

**STAIGER, SCHWALD & PARTNER**  
ATTORNEYS-AT-LAW

## **Memorandum**

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To	AEL Corporate SIG
From	Marc Metzger / Alex Schindler
Date	April 30, 2009

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### **Anti-Money Laundering Requirements for Lawyers Operating in Switzerland**

#### **1. Application of Anti-Money Laundering Laws on Lawyers**

##### **1.1 General Remarks**

According to Article 2 of the Federal Act on Anti-Money Laundering (hereinafter the 'AMLA') the AMLA applies to financial intermediaries. Financial intermediaries are (1) the players of the banking sector, such as banks, securities dealers and fund managers, (2) as well as companies and individuals engaged in the para-banking sector. The latter group is defined as "persons who on a professional basis accept or hold on deposit assets or who assist in the investment or transfer of such assets". Amongst other things, the AMLA requests financial intermediaries to identify clients and beneficial owners, to clarify the nature and purpose of the business relationship and, in certain cases, the economic background of a transaction or a business relationship.

Lawyers are exempt from the application of the Anti-Money Laundering Regulations as long as their activities are covered by the attorney-client privilege (Article 9 para. 2 AMLA). In other words, a lawyer giving legal advice to a corporate entity or an individual does not have to fulfill the anti-money laundering requirements such as identifying the client and establishing the identity of the beneficial owner. If such legal advice is accompanied with holding on deposit, investing or transferring of assets, the activity still does not fall within the provisions of the AMLA. If a lawyer performs a public function, such as receiver, guardian, administrator of estates etc., he is, again, exempt from the application of the AMLA. If however, the commercial element of the lawyer's activity outbalances the element of legal advice or the lawyer acts purely as a financial intermediary, i.e. as a trustee or a board member of a domiciliary company, he falls within the provisions of the AMLA.

Finally, the AMLA applies only to professional financial intermediaries. A financial intermediary acts professionally if he exceeds certain limits relating to profits, amounts of client assets and/or transaction volumes.

## **2. Anti-Money Laundering Requirements**

Financial intermediaries not being subject to a specific supervision like banks, insurance companies etc., are generally supervised by Self-Regulatory Organisations ('SRO'). These SROs issue detailed regulations for the identification of clients and beneficial owners. For instance, lawyers of Staiger, Schwald & Partners Ltd. acting as financial intermediaries are members of the Financial Services Standards Association ('FSSA').

### **2.1 Verification of the Identity of the Client**

The financial intermediary must verify the identity of the customer on the basis of a document of evidentiary value (i.e. passport, extract of commercial register or authenticated copy thereof). Where the customer is a legal entity, the financial intermediary must acknowledge the provisions regulating the power to bind the legal entity, and verify the identity of the persons who enter into the business relationship on behalf of the legal entity (Article 3 para. 1 AMLA). Due to the documentation requirements of Article 7 para. 1 AMLA the financial intermediary must copy the document of evidentiary value to keep in his file.

### **2.2 Establishment of the Identity of the Beneficial Owner**

According to Article 4 para. 1 AMLA the financial intermediary must obtain a written declaration from the client indicating who the beneficial owner is, if:

- the customer is not the beneficial owner or if there is any doubt about the issue;
- the customer is a domiciliary company;
- a cash transaction of considerable financial value is being carried out.

The FSSA provides a standard form for such declaration which may be used by the financial intermediaries supervised by the FSSA (see annex).

### **2.3 Duty to Clarify**

The financial intermediary is required to identify the nature and purpose of the business relationship intended by the client. The extent of the required information is determined by the risk represented by the client (Article 6 para. 1 AMLA).

The financial intermediary must clarify the economic background and the purpose of a transaction or of a business relationship if it appears unusual (unless its legality is clear) or if there are indications that as-

sets are the proceeds of a felony or subject to the power of disposal of a criminal organisation or serve the financing of terrorism (Article 6 para. 2 AMLA).

#### **2.4 Copy Documentation or Confirmation from another AEL Firm**

The AMLA does not explicitly regulate the identification on the basis of an authenticated copy of an identification document. However, most regulations of SROs allow the identification of the client on this basis. For instance, according to Article 3 para. 3 in connection with Article 9 of the FSSA Regulations, the client may be identified by a copy of an authenticated identification document. Certification of authenticity of the copy of the identification document may also be issued by a foreign financial intermediary provided that such foreign financial intermediary is subject to equivalent anti-money laundering supervision and regulation. Based on the EU Money Laundering Directive we assume that a EU lawyer supervised by an anti-money laundering authority may certify the authenticity of an identification document.

On the other hand, a mere confirmation from another AEL regarding the identity of a client and/or a beneficial owner does not meet the regulatory requirements of the FSSA.

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**CONFIDENTIAL****V Q F**

VQF membership number	Client number

**Declaration of the beneficial owner**

[pursuant to Art. 4 Money Laundering Act; Art. 14 et seq. VQF rules (Form 400.1); identification form (Form 902.1 sect. 4)]

Financial intermediary

Contracting party

The signatory hereby declares:  
(Mark as applicable)

- that the contracting party/parties alone has/have an economic entitlement to the assets
- that the following has/have an economic entitlement to the assets:

Surname, first name	
Date of birth	
Business name, poss. valid extract from the Register of Commerce (enclose)	
Residential/domicile address	
Nationality/domicile state	

The contracting party engages to **notify amendments without delay** of its own accord.

**Deliberately given false information shall be punishable pursuant to Art. 251 Penal Code (falsification of documents).**

Place, date

Signature, contracting party