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von Finanzdienstleistungen

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To the members of the
VQF Financial Services Standards
Association

Zug, 5 March 2009
RU/AG

Commencement of the New Anti-Money Laundering Act

Dear Members
Dear Sir or Madam

The new Anti-Money Laundering Act (GwG) came into force on 1 February 2009. There is no period of transition in the new GwG for adjusting the regulations for Self-Regulatory Organizations (SROs). The Ordinance of the Swiss Financial Market Supervisory Authority (FINMA) on the Prevention of Money Laundering and the Financing of Terrorism in the Non-Banking Sector (GwV FINMA 3) provides a guideline for SRO regulations requiring adjustment in accordance with the new GwG. The definitive wording of this Ordinance was only published on 1 January 2009, the date on which it came into force.

It is clearly not possible for neither the SROs nor FINMA to work out the details of the new regulations – and arrange for any adjustments to be approved by FINMA - within eight days (or even one month). Therefore, at a meeting between the SROs and FINMA (SRO Forum), the problem of the transitional period was discussed. FINMA later issued a statement concerning the problem of the period of transition between the commencement of the new GwG and the commencement of the new SRO regulations. FINMA decided that the more stringent regulations for financial intermediaries in the new GwG will come into force immediately on commencement of the new Act (as of 1 February 2009). **The following regulations will apply until the VQF's new SRO regulations come into force:**

- The current SRO regulations of the VQF,
- Supplement to include the more stringent regulations in the new GwG (see item 1 et seq. below).

The more stringent regulations (new duties) for financial intermediaries in the new GwG¹ are as follows:

I. Duty of Identification

1. **Article 3 Para. 1 GwG:** If the customer is a legal entity (e.g. stock corporation, limited company etc.), the financial intermediary must again take note of the terms of authorisation of those natural persons acting on behalf of the legal entity in regard to the business relationship (this may be done, for example by inspecting the Commercial Register, which in any case must be obtained, as previously, for the identification of the legal entity).

¹ The new GwG is available for viewing on the Internet at http://www.admin.ch/ch/d/sr/c955_0.html.

Article 3 Para. 1 GwG now also states that the identity of natural person(s) acting on behalf of the legal entity in regard to the business relationship with the financial intermediary must be verified by means of a personal identification document. This new requirement concerning identification documents is already contained in Article 8 Para. 6 of the current VQF SRO regulations.

2. **Article 3 Para. 4 GwG:** In the case of cash transactions (all types of transaction in cash, bearer instruments and precious metals), there is a new requirement for identification to take place irrespective of the threshold values of the VQF SRO regulations (see Article 10 Para. 1 of the VQF SRO regulations: CHF 25,000 for cash transactions and CHF 5,000 in the case of money exchange transactions), not only in the event of suspicion of money laundering but also on suspicion of the financing of terrorism.

How is the financing of terrorism defined? According to Article 260^{quinquies} Para. 1 of the Swiss Penal Code (StGB), the financing of terrorism is basically understood to be the mere collecting or making available of assets for the financing of terrorist activities. However, a direct connection to a terrorist act is not required. The widening of duties of due diligence in the GwG with regard to combating the financing of terrorism is attributable to international demands. Recent international developments have shown that there are only minor differences between the ways in which terrorist groups and money launderers use the financial system. Thus terrorist groups also seek to conceal the connection between the source and intended application of their assets (paper trail). In order to achieve this, in the main the same channels are used both to finance terrorism and for money laundering. This justifies the widening or application of GwG duties of due diligence to the financing of terrorism. The legislator also considered the integrity, functionality and stability of the Swiss financial system to be at serious risk due to abuse for the purposes of terrorism. Unlike money laundering, terrorist organisations are also supported, in part, by legally acquired assets. This also alters the objective of the GwG: it is now no longer concerned solely with determining whether assets may originate from a felony but also whether legal assets may be used to commit a felony in the future.

II. Duties of Clarification

3. **Article 6 Para. 1 GwG:** A general duty of clarification is now mentioned in the GwG, i.e. the nature and purpose of the business relationship must always be clarified on entering into any business relationship. The extent of the information to be obtained is in accordance with the risk that the customer represents.

