



UNDER SECRETARY

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

September 06, 2007

William H. Clark, Jr., Esq.  
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Dear Mr. Clark:

It was a pleasure meeting with you on August 22 to discuss issues relating to our efforts to bring greater transparency to the state legal entity formation process. We look forward to working with you and further exploring these issues as model legislation for the States continues to develop.

As we discussed, the lack of transparency with respect to the individuals who control privately held for-profit legal entities created in the United States continues to represent a substantial vulnerability in the U.S. anti-money laundering/counter terrorist financing (AML/CFT) regime. As described in several government and intergovernmental reports,<sup>1</sup> the use of U.S. companies to mask the identity of criminals presents an ongoing and substantial problem for AML/CFT authorities as well as for U.S. and global law enforcement authorities more generally. These reports include descriptions of common scenarios or typologies in which criminals have used corporate vehicles to mask their illicit activity.<sup>2</sup>

Our ultimate objective in this endeavor is to impede the misuse by criminals of legal entities by ensuring that accurate information regarding the individuals with ultimate effective control of these entities is available to law enforcement authorities in a timely manner. In our view, the most direct means to achieve this objective is to focus on the

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<sup>1</sup> *E.g.*, The National Money Laundering Strategy, 2007, Departments of the Treasury, Justice and Homeland Security, pages 8 and Appendix A pages 63-66, available at <http://www.treas.gov/press/releases/hp386.htm>; "Company Formations – Minimal Ownership Information is Collected and Available", GAO Report 06-376, April 2006, available at [www.gao.gov/new.items/d06376.pdf](http://www.gao.gov/new.items/d06376.pdf); "Report on the Role of Domestic Shell Companies in Financial Crime and Money Laundering," FinCEN, November 2006, available at [www.fincen.gov/LLCAssessment\\_final.pdf](http://www.fincen.gov/LLCAssessment_final.pdf); and the Financial Action Task Force's Third Mutual Evaluation Report of the United States, June 2006, at pages 226-237, available at [www.fatf-afi.org/dataoecd/44/9/37101772.pdf](http://www.fatf-afi.org/dataoecd/44/9/37101772.pdf).

<sup>2</sup> With respect to case studies on the typologies mentioned above *see* Financial Action Task Force, "The Misuse of Corporate Vehicles, including Trust and Company Service Providers," October 13, 2006, [www.fatf-gafi.org/dataoecd/30/46/37627377.pdf](http://www.fatf-gafi.org/dataoecd/30/46/37627377.pdf), pages 1-10, 30-57; GAO Report 06-376, April 2006, pages 30-36; and "Company Formations – Minimal Ownership Information is Collected and Available", FinCEN, November 2006.

legal entity formation and administration processes because States are in a unique position to collect information regarding such persons. In this regard, the Department of the Treasury's Office of Terrorism and Financial Intelligence (TFI) has been discussing with others in government some general principles which, if considered in earnest by the States, may lead to the establishment of processes that would (i) make the identity of controlling persons of legal entities more readily available to law enforcement and (ii) protect U.S. commercial and financial sectors from abuse, while not interfering with existing legitimate business practices, especially of small businesses that are so important to our economy.

It is particularly important to share these principles with you now as the growing awareness of the vulnerabilities associated with the lack of this information regarding legal entities created in the United States has prompted an ongoing discussion within many States and relevant associations regarding legislative reform. The proposed reform that we discussed, based on the recent National Association of Secretaries of State Company Formation Task Force Report & Recommendations, represents progress in facilitating the availability of ownership information. However, it falls short of ensuring the timely availability to law enforcement of accurate ownership information and thus does not fully address the problem of legal entities masking the identity of criminals.

We are not in a position to prescribe the means by which States reform their company formation and administration processes to address this vulnerability. We therefore seek your assistance in developing model State legislation that would achieve our objective of ensuring the timely availability to competent authorities of accurate information regarding the control of legal entities, so that State legal entity formation and administration regimes will be less susceptible to abuse and more transparent to law enforcement.

Presumably, the most direct means to address the lack of availability of ownership information would be for the States to collect this information at the time that they create legal entities, and thereafter following any change of control. Model legislation implementing this approach would address the following issues:

**Term and Definition:** Although the term generally applied by anti-money laundering regimes to the natural person with effective control of a legal entity is the "beneficial owner," this term has a different meaning in other U.S. legal contexts. Therefore, it may be preferable to apply a different term for this concept in model legislation (e.g., "controlling individual"). The definition of the term would designate the natural person(s) with the authority to exercise ultimate effective control over a legal entity. (This would require looking through each entity that controls another entity to the natural person(s) controlling that entity.)

**Information Requirement:** Such model legislation would address the information that would be required regarding the controlling person(s). This might include identification and contact information (name, address, date of birth and government-issued

identification number). It would also have to address the need to update the information following any change in controlling person.

**Veracity:** Such model legislation could address means to ensure the veracity of the above information. For example, it could require the person submitting the information to be legally accountable for it. Failure to file or maintain accurate and complete information, or to update the accuracy of that information following a change, could be punishable under State law.

**Disclosure:** Such model legislation should recognize the need to safeguard privacy, and not make the above information publicly accessible. However, law enforcement should have access to the information without obtaining a subpoena, and preferably without the result that the target of an investigation would become aware of law enforcement's interest. In addition, consideration could be given to including a mechanism that would enable financial institutions to gain access to controlling person information regarding their customers under appropriate circumstances, as this information can be useful in performing due diligence.

The approach described above seems to us to represent the most direct means of achieving our objective of ensuring the timely availability of accurate information regarding the individuals who control legal entities, and thereby addressing this significant weakness in our ability to protect our system from abuse by money launderers and other criminals. There are many issues and details that will require further consideration and discussion to develop comprehensive model legislation. TFI is continuing to discuss the above principles with law enforcement, State governments, the private sector, and other interested parties to advance efforts to implement effective reforms. In this regard, we would appreciate the opportunity to discuss any thoughts that you might have regarding the approach outlined above, as well as any other approach by which we might more readily achieve our objective.

We appreciate that reform in this regard is not a small undertaking and that there are many components to enhancing transparency in our financial system. Nevertheless, we see the States as being a key part of the solution. We look forward to continuing our dialogue with you on these issues.

Sincerely,

  
Stuart A. Levey