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Please include this reference number in all correspondence.

To the attention of:

- All Banks and Securities Dealers
- All Banking and Exchange Auditors
- Swiss National Bank
- Swiss Ministry of Finance
- Swiss Bankers Association
- Swiss Funds Association
- Swiss Institute of Certified Accountants & Tax Consultants
- Swiss Association of Independent Securities Dealers
- Swiss Association of Foreign Funds

SFBC-Press Release Nr. 23 (2002) of September 5, 2002

The SFBC revises its Outsourcing Circular. The modifications concern the definition of outsourcing, the scope of application both in terms of territory and substance, and the duty to inform clients.

Ladies and Gentlemen,

The Swiss Federal Banking Commission ("SFBC") revised its Circular SFBC 99/2 on Outsourcing (the "Circular"). The main areas affected by this revision are; (i) the definition of outsourcing (par. 2), (ii) the scope of application both in terms of territory and substance (par. 4 – 12), and; (iii) the duty to inform clients (par. 39).

- **Definition – Independence Criterion and Annexed Examples (Par. 2)**

The SFBC adds the independence criterion to the existing durability criterion. This addition will enable the SFBC to differentiate between outsourcing to an independent service provider and outsourcing to a separate but subordinate entity. The reference to subcontracting has been omitted. The issue of subcontracting is now addressed in paragraph 21a.

The examples of essential and non-essential services that were listed in paragraph 2 have also been omitted. Instead, a new list of similar examples will be annexed to the Circular.



- **Application to Companies' Groups with consolidation duties (Par. 4a)**

Paragraph 4a stipulates that the Circular is applicable to companies' groups, which have a consolidation obligation pursuant to articles 13a par. 2-4 of the Banking Ordinance and 29 par. 2-4 of the Stock Exchange Act. Real Estate companies are expressly excluded from the Circular's scope of application.

- **Territorial Scope of Application – Abandonment of the “Similar Local Prescription” Requirement (Par. 5)**

The requirement that the Circular's principles also have to be respected in jurisdictions where no such measures exist is abandoned. Considering the wide range of foreign rules, the criterion of the similar local prescription is deemed inappropriate in practice.

The modification of the Circular forces Swiss companies to ensure that foreign companies and branches belonging to the same group and subject to the same consolidation obligation, comply with the principles of the Circular only where:

- there is no applicable foreign legislation, and;
- the importance and relative size of the outsourced activities are sufficiently significant to have an impact on the risks in accordance with paragraph 2.

- **Security Measures – Rules of Diligence (Par. 29a)**

When developing and implementing the security measures, paragraph 29a of the Circular requires that companies comply with the rules that would apply in the absence of any outsourcing. These security measures should take into account all foreseeable emergency cases.

- **Secrecy in business and banking matters (Par. 34 and 35)**

The revised principle 5 clearly stipulates that the rule concerning secrecy in business and, where relevant, banking and professional secrecy are only valid with respect to Swiss delegates. In case of outsourcing abroad, paragraph 35 provides that banking secrecy and data protection as defined by Swiss law must be enforced through proper technical and organizational means.



Eidgenössische Bankenkommission
Commission fédérale des banques
Commissione federale delle banche
Swiss Federal Banking Commission

- **Duty to Inform Clients (Par. 38 and 39)**

The modifications introduced by paragraph 38 are primarily changes in language. The Circular now provides that the information made available to the clients must contain details of the activities being outsourced.

In cases requiring the treatment abroad of anonymized client information, the Circular no longer requires a duty to inform client individually. However, this obligation remains where the information is transmitted in a way that allows for the identification of the client.

The foregoing modifications enter into force on November 1, 2002. The text of the Circular can be downloaded from the SFBC's website (www.ebk.admin.ch).

Yours sincerely,

The Secretariat of the
SWISS FEDERAL BANKING COMMISSION

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