Swiss Institute of Certified Accountants and Tax Consultants

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Location/Date Zurich, August 18, 2003

Recipient Secretary, Public Company Accounting Oversight Board

Sender Andreas Müller, Chairman, Walter Hess, General Secretary

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Subject **PCAOB Rulemaking Docket Matter No. 006**
PCAOB Rulemaking Docket Matter No. 007

General comments regarding PCAOB Release No. 2003-012: Proposed Rules 5000 through 5501, and PCAOB Release No. 2003-013: Proposed Rules 4000 through 4010

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

Dear Mr. Secretary,

The Swiss Institute of Certified Accountants and Tax Consultants (the "Institute") appreciates the opportunity to submit our general comments on the Proposed Rules, *Proposed Rules on Investigations and Adjudications* (PCAOB Rulemaking Docket Matter No. 005, "Proposed Rules 005") and *Proposed Rules on Inspections of Registered Public Accounting Firms* (PCAOB Rulemaking Docket Matter No. 006, "Proposed Rules 006", collectively the "Proposed Rules 005 and 006") of the Public Company Accounting Oversight Board (the "PCAOB" or the "Board"), by which it implements Section 102, 104 (a) and 105 of the Sarbanes-Oxley Act of 2002 (the "Act").

In two previous letters to the PCAOB and the SEC dated March 27, 2003 (our "March Letter") and July 2, 2003 (the "July Letter"), we have provided comments as to how the Act and the proposed Registration System for Public Accounting Firms will affect our members. We refer to the March Letter and the July Letter and consider integral parts of this submission, as many of our comments made therein apply to the Board's Proposed Rules 005 and 006 as well. We attach the March Letter and the July Letter for your convenience.

We acknowledge and appreciate, that in both the Proposed Rules 005 and 006 the PCAOB has expressly acknowledged the "Special Issues Relating to Non-U.S. Firms", in particular that:

- "the nature and scope of the Board's oversight over non-U.S. accounting firms that audit the financial statements of U.S. public companies will be the subject of dialogue between the Board and its foreign counterparts";

- "the Board is committed to finding ways of accomplishing the goals of the Act without subjecting non-U.S. firms to unnecessary burdens or conflicting requirements"; and

- "the Board's Proposed Rules are not intended in any way to signal that the Board has already determined how its oversight should operate as to those firms".

In the context of the above-mentioned points, we would like to re-emphasize the following points from the Swiss perspective:

We have the same intention and are striving for the same goal as the PCAOB, namely "to protect the interests of investors and further the public interest through the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors" (Sec. 101(a) of the Act).

Nevertheless, the Board's Rules regarding registration adopted by the SEC as well as to the continuing inspection, investigation, and sanctioning powers of the Board set forth in the Proposed Rules 005 and 006, would create serious conflicts with Swiss law. We certainly welcome the PCAOB's stated intention of opening a dialogue with its foreign counterparts regarding the implementation of the Act and the adoption of appropriately modified rules in lieu of the Proposed Rules 005 and 006 regarding inspections and disciplinary procedures in foreign jurisdictions. However, we would like to mention that we have significant doubts as to whether such dialogue can be carried through and that an effective solution can be found between the PCAOB and the respective Swiss organizations within the Board's intended timeframe.

It follows that we recommend the timeframe for implementing these Proposed Rules be extended by at least one year (*i.e.*, until April 2005) for Swiss public accounting firms (and any other non-U.S firms). This additional time would allow the Swiss legislature (and the legislature of any other jurisdiction in a comparable situation) to put in place the envisaged legal framework as well as give the Swiss government an opportunity to implement a Swiss public accounting oversight system on a practical level. Furthermore, this additional time would enable the PCAOB to establish the means and processes of cooperation with the Swiss oversight body and to secure compliance with the spirit and intent of the Act by building on compliance with, and local enforcement through, the corresponding Swiss oversight system, and not by unilaterally imposing a duplicative and potentially conflicting oversight system. Any other approach would lead to unnecessary complication and inefficiency in the effort to reach the abovementioned goal, not only on the part of our members, but also for the PCAOB and the Swiss government.

