

Transparency and Trust
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**Department for Business Innovation & Skills Discussion Paper –
Transparency & Trust: Enhancing the Transparency of UK Company
Ownership and Increasing Trust in UK Business**

The Association for Financial Markets in Europe (AFME)¹ welcomes the opportunity to respond to the Department's Discussion Paper – Transparency & Trust: Enhancing the Transparency of UK Company Ownership and Increasing Trust in UK Business (Discussion Paper).

Summary

AFME Members welcome the Department's proposals in respect of increasing the transparency of UK company ownership. As they are in the forefront of the fight against money laundering and terrorist financing, phenomena that can affect all members of society, Members have to identify and verify, in appropriate cases, the beneficial owners of all corporate clients on a daily basis. Given London's prominence as a global financial centre, the UK's current chairmanship of the G8 Group of developed nations and the UK's relationship with the Crown Dependencies and Overseas Territories, it is important that the UK government sets an example to the rest of the world in enhancing corporate transparency.

On the Department's proposals regarding directors, to the extent the proposals specifically at the directors of banks, AFME believes that such proposals should be considered separately as part of the current legislative proposals to reform the banking sector.

¹ The Association for Financial Markets in Europe (AFME) represents a wide range of participants in European wholesale financial markets. Our members comprise all pan European banks as well as key regional banks, brokers, law firms, investors and other financial markets participants. As such we seek to bring market insight and industry perspective to the discussions on the full range of financial regulatory reform effects that are currently under way.

Corporate Transparency

1. The proposed definition of beneficial ownership and its application in respect of information held by a central registry?

AFME supports the Department's proposed definition of beneficial ownership and its application in respect of information held by a central registry.

2. The types of companies and legal entity that should be in the scope of the registry?

AFME believes, as a general principle, that all companies domiciled in the UK, including LLPs, should fall within the scope of the Department's proposals.

3. Where there should be exemptions for certain types of companies? If so, which?

AFME supports the Department's view that public companies listed on a regulated market should be excluded from its proposals as such companies are currently subject to extensive legal requirements to collect and publish beneficial ownership information.

4. Extending Part 22 of the Companies Act 2006 to all companies as an aide to beneficial ownership identification by the company?

AFME supports the Department's proposals to extend Part 22 of the Companies Act 2006 to all companies to assist them in identifying their beneficial owners.

5. Placing a requirement on the company to identify the beneficial ownership of blocks of shares representing more than 25% of the voting rights or shares in the company; or which would give the beneficial owner equivalent control over the company in any other way?

AFME supports the Department's proposal to place a requirement on the company to identify the beneficial ownership of blocks of shares representing more than 25% of the voting rights or shares in the company or which would give the beneficial owner equivalent control over the company in any other way.

6. Placing a requirement on beneficial owners to disclose their beneficial ownership of the company to the company?

AFME supports the Department's proposal to place a requirement on beneficial owners to disclose their beneficial ownership of the company to the company.

7. Whether there are additional or other requirements we could apply to ensure that information on all companies' beneficial ownership is obtained? If so, what?

Currently, companies are required, in their financial statements, to disclose who their immediate and ultimate parents are. The definition of "parent" is set out in various accounting standards. AFME suggests that the definition of "ultimate parent" be aligned to the definition of beneficial owner that the Department is currently proposing. For those companies whose financial statements are subject to an audit by an external auditor, such information will be subject to audit.

8. Requiring the trustee(s) of express trusts to be disclosed as the beneficial owner of a company?

AFME supports the Department's proposal that the trustees of an express trust be disclosed as the beneficial owner of a company. AFME would go further and call for a register of trusts to be created and be available to the public, at minimal cost, disclosing details of all relevant parties to the trust such as the settler, the protector (if any), the trustees and the beneficiaries to the extent they are identifiable as individuals.

9. Whether it would be appropriate for the beneficiary or beneficiaries of the trust to be disclosed as the beneficial owner as well? Under what circumstances?

AFME believes that, in all circumstances, the beneficiaries of a trust should be disclosed, whether they be definite individuals (e.g. Mary Smith), a definite group or identifiable individuals (e.g. the current and future children of John Smith) or an amorphous group of individuals (e.g. "the poor of the parish"). To the extent that any individual beneficiary is identifiable, they should be identified.

10. Extending the investigative powers in the Companies Act 1985 to specified law enforcement and tax authorities?

AFME supports the Department's proposals to extend the investigative powers in the Companies Act 1985 to specified law enforcement and tax authorities.

11. Using the requirements that apply in respect of a company's legal owners as the model of beneficial ownership information to be provided to the company and the registry?

AFME supports the Department's proposal of using the current requirements in respect of a company's legal owners as the model of beneficial ownership to be provided to the company and the registry.

12. If not, what additional or other information we might require? How?

Not applicable.

13. Whether there is a need to introduce additional or other measures to ensure the accuracy of the beneficial ownership information that is filed with Companies House and retained on the register?

