

State Secretariat for Economic Affairs

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The Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington D.C. 20549-0609

Bern, 2 July 2003

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Reference: File No. PCAOB-2003-03 - PCAOB; Notice of Filing of Proposed Rules Relating to Registration System

Dear Mr. Katz:

Following the Commission's invitation to comment on the rules for registration proposed by the PCAOB and published by the SEC on 5 June we have the pleasure to submit to you some comments on the part of the Swiss authorities and a more technical response drafted by the Swiss Institute of Certified Accountants and Tax Consultants.

We welcome that a substantial part of the Board's and the Commission's notices deal with the registration of foreign public accounting firms and entail the conclusion "that the registration of foreign public accounting firms raises unique issues". We also note that some of the concerns we expressed during our meeting in March of this year with high-level members of the SEC, in our submission to the PCAOB and at the Roundtable at the end of March have been addressed in the rules proposed by the PCAOB, at least as far as the registration process is concerned. On the other hand, we do regret that no overall exemption from registration in line with Section 106 (c) of the SOA for non-US auditing firms is foreseen in the proposed rules. As pointed out in our earlier submissions and statements a registration requirement would entail a serious danger of conflicts of laws and an unnecessary duplication of administrative and legal demands on Swiss and other foreign accounting firms. Such a decision would also be unfortunate because it cannot be the objective to deepen international cooperation in drawing up common guidelines on corporate governance, notably in the context of the OECD, without extending that same spirit of cooperation to the implementation of the rules. We would also be worried about the consequences for international economic relations if other countries were to follow the example of the United States and adopt similar registration requirements covering foreign firms.

In this context we would like to inform you that considerable progress towards effective public accounting oversight has also been made in Switzerland. As a matter of fact, the government intends to submit a bill proposing strict standards for public accounting firms and the establishment of an oversight board complying with international standards to the Swiss Parliament during this fall, along with the proposal that Parliament adopt these measures in the fastest way possible. This underlines that Switzerland will continue to assume its responsibility for an ever more effective corporate governance regime on its territory. It also confirms, however, the real danger of conflicts of laws and of additional administrative and legal requirements as a result of multiple oversight for Swiss firms which will first and foremost need to comply with the new Swiss system. As mentioned above, this would be exacerbated if the EU Member States, Switzerland's most important trading partners, were led to follow the U.S. example and include in their planned oversight regimes foreign firms as well.

Aside from expressing our strong reservations about compulsory registration of foreign firms we conclude that considerable incongruities and uncertainties would remain if the proposed rules were adopted by the SEC. To name but two: On the one hand, foreign public accounting firms are supposed to register even though "the nature of the oversight to be exercised over registered foreign public accounting firms is a matter the Board has yet to resolve". The issue of inspection is of particular importance in this context because it is an area where conflicts of law will arise, as Swiss and other commenters have repeatedly pointed out. Equally important is the timing of an inspection obligation for foreign firms as their own oversight boards, which would need to assume this task on behalf of the PCAOB, will only be functioning after April 2004 in some countries. On the other hand, the standards set out in some proposed rules, which are crucial for foreign firms as e.g. Rule 2105, are sufficiently vague that they can be interpreted and applied in very restrictive or flexible ways. It is crucial that these and other incongruities and uncertainties are addressed and clarified in the proposed rules and at any rate settled sufficiently early that those concerned can take the necessary actions and decisions.

The Board and the Commission have officially expressed their readiness to enter into a dialogue with existing and planned foreign oversight boards in order "to try to find ways to reduce administrative burdens and to provide for coordination in areas where there is a common interest, such as annual reporting, inspection, and discipline". The Swiss Government stands ready to engage in such a dialogue where all concerns and open questions could, and indeed should be, discussed in depth.

Sincerely yours,

Hanspeter Tschäni
Head of Division
International Economic Law

Enclosures