

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER OF LUXEMBOURG
AND THE
SWISS FEDERAL AUDIT OVERSIGHT AUTHORITY
ON COOPERATION RELATED TO THE OVERSIGHT OF AUDITORS

The Commission de Surveillance du Secteur Financier (CSSF), based on its obligations under the law of December 18, 2009 relating to the audit profession;

and

the Swiss Federal Audit Oversight Authority (FAOA), based on its obligations under the Swiss Federal Act of 16 December 2005 on the Licensing and Oversight of Auditors (Audit Oversight Act, AOA; SR 221.302) and the implementation of the legislation based thereon;

have agreed as follows:

PURPOSE

1. Both Parties seek to improve the quality of auditing and strengthen public trust in the Auditors' report and increase investor confidence in their respective capital markets.
2. Given the global nature of capital markets, the Parties recognise the need for international cooperation, in which the supervisory Parties can trust the respective oversight activity of the supervisory Party in the home country of the audit firms. This is the only way to avoid an undue burden on the audit firms and overlapping in supervision.
3. Recognising that the European Commission has decided upon the adequacy referred to in Article 47, paragraph 1(c) of the Directive 2006/43/EC in respect of Switzerland¹ enabling the exchange of audit working papers between the EU Member States' oversight authorities and Switzerland;
4. Recognizing that the European Commission has decided upon the equivalence referred to in Article 46, paragraph 1 of the Directive 2006/43/EC in respect of Switzerland² and that the conditions under which the requirements of Article 45(1) and (3) will be disapplied or modified must be set in a cooperative arrangement as referred to in Article 46(3) of the Directive 2006/43/EC between the Member State and Switzerland and communicated to the Commission.

¹ Commission Decision of 5 February 2010 on the adequacy of the competent Authorities of certain third countries pursuant to Directive 2006/43/EC of the European Parliament and of the Council.

² Commission Decision of 19 January 2011 on the equivalence of certain third country public oversight, quality assurance, investigation and penalty systems for auditors and audit entities and a transitional period for audit activities of certain third country auditors and audit entities in the European Union; Member States may disapply or modify on the basis of reciprocity the requirements of Article 45(1) and (3) in relation to the auditors and audit entities of that third country or territory

5. The purpose of this MOU is to facilitate mutual cooperation between the Parties to the extent permitted by their respective national Laws or regulation in the area of registration, public oversight, Inspections and Investigations of Auditors of companies which, in accordance with the law of December 18, 2009 relating to the audit profession in Luxembourg and the Federal Audit Oversight Act in Switzerland are subject to the oversight of the Parties.

DEFINITIONS

6. For the purpose of this MOU,

“Party” or **“Parties”** means the Commission de Surveillance du Secteur Financier in Luxembourg and/or the Federal Audit Oversight Authority in Switzerland.

“Auditor” means a natural person or an audit firm that is subject to the oversight of Parties in accordance with the law of December 18, 2009 relating to the audit profession in Luxembourg and the Audit Oversight Act in Switzerland.

“Laws or regulations” mean any laws, rules or regulations in force in the respective countries of the Parties.

“Inspections” refers to external quality assurance reviews of Auditors generally undertaken on a regular basis with the aim of enhancing audit quality.

“Investigations” refers to investigations in response to a specific suspicion of infringement or violation of Laws or regulations.

“Information” means non-public information that relates to: (1) the outcome of Inspections and Investigations, including information on firm-wide quality control procedures and engagement reviews, (2) audit working papers or other documents held by Auditors, and (3) other areas of mutual interest for the purpose of supervision, provided that the information relates to matters that are subject to the regulatory jurisdictions of both Parties.

COOPERATION

Exchange of Information

7. Cooperation may include the exchange of Information between Parties for the purposes permitted or required by Laws or regulations on public oversight, registration, Inspections, and Investigations of Auditors.

Mutual recognition

8. The Parties will rely on the supervision of the Auditors in their home country and shall refrain from public oversight activities, Inspections, Investigations and penalties with respect to Auditors from the other country on the basis of reciprocity, to the extent permitted by their respective national Laws or regulations.
9. The Parties shall endeavour to minimize the burden related to the registration process applying to Auditors from the other country on the basis of reciprocity, to the extent permitted by their respective national Laws or regulations³.
10. To the extent permitted by Laws or regulations, the Parties will use their best endeavours to inform one another, prior to or immediately after taking any significant public oversight measures, in respect of relevant Auditors that are registered or seek registration in the other country.

Requests for Information

11. Each Party will provide the other Party with Information upon request.
12. Requests will be made in writing (including e-mail) and addressed to the contact person of the requested Party.
13. The requesting Party should specify the following:
 - (a) The Information requested;
 - (b) the purposes for which the Information will be used;
 - (c) the reasons why the Information is needed, and if applicable, the respective Laws or regulations that may have been violated;
 - (d) an indication of the date by which the Information is needed;
 - (e) to the best of the knowledge of the requesting Party, an indication of whether the Information requested might be subject to further use, transfer or disclosure under paragraphs 23 to 26.

³ In any case, the CSSF requires a light registration process for a third-country audit entity which originates from a third-country which has been declared as equivalent by the European Commission as well as the disclosure of an annual transparency report.

