data or personal profiles that have come to his knowledge in the course of professional activities that require that he has knowledge of such data, shall be punishable on application for prosecution by a term of detention or by fine.

2 Whoever willfully and without authorization discloses confidential and sensitive personal data or personal profiles that have come to his knowledge in the course of his activities for persons who are subject to a duty of professional secrecy or in the course of his vocational training with such persons, shall also be punishable on application for prosecution by a term of detention or a fine.

3 The illegal communication of confidential and sensitive data or personal profiles shall also be punishable after the relevant person has ceased to practise his profession or has completed his vocational training.

Federal Law on Banks and Savings Banks (Banking Act, BA)

Art. 47

1 Whoever divulges a secret entrusted to him or of which he has become aware in his capacity as officer, employee, mandatory, liquidator or commissioner of a bank, as representative of the Banking Commission, officer or employee of a recognized auditing company and whoever tries to induce others to violate professional secrecy, shall be punished by imprisonment for not more than six months or by a fine of not more than SFr. 50,000.
2 If the act has been committed by negligence, the penalty shall be a fine not exceeding SFr. 30,000.
3 The violation of professional secrecy remains punishable even after termination of the official or employment relationship or the exercise of the profession.
4 Federal and Cantonal regulations concerning the obligation to testify and to furnish information to a government authority shall apply.

Federal Act on Stock Exchanges and Securitie s Trading (Stock Exchange Act, SESTA)

Art. 43 Breach of professional secrecy

1 Whosoever:

a. discloses a secret which has been confided to him in his capacity as a member of a governing body, employee, mandatary or liquidator of a stock exchange or a securities dealer, as a member of one of the governing bodies or employee of recognized auditors, or of which he has become aware in any such capacity; or
b. attempts such breach of professional secrecy by inducement,

shall be punished by imprisonment or with a fine;
2 Whosoever breaches professional secrecy after termination of office or his employment shall nevertheless remain liable to punishment.
3 The federal and cantonal provisions relating to the duty to testify and the duty to provide information to the authorities remain reserved.

Swiss Criminal Code (Swiss Penal Code, SPC)

Article 162 Violation of manufacturing or business secrets

Whoever reveals a manufacturing or business secret which he is obliged to keep by legal or contractual obligations,
whoever uses such revelation for the benefit of himself or another person,
shall be, upon request for prosecution, sentenced to imprisonment or fined.

Article 271 Prohibited Activities for a Foreign State

1. Whoever conducts, without authorization, for a foreign State on Swiss territory acts that are within the competence of public authorities or public officials,
whoever conducts such acts for a foreign party or another foreign organization,
any person aiding in such acts,
shall be sentenced to imprisonment, in severe cases to penal servitude.
2. .....
3. .....

Article 273 Economic Intelligence Service

Whoever searches out manufacture or business secrets in order to make them accessible to a foreign official public body, foreign organization, to a foreign private company or their agents, shall be sentenced to imprisonment or, in severe cases, penal servitude. In addition, a fine may be imposed.

Article 321 Violation of Professional Secrets

1. Clergymen, barristers, defense counsels, notaries, examiners being sworn to secrecy, doctors, chemists, midwifes, and their assistants who reveal a secret which they were told or of which they took knowledge while exercising their profession, shall be, upon request for prosecution, sentenced to imprisonment or fined.
The same goes for students, revealing a secret of which they took knowledge during their studies.
Violations of professional secrets are punishable after the end of the studies or professional activities as well.

2. The offender remains exempt from punishment if the secret has been revealed because of the consent of the party entitled or following the written permission of the competent or supervising authority, issued on the offender's request.