



# Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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3003 N. Central Ave.  
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July 24, 2008

The Hon. Joseph I. Lieberman

### *Chairman*

Senate Committee on Homeland Security and Governmental Affairs

SD-340 Dirksen Senate Office Building

Washington, D.C. 20510

The Hon. Susan M. Collins

### *Ranking Minority Member*

Senate Committee on Homeland Security and Governmental Affairs

SD-344 Dirksen Senate Office Building

Washington, D.C. 20510

Re: S. 2956 (Incorporation Transparency and Law Enforcement Assistance Act)

Dear Senators Lieberman and