14. In the case where Information is exclusively held by the relevant Auditor, the Parties will not request direct transfer of such Information by the Auditor. Such Information will be requested from the other Party in each case.
15. If cases where the Information requested may be maintained or available at another Party within the country of the requested Party, the requested Party will endeavour to provide the Information to the extent permitted by national Laws or regulations.

Execution of requests for Information

16. Each request will be assessed on a case by case basis by the requested Party to determine whether Information can be provided under the terms of this MOU. In any case where the request cannot be met in full within the desired time period, the requested Party will inform the requesting Party accordingly and will consider whether other relevant Information or assistance can be given.
17. Each party shall endeavour to provide a prompt and adequate response to requests for Information.
18. In order to avoid unnecessary delays, the requested Party will provide as appropriate parts of the requested Information as they become available.
19. The requested Party may refuse to act on a request where:
 - (a) it concludes that the request is not in accordance with this MOU;
 - (b) acceding to the request would contravene the Laws or regulations of the requested Party's country, in particular if the Information is to be passed on to criminal authorities or to authorities and bodies with the power of administrative sanctions and legal assistance in criminal matters would be excluded because of the nature of the offence;
 - (c) it would burden the requested Party disproportionately;
 - (d) it concludes that it would be contrary to the public interest of the requested Party's country for assistance to be given;
 - (e) the provision of Information would adversely affect the sovereignty, security or public order of the requested Party's country; or
 - (f) judicial proceedings (civil, criminal or administrative proceedings) have already been initiated or have become legally effective in respect of the same actions and against the same persons before the Parties of the country of the requested Party.
20. The requested Party will promptly inform the requesting Party of the reasons where it refuses to act on a request made under this MOU.

21. Any document or other material provided in response to a request under this MOU and any copies thereof shall be returned on request to the extent permitted by national Laws or regulations.

CONFIDENTIALITY

22. Each Party shall keep confidential all Information received or created in the course of cooperation. The obligation of confidentiality shall apply to all persons who are or have been:

- (a) employed by the Parties;
- (b) involved in the governance of the Parties; or
- (c) otherwise associated with the Parties.

USE OF INFORMATION

23. The Parties may use Information received or created in the course of cooperation only for the exercise of their functions of public oversight, Inspections and Investigations of Auditors. If any Party intends to use Information received or created in the course of cooperation for any purposes other than those stated in the request⁴, it must obtain the prior written and specific consent of the requested Party. If the requested Party consents to the use of Information for a purpose other than that stated, it may subject it to conditions.

EXCEPTIONS TO CONFIDENTIALITY

24. In the event that a Party is required to disclose or to transfer the Information received or created in order to comply with its obligation under its national Laws or regulations or by a court order, it will provide, wherever possible, at least fifteen working days advance written notice to the other Party prior to its disclosure or transfer, stating the reasons as to why the Party is required to disclose or transfer such Information. A Party may only disclose or transfer the Information as long as the intended recipient is legally obligated to maintain such Information as confidential.
25. If the other Party objects to the disclosure or the transfer, as referred to in paragraph 24, the requesting Party will make best efforts to resist the disclosure or transfer of the Information.
26. A Party that intends to disclose or to transfer any Information received or created in the course of cooperation, other than in cases referred to in paragraph 24, must obtain the prior written and specific consent of the Party which provided the Information. The Party which intends to disclose or transfer the Information shall indicate the reasons and the purposes for which it would be disclosed or transferred. The requested Party may make its consent to the disclosure or transfer of the Information subject to conditions.

THE TRANSFER OF PERSONAL DATA

27. The Parties will only transfer personal data in accordance with their respective Laws or regulations on data protection.

⁴ The CSSF will not make use of Information received or created in the course of cooperation for its duties other than under the law of December 18, 2009 relating to the audit profession, without the prior consent of the FAOA.

OTHER

28. This MOU does not create any binding legal obligations, nor does it modify or supersede any Laws or regulations in Luxembourg or in Switzerland. This MOU does not give rise to a right on the part of the CSSF, the FAOA or any other governmental or non-governmental entity or any private person to challenge, directly or indirectly, the degree or manner of cooperation by the CSSF or the FAOA.
29. This MOU does not prohibit the Parties from taking measures with regard to the supervision of Auditors that are different from or in addition to the measures set forth in this MOU.
30. The Parties shall at the request of either Party consult on issues related to the matters covered by this MOU and share experiences and knowledge gained in the discharge of their respective duties to the extent permitted by their respective Laws or regulations.
31. The Parties may consult informally, at any time, about a request or proposed request or about any Information provided.
32. The Parties may consult and revise the terms of this MOU in the event of a substantial change in Laws or regulations and/or practices affecting the operation of this MOU.

ENTRY INTO EFFECT AND TERMINATION

33. This MOU will come into force from the date of signature by both Parties.
34. This MOU may be terminated by either Party at any time. The provisions concerning confidentiality (paragraphs 22 to 26) and on the transfer of personal data (paragraph 27) shall remain in force thereafter.

Luxembourg, 26 September 2013

Commission de Surveillance du
Secteur Financier



Jean Guill
(Director General)

Bern, 4 October 2013

Federal Audit Oversight Authority



Thomas Rufer
(Chairman of the Board of Directors)



Frank Schneider
(Chief Executive Officer)