With a Swiss accounting oversight system in effect, it is our position that the Board should neither directly inspect nor sanction Swiss public accounting firms. Rather, the Board should exercise its powers through, and in cooperation with, the Swiss accounting oversight body within the framework of a protocol to be established. Such indirect oversight would sufficiently protect the interests of investors and the public once the Board have familiarized themselves with the Swiss accounting oversight system and has found a common ground for a cooperative, bilateral oversight system rather than two unilateral, duplicative and (potentially) conflicting oversight systems.

We appreciate the opportunity to express our concerns that the Proposed Rules 005 and 006 should not set the benchmark for inspections, investigations and adjudications regarding public accounting firms established in Switzerland (and other non-US jurisdictions), but that implementation of the Act regarding those public accounting firms should follow different principles as set forth above and in our March Letter and July Letter. We look forward to continuing this discussion until a solution has been found that achieves our common cause, while fairly balancing the sometimes conflicting interests of the parties involved.

Respectfully submitted,

Swiss Institute of Certified Accountants and Tax Consultants

Andreas Müller
Chairman

Walter Hess
General Secretary

Attachment: Letter of the Institute to the PCAOB dated March 27, 2003
Letter of the Institute to the SEC dated July 2, 2003

Swiss Institute of Certified Accountants and Tax Consultants

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Location/Date: Zurich, 27th March 2003 (Oer)

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
Attn. Mr. Stanley Macel III, Senior Counsel Office of International Affairs
1666 K Street, N.W.
Washington, D.C. 20006-2803
U.S.A

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.

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Location/Date Zurich, July 2, 2003

Recipient Secretary, Securities and Exchange Commission

Sender Andreas Müller, Chairman, Walter Hess, General Secretary

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Subject **PCAOB-2003-03**

Registration System for Public Accounting Firms
Comments to PCAOB Release No. 2003-007: proposed Rules 1001, 2100 through 2106, 2300, and Form 1

Securities and Exchange Commission
Secretary
Attn. Mr. Jonathan G. Katz
450 Fifth Street, N.W.
Washington, D.C. 20549-0609
U.S.A

PCAOB Release No. 2003-007: Registration System for Public Accounting Firms

Dear Mr. Katz:

The Swiss Institute of Certified Accountants and Tax Consultants (the "Institute") appreciates the opportunity to submit comments on the proposal of the Public Company Accounting Oversight Board (the "PCAOB" or the "Board") implementing the accounting firm registration requirements of the Sarbanes-Oxley Act ("the Act"). Our comments refer to the PCAOB Release No. 2003-7, comprising the proposed PCAOB Rules 1001, 2100 through 2106, and 2300 (the "Rules"), and the PCAOB Form 1 (the "Form"), which was submitted to the Securities and Exchange Commission (the "SEC" or "your Commission") on May 8, 2003, and to which your Commission has issued Release No. 34-47990, File No. PCAOB-2003-03, published in the Federal Register of June 11, 2003. Therein you invite interested parties to submit comments in writing to the Rules and the Form.

The Institute is the professional body representing, among others, the Swiss accounting profession. In our letter of March 27, 2003 to the PCAOB (our "March Letter"), we stated our position and provided comments on how the Act, Rules, and Form (in the version of March 7, 2003) will affect our members. We attach the March Letter for your convenience and consider it to be an integral part of this submission. In the event of differences between the two, this letter takes precedence over our March Letter.

All terms used in these comments and defined in the Act, the Rules, or our March Letter are used with the meaning as so defined, except if defined differently herein.

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I. Shared Spirit and Local Actions

(1) Shared Spirit in the U.S., Switzerland, and other Jurisdictions

Our Institute continues to fully support the spirit and intentions that underlie the Act. Our Institute also feels, and countless talks to colleagues, industry organizations, and governmental entities within and outside of our country have confirmed, that the same is true with regard to the countries of the EU and other jurisdictions. Our members are affected by the Act and its implementation in many ways similar to public accounting firms within the EU and other jurisdictions.

(2) Equal Treatment of non-U.S. Applicants

We appreciate your stated intention to treat all non-U.S. applicants who anticipate or experience difficulties in registering in accordance with the proposed rules or in subjecting themselves to the enforcement powers of the PCAOB in a uniform and equal way. We trust that this will continue to be the case, and that there will be no discrimination of non-U.S. applicants due to their nationality.

(3) Planned Legislation Regarding Swiss Oversight System

This position and general attitude of shared spirit and intent has guided not only our Institute vis-à-vis the SEC and the PCAOB regarding the steps and regulations proposed for implementing the Act, but also the Swiss government with regard to Swiss legislation. For details regarding the legislative process, we refer to the letter on behalf of the Swiss Authorities that this letter accompanies.

