

1 September 2016

Transparency and Trust Team
Department for Business, Energy & Industrial Strategy
1 Victoria Street
London
SW1H 0ET

Dear Sirs,

Beneficial Ownership Transparency

The role of the Financial Markets Law Committee (the "FMLC" or the "Committee") is to identify issues of legal uncertainty, or misunderstanding, present and future, in the framework of the wholesale financial markets which might give rise to material risks, and to consider how such issues should be addressed.

The FMLC welcomes and supports the implementation of the G20 High Level Principles on Beneficial Ownership Transparency in the United Kingdom, including through the enactment of legislation. The new Part 21A of the Companies Act 2006, which came into effect on 6 April 2016, requires companies and limited liability partnerships to hold and report adequate, accurate and current information on their beneficial ownership in a register designated as the "register of people with significant control" (the "**PSC Register**").¹ This requirement, it is envisaged, will help prevent the misuse of companies for illicit purposes such as corruption, tax evasion and money laundering.

The FMLC wishes to draw attention, however, to an unintended consequence which the PSC Register regime may have on security financial collateral arrangements. Under the legal framework for the PSC Register, restriction notices are required to be issued to relevant legal entities with a relevant interest in the company for failing to respond to information requests from the company. Equivalent provisions apply to limited liability partnerships. The restriction notice has the effect of nullifying the legal entity's interests so that any sale or transfer of the relevant shares, exercise of rights in respect of the relevant shares and issuance of shares in right of an interest or in pursuance of an offer made to the interest-holder, is void.²

Security financial collateral arrangements, which are arrangements that create a security interest in financial collateral (cash, financial instruments and credit claims) to secure obligations, enjoy a degree of protection under the Financial Collateral Arrangements (No.2) Regulations 2003 (the "**FCARs**").

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¹ Part 21A of the Companies Act 2006 was introduced by Schedule 3 to the Small Business, Enterprise and Employment Act 2015.

² Small Business, Enterprise and Employment Act 2015 sch 1B(3).

The FCARs implement E.U. Directive 2002/47/EC on financial collateral arrangements (the "FCAD"). The FCAD seeks to provide a simple, speedy, effective and uniform means of enforcing security over financial collateral throughout the European Union. To this end it requires EU Member States, *inter alia*, to eliminate formality requirements on the creation or enforcement of collateral imposed by national law.³

The application of a restriction notice in respect of shares subject to a security financial collateral arrangement will arguably fetter the exercise of rights pertaining to those shares, ultimately interfering with the swift enforcement of security over financial collateral and significantly undermining a key policy objective of the FCARs. It would, therefore, be helpful if the restrictions notice regime were adapted so that it is consistent with the FCARs. Consistency would ensure that financial collateral arrangements continue to support the effective functioning of the wholesale financial system.

I and Members of the Committee would be delighted to meet you to discuss the issues raised in this letter. Please do not hesitate to contact me to arrange such a meeting or should you require further information or assistance.

Yours sincerely,



Joanna Perkins

FMLC Chief Executive

Copied to: Richard Knox, HM Treasury

³ Yeoward & Parsons et al on the Law of Financial Collateral.