We refer to our proposal made in the response to Q7: for those companies whose financial statements are subject to external audit, details of beneficial ownership will be reviewed by the auditor and may be cross-checked to details provided by the company to Companies House.

14. If so, what? To what extent would the benefits of these measures outweigh the costs and other impacts?

AFME suggests that the extra costs incurred by the company as a result of the audit requirement will be minimal as currently the definition of "parent" is similar to the proposed definition of "beneficial owner".

15. Whether companies should be required to update beneficial ownership information at fixed intervals or as the information changes?

AFME supports the Department's proposal that companies should be required to update beneficial ownership information as the information changes just as companies are required to update other information as it changes, such as changes in the registered office and changes in directors.

16. Whether beneficial owners should be required to disclose changes in beneficial ownership information proactively to the company?

AFME believes that the beneficial owners of a company be legally required to disclose changes in beneficial ownership information proactively to the company. The system for notifying a company listed on a regulated market of changes in ownership above 3% of voting shares provides such a model.

17. The appropriate timeframes for notification of changes to the company or Companies House?

AFME recommends that beneficial owners should notify the company of relevant changes in the beneficial ownership details of the company within 14 days of the beneficial owners becoming aware of the change or within 14 days of their being reasonable grounds where the beneficial owners of should have become aware of the relevant change. The 14 day period has been selected as this is the period after which changes in directors have to be notified to Companies House.

18. The broad possible costs and benefits of a policy change to the annual return.

AFME would not object to a single filing, on an annual basis, of the accounts together with the annual return as a single filing would reduce the burdens on business compared to the current separate filing of each document. However, AFME believes that it is important to continue to use the annual return as a “backstop” for other important filings such as a change in directors. In order to enhance the reliability of information held at Companies House, it is important that the annual return is reviewed by Companies House staff once it is received for apparent discrepancies with information currently held on file.

19. Whether information in the registry should be made available publicly. Why? Why not?

AFME's Members who are regulated financial institutions strongly support the public availability of information held by the registry, not least due to their proficient use of the register when conducting due diligence on their corporate customers. Apart from the reasons stated in the Discussion Paper, simply the fact that information is in the public domain will act as a deterrent to some people both in terms of giving false information (particularly if they are reminded that deliberately or recklessly submitting false information may be an offence) and in terms of misusing corporate structures for improper purposes. Furthermore, by making all information available on the public register would assist overseas law enforcement agencies in their fight against cross-border crime. AFME understands that certain information held in the registries of the Isle of Man and of Jersey are

accessible only to local law enforcement agencies. Should their foreign counterparts wish to obtain such access to assist them with their inquiries, the process for gaining such access is slow, time consuming and bureaucratic, which is a serious impediment in the fight against international crime.

20. If not, whether the information should be accessible to regulated entities? Why? Why not?

Please refer to AFME's response to Q20.

21. Whether a framework of exemptions should be put in place? If yes, which categories of beneficial owners might be included? How might this framework operate?

Whilst AFME understands the need for exemptions such as those for vulnerable adults and those individuals where law enforcement authorities conclude there is a realistic, as opposed to a theoretical, threat to personal safety, we believe that such exemptions should be kept to a minimum and applications for an exemption should be rigorously scrutinised. We do not believe that potential embarrassment of the beneficial owner, in itself, should qualify for an exemption.

22. The possible costs and benefits of a policy change to the registers of members?

AFME believes that the proposals around information held by the company and those who may access it (e.g. shareholders) should not in any way detract from the registry at Companies House being a reliable source of information about the company. AFME Members would be most perturbed if, for example, details of beneficial owners and directors would only be available from the company's registered office as opposed to being available from Companies House. Such a measure would make the process of customer due diligence much slower and more expensive.

23. Whether beneficial ownership information held by the company should be made publicly available? How?

As a broad principle, AFME believes that beneficial ownership held by the company should be made publicly available. One way in which this may be achieved is via a secure online electronic register over which only the company may effect changes. Such a register maintained by the company could also serve as the register held by Companies House. It would be important that such an online register would include access to the various changes in beneficial ownership in the

past rather than just showing the details of the current beneficial owners.

24. Should any framework of exemptions in relation to information held by the registry also apply to information held by the company?

AFME believe that there should be no exemptions in relation to beneficial ownership held by the company. However, any exemptions from making parts of this information publicly available should be consistent with our proposals outlined in our response to Q21.

25. The costs and benefits of this policy change for companies, beneficial owners, regulated entities and other organisations.

By providing an online register of beneficial owners, once the original set up and training costs are overcome by the company, routine administration of changes in beneficial ownership details should be minimal. Furthermore, the costs of conducting customer due diligence by AFME Members would fall and they would have the benefit of access to a much more accurate record of the current beneficial owners.

26. In particular:-

- **The link between the proposals and crime reduction;**
- **The link between the proposals and the incentives to invest;**
- **The number of companies affected;**
- **The amount of time it would take to obtain, collate and report data on beneficial ownership – for both simple and more complex ownership structures;**
- **Costs to the regulated entities;**
- **The changes which regulated entities might make to their actions;**
- **The number of beneficial owners;**
- **The degree of publicity and guidance required;**
- **Likely compliance;**
- **Potential unintended consequences;**
- **The varying impacts of the alternate options.**

Not applicable.