(4) Extension of Timetable for Registration

We strongly feel that registering with and subjecting ourselves to the inspection and disciplinary regime of the PCAOB within the currently proposed timeframe, while a Swiss oversight system is simultaneously being enacted and implemented, would expose our members to a practical burden and risks associated with conflicts of legal systems that are not warranted by the spirit and intent underlying the Act.

We also are of the strong opinion that it would be unfair and unjust to require Swiss applicants to register while so many issues regarding effects of registration remain open, given that "the nature of the oversight to be exercised over registered foreign public accounting firms is a matter the Board has yet to resolve". Rather registration should only occur once the scope and nature of the investigative and disciplinary powers of the Board have been determined conclusively or at least to a degree that gives the certainty necessary for Swiss applicants to conduct their business.

We thus emphatically request that the registration process for Swiss applicants (and any other non-U.S. applicants in jurisdictions where a local public accounting oversight system is being put in place) be delayed by another period of 360 days and that the effective date for the inspection and disciplinary powers of the Board be postponed by an addition period of 360 days. This would allow the Swiss legislature (and the legislature of any other jurisdiction in a comparable situation) to put in place the envisaged legal framework, and the Swiss government to implement the Swiss public accounting oversight system on a practical level. It would also enable the PCAOB and your Commission to establish the means and processes of cooperation with the Swiss oversight body and to secure compliance with the spirit and intent of the Act by building on compliance with and local enforcement through the corresponding Swiss oversight system (PCAOB Release No. 2003-007, Part B.3, page 20), not by unilaterally imposing a duplicative and potentially conflicting oversight system. Any other approach would lead to a waste of time and efforts both on the side of our members and on the side of the PCAOB, your Commission, and the Swiss government.

This time and these efforts should indeed be spared and saved for what is our common goal and intention, namely "to protect the interests of investors and further the public interest through the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors" (Sec. 101(a) of the Act).

(5) Effects of Registration Limited to Contacts between Oversight Bodies

Once the Swiss accounting oversight system has come into effect, it is our position that the Board should neither directly inspect nor sanction Swiss public accounting firms. Rather the Board should exercise its powers through and in cooperation with the Swiss accounting oversight body within the framework of a protocol to be established. Such indirect oversight would sufficiently protect the interests of investors and the public once the Board and your Commission has familiarized themselves with the Swiss accounting oversight system and found a common ground for a cooperative, bilateral oversight system rather than two unilateral, duplicative, and (potentially) conflicting oversight systems.

II. Conflicts between Obligations Imposed by the Act and Swiss Law

We shall not reiterate the provisions of Swiss law that could be violated by implementation of the Rules and submission of the completed Form, nor shall we reference the individual clauses and provisions of the Rules and the Form that would cause these violations.

(1) Attenuation of Certain Conflicts with Swiss Law

We appreciate that the amendments applied by the Board to the Rules and the Form (version of March 7) have attenuated, if not removed, some of these conflicts. We will not comment on these modifications in detail.

(2) Reservation for Conflicting non-U.S. Laws

We also appreciate the opportunity offered by Rule 2105 to submit evidence of conflicting non-U.S. laws where the submission of information requested as part of the registration would cause the applicant to violate such non-U.S. law, including a copy of the relevant portion of the non-U.S. law and a legal opinion buttressing the position of the applicant. We will comment further on proposed Rule 2105 in Section III(3) below.

It is unfortunate, however, that this remedy has been limited to the submission of information as part of the registration process, whereas the consequences of registration, including but not limited to the continuing inspection, investigation, and sanctioning power of the Board, is prone to create conflicts with Swiss law that are at least as serious as those created by the registration process. We therefore repeat our proposal with all due emphasis that the remedy concerning conflicting non-U.S. law expressed in Rule 2105 be extended to all conflicts created or threatened by the implementation of the Act (cf. also Section V below.)

(3) No Third-Party Consents

We understand that public accounting firms shall obtain consent from the issuers whose audit is at stake, and from their associated persons insofar as necessary for compliance with the Act, the Rules, and the Form. Swiss applicants should not, however, be asked to obtain consents from third parties, in particular from contract partners of issuers insofar as such third parties have a *bona fide* confidentiality interest. Rather a global exemption should be granted covering such instances. Anything else would interfere with audit clients' business, distort competition, and create intolerable complications.