With regard to regular customers this was already provided for in Article 11 of the VQF regulations, at the time of the creation of the customer profile. This also now applies to occasional customers (see Article 10 VQF regulations) of VQF members, e.g. in the case of cash, money exchange or money transfer transactions. General duty of clarification in the case of occasional customers naturally only occurs insofar as the financial intermediary is also obliged to obtain identification.

4. **Article 6 Para. 2:** The financial intermediary must now also clarify the financial background and purpose of a transaction or business relationship if there is evidence that the assets involved in the business relationship serve the financing of terrorism (Article 260^{quinquies} Para. 1 Swiss Penal Code; see also item 2 above).

Detecting the financing of terrorism can prove to be extremely difficult in practice, mainly because the assets involved may be of legal origin. Information that can serve to reveal a connection with the financing of terrorism includes the name of the sender or recipient and details of the issuing or target country for the transaction. In fact, however, financial intermediaries are referred to external information (e.g. "Bush Lists", media reports etc.). By way of its Newsletter, the VQF has been informing its members of amendments and adjustments to the "Bush List" and other relevant lists for some years.

III. Organisational Duties

5. **Article 8 GwG:** In the new version of the Act, not only must organisational measures be taken to combat money laundering; but also organisational measures must now be taken for to prevent the financing of terrorism.

In this regard we refer to the lists in item 4 above. We also expressly recommend that members continue to use these lists or subscribe to a proprietary inquiry system (e.g. www.world-check.com or other). Members must be able to guarantee the existence of an internal organisational concept aimed at preventing abuse of the member's services by money launderers and financers of terrorism. This also includes, in particular, raising the awareness of member employees with regard to the risks of financing terrorism. Accordingly, the VQF will adapt the existing internal guidelines already used by many members (VQF doc. No. 1108[1].2), in order to provide new organisational measures to prevent the financing of terrorism. In addition to information on the new VQF SRO regulations, we will also provide members with details of the new internal guidelines.

IV. Reporting Duties

6. **Article 9 Para. 1 GwG:** A financial intermediary must immediately file a report with the Money Laundering Reporting Office Switzerland as defined in Article 23 GwG if it (amendments underlined):

- a. knows or has reasonable grounds to suspect that the assets involved in the business relationship:
 1. are connected to a punishable offence in accordance with Article 260^{ter} number 1 or 305^{bis} of the Swiss Penal Code;
 2. are the proceeds of a felony;
 3. are subject to the power of disposal of a criminal organisation; or
 4. serve the financing of terrorism (Article 260^{quinquies} Para. 1 Swiss Penal Code);
- b. cancels proceedings to open a business relationship due to justified suspicion in accordance with letter a above.

Reference is made to items 2 and 4 of this letter concerning the definition of the financing of terrorism and the problems associated with detecting the financing of terrorism in practice.

A new duty to report also exists if the financial intermediary declines to proceed to open a business relationship (i.e. even if no business relationship exists) due to certainty or reasonable grounds of suspicion of the existence of circumstances mentioned under letter a above. By way of this measure, the legislator aims to prevent the funds in question from otherwise getting into the financial system in the event of the cancellation of proceedings, or without the authorities having been given prior notice of the specific reasons for cancellation. This widening of the duty to report does not entail any additional duty to clarify; rather, reporting must take place solely on the basis of the information available at the time of cancellation as a result of which reasonable grounds for suspicion are given.

V. Outlook

7. During the course of January and February 2009, the VQF revised the statutes, SRO regulations and forms etc. on the basis of the new GwG and the new GwV-FINMA 3. We submitted these new documents to FINMA for approval on February 27 2009. Due to the fact that all SROs are currently revising their own regulations and other documents, which they must submit to FINMA for approval, and that certain specific aspects of the new GwG may under certain circumstances be subject to dispute between the SROs and FINMA, it is not possible at present to predict when we might expect the new SRO regulations to be approved. We anticipate that the **new SRO regulations** will come into effect in the second half of 2009. The VQF will arrange for all members to receive a copy of the SRO regulations – including an explanation of the new provisions – in good time prior to their official commencement.

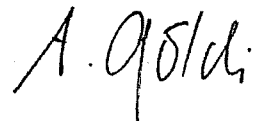
Please do not hesitate to contact us if you have any questions or require further clarification.

Yours sincerely

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