27. Prohibiting the new issue of bearer shares

AFME supports the Department's proposal of prohibiting the new issue of bearer shares for the reasons articulated by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes.

28. Whether individuals should be given a set period of time to convert existing bearer shares to ordinary registered shares? How long?

AFME believes that a period of three years should be given for individuals to convert existing bearer shares to ordinary registered shares.

29. Whether there are additional or other measures that we might take?

AFME supports the option to replicate Sections 801 and 802 of the Companies Act 2006, whereby unidentified shares be frozen by the Court, following which the company may apply to the Court for the shares to be sold for the benefit of the owners of the shares, who, in turn would have to identify themselves to the Court to claim the proceeds for the sale.

30. The costs and benefits of this policy change

AFME believes that the abolition of bearer shares would be helpful in the fight against crime in that it would eliminate an avenue, currently available to criminals, to disguise or hide their identity. It would also assist the UK government in international fora when proposing the abolition of bearer shares on a multi-national basis.

31. Whether we should more widely communicate the application of directors' statutory duties to all company directors and whether we should – alternatively or in addition – require nominee directors to disclose their nominee status and the name of the beneficial owner on whose behalf they have been appointed? Why? Why not? If yes, should that disclosure be made available on the public record?

AFME believes that the Department should more widely communicate the application of directors' statutory duties to all company directors. This may be achieved by issuing an easy to read booklet containing details of the duties of directors to directors on them first becoming registered at Companies House as a director and then thereafter, say, every 2 years. Another option would be for all directors to take a simple online training course with a multiple choice test at the

conclusion. On a regular basis, thereafter, directors should have to confirm that they have reviewed an updated set of training materials.

In terms of nominee directors, AFME supports the proposals made by the Financial Action Task Force and the G8. Furthermore, AFME supports the Department's preference that where nominee directors have divested themselves of the power to direct the company this fact should be disclosed together with the details of the beneficial owners on whose behalf they are acting. AFME believes that both pieces of information should be publicly available at Companies House. Such disclosures would assist AFME Members when conducting their customer due diligence as well as assisting law enforcement agencies in their inquiries. Additionally, such disclosures may, in of themselves, act as a deterrent against the abuse of nominee directors.

32. Whether we should make it an offence for a director to legally divest themselves of the power to run the company? Why? Why not?

AFME would support a proposal to make it an offence for a director to legally divest themselves of the power to run the company as the concept limited liability companies are a key element in the functioning of an efficient economy, however it is only through natural persons acting as directors can a company operate. Given the importance of the role played in the economy by companies and the statutory duties placed on directors, it should not be possible for a director to divest him/herself of the power to run a company.

33. Whether there are additional or other measures that we might take?

Not applicable.

34. The costs and benefits of this policy change.

Not applicable.

35. Whether we should prohibit UK companies from appointing corporate directors? Why? Why not?

AFME believes that UK companies should be prohibited from appointing corporate directors for the reasons outlined in paragraph 5.8 of the Discussion Paper.

36. If yes, what transitional arrangements might be appropriate?

AFME suggests that companies be given a transitional period of three years after the relevant legislation has come into force in order to allow companies sufficient time to replace any corporate directors with individuals prepared to serve as directors.

37. Whether there are additional or other measures that we might take?

AFME would go further and suggest that the Department consider introducing a requirement that all directors of all UK companies be individuals, as it is only through individuals that a company may act and the most important individuals associated with a company are its directors.

38. The cost and benefits of this policy change?

Not applicable.

Restoring Trust

AFME believes that the idea of amending the duties of directors of banks to create a primary duty to promote financial stability of the bank over other directors' duties (most notably, the interests of shareholders) requires careful consideration. Any such change will almost certainly result in a much less economically productive banking sector, by effectively requiring unduly conservative risk-taking and strategic decision-taking at board level, which will be magnified by the contemplated criminal regime for directors. It is likely that this would also adversely impact investor appetite for bank stocks, if investors perceive that banks are significantly less interested in profits.

AFME further believes that this question should be addressed as part of the upcoming changes in the law on banks' governance resulting from the report of the Parliamentary Commission on Banking Standards (Changing Banking for Good), and not as part of general company law reform. Other changes under consideration, such as criminal liability for reckless directors of banks, reversal of burden of proof in civil regulatory proceedings against banks' directors and officers, replacement of the Approved Person regime, will be germane to this proposal. This proposal should be considered alongside them and not in isolation.

Conclusion

We would be pleased to discuss the issues covered in this submission with the FCA or to provide any further information on these issues if that would be helpful, including suggesting some textual amendments to FCA's proposals for new rules on these matters.

Yours faithfully

A handwritten signature in black ink, appearing to read "Denis O'Connor", with a long horizontal flourish extending to the right.

Denis O'Connor
Managing Director