III. Comments on Certain Rules

The following comments are based on our current knowledge and understanding of the implications of the situation. Additional comments may come up at a later stage, in particular as a consequence of the evolving Swiss legislative process.

(1) To Rule 1001 Item (a)(iv)(Associated Entity)

We refer to our comment in the March letter to Rule 1001 Item (c) and repeat that this definition should exclude entities associated with the Swiss public accounting firm through the

network to which the respective Swiss accounting firm is a party. It should include only subsidiaries, the parent company, and sister companies of the Swiss public accounting firm within Switzerland (and, exceptionally, also abroad, in particular in the Principality of Liechtenstein), in order to avoid double notification and unwarranted administrative burdens.

Issues arising from the fact that the Principality of Liechtenstein is a jurisdiction separate and apart from Switzerland, but that several of our members audit clients or maintain subsidiaries or branch offices in Liechtenstein would have to be addressed separately.

(2) To Rule 1001 Item (p)(ii)(Play a Substantial Role in the Preparation or Furnishing of an Audit Report)

We refer to our comment in the March Letter to Rule 1001 Part II, Item 2.4 (Issuers for which Applicant *Played, or Expects to* Play, a *Substantial Role in* Audit). The accounting firm that has primary responsibility for the audit should have exclusive responsibility for notification and compliance with the Act and the Board's requirements regarding the "material service" test. Further, the information should be treated as confidential.

(3) To Rule 2105 (Conflicting Non-U.S. Laws)

While we in principle welcome the limitations regarding non-U.S. law offered by this Rule, we would like to point out that legal impediments arise not only from non-U.S. laws being violated as a consequence of the submission of the information requested (and in general of compliance with the Act), but also from laws where submission of information or compliance with the Act would expose the Applicant to negative consequences sufficiently severe to warrant an exemption and where necessary consents and waivers by third parties are not obtainable (*e.g.*, consents from customers of a Swiss audit client, *cf.* item II(3) above).

(4) To Rule 2106 Item (c)(Requests for More Information)

We refer to our comment in the March Letter to Rule 2005 Item (c). This Rule should only apply if the Board requests additional information because the application is deemed incomplete. If the application is complete insofar as the information requested in the Form has been submitted, the application should be deemed received irrespective of a subsequent request for additional information.

(5) To Rule 2300 Item (b)(Confidential Treatment Request) and (c) (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 harmful and unforeseeable consequences for the applicant, associated entities, associated persons, and third parties affected (see section IV(7) below).

(6) To Rule 2300 Item (g)

Information that has been granted confidential treatment by the Board should also be handled confidentially by the Commission. Submitting certain types of information would be unacceptable, even if the hurdles of Swiss law could be overcome, if it could not be excluded that such information will be made available to third parties (principle of non-proliferation), including the Attorney General of the United States, federal regulators other than your Commission, or state attorneys general (*cf*. Sec. 105(b)(5)(A) of the Act). We refer in that regard to our March Letter, section II.

IV. Comments on Individual Items of the Form

We will comment on the Form, following the order of items in the Form.

(1) To General Instructions, Item 6:

We refer to our separate comments in section III(5) above regarding confidential treatment.

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

We refer to section III(1) above.

(3) To Part I, Item 1.7 (Applicant's Licenses):

This requirement should not relate to Swiss applicants, since the Swiss regulators (SWX, Federal Banking Commission, etc.) who issue licenses or similar authorizations do not normally associate any numbers therewith.

(4) To Part II (Listing of Applicants Public Company Clients):

While U.S. applicants will have to register in October 2003, non-U.S. applicants will have to register in April 2004 (or later, *cf*. section I(4) above). Thus the "Current Calendar Year" and the "Preceding Calendar Year" will be different for U.S. and non-U.S. applicants.

(5) To Part II, Item 2.1 (Issuers for which Applicant prepared Audit Reports during the Preceding Calendar Year) and 2.2 (Issuers for which Applicant Prepared Audit Reports During the Current Calendar Year), paragraphs c., d., and e.:

This demarcation between *audit services*, *other accounting services,* and *non-audit services* is difficult to draw for non-U.S. public accounting firms that are not used to these categories, and will be further complicated by the change of system occurring on December 15, 2003. This will force some of our members to take recourse to estimations and best guesses as to

which categories certain services fall into. We recommend instead using a two-pronged approach, differentiating (only) between audit services and non-audit services. This is the customary differentiation for most corporate governance regimes outside the U.S.

Further, information of the type sought here should generally be treated as confidential, as it will not be available in that form elsewhere.

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

Cf. section III(2) above.

(7) To Part V (Listing of Certain Proceedings Involving the Applicant):

Information of the type sought is considered confidential by all of the Swiss accounting firms, their associated persons, and third parties affected. Consent from third parties affected (other than issuers), which would be necessary for confidentiality and data protection purposes, would be impossible to obtain (*cf.* item II(3) above). We also would like to draw your attention to the fact that this type of information has never been made public before, and public disclosure of information of this type would be a novelty for Swiss business, and not in accordance with the Swiss legal system.

Public disclosure of this type of information would violate the personal rights of persons involved, and the confidentiality interests of employees, clients, and third parties with potentially disastrous effects. The disclosure of pending procedures would also violate the principle of presumed innocence.

Public disclosure of this type of information would lead to a *de facto* discrimination of Swiss registered accounting firms with respect to 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 registered 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, we propose that disclosure under items 5.1 through 5.4 of the Form be limited to (i) procedures pending in connection with issuers, and (ii) information and data whose release: (a) would not require consent from third parties other than the associated entities or associated persons of such public accounting firm; (b) would not conflict with the Swiss criminal provisions referred to above; or (c) could be effected on a no-name basis.

The information should in all cases be treated as confidential.

(8) To Part IV Item 6.1

Since this type of information is already being filed and made publicly available, we consider this requirement duplicative and superfluous.

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

As indicated above, the required consents and statements could not be given at this moment in time, and can most likely not be given in March or April 2004 either

We therefore propose that the requirement to submit consents covering the issues addressed in Items 8.1 a. through c. be postponed until a common understanding of the scope and nature of the exemptions and the effects of the Swiss legislative measures has been reached between your Commission, the PCAOB, and their Swiss counterparts.

Alternatively, the wording of these Consents would have to be amended to reflect the limitations of non-U.S. law in a way that corresponds to Rule 2105.

V. Consents to be Provided by Foreign Public Accounting Firms

The Rules and Form do not address the issue of the consents deemed given by foreign public accounting firms who issue an opinion or otherwise perform material services within the meaning of Sec. 106(b) of the Act. The same limitations as to non-U.S. law that apply to the information submitted in the course of the registration pursuant to Rule 2105 should apply to such deemed consents.

VI. Conclusions

(1) Timetable

The timetable should be extended by at least one additional 360 day period for the registration by Swiss public accounting firms, and by a subsequent 360 day period for the investigative and disciplinary powers of the Board to take effect. This is necessary in order to give the Commission and the Board on the one hand and the Swiss Governmental Authorities and the Swiss accounting profession on the other hand the time necessary to establish the Swiss accounting oversight system and, on the basis of such Swiss oversight system, to establish a mutual understanding on the scope and nature of the investigative and disciplinary powers of the Board and on the exemptions to be granted to Swiss applicants from the related 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, lack of third party consent, or due to practical difficulties

(b) to furnish the consents required under part VIII of the Form, and

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

(2) Limitations of non-U.S. Law

The limitations of non-U.S. law as set forth in Rule 2105 should apply also to the consents required under Item 8 of the Form, to the investigative and disciplinary powers of the Board, and to the deemed consents pursuant to Sec.106(b) of the Act.

(3) Dialogue, Interplay, and Equal Treatment

The Board, your Commission, and the Swiss Governmental Authorities should establish an appropriate mechanism of dialogue and interplay between the Board and the envisaged Swiss public accounting oversight body. In any event we trust that Swiss applicants will be treated equally with other non-U.S. applicants in a comparable situation.

We appreciate the opportunity to express our concerns and to offer you our insights on implementing the Act. We look forward to continuing this discussion until a solution has been found that achieves our common cause, while fairly balancing the sometimes conflicting interests of the parties involved.

Respectfully submitted,

Swiss Institute of Certified Accountants and Tax Consultants

Andreas Müller
Chairman

Walter Hess
General Secretary

Attachment: Letter of the Institute to the PCAOB dated March 27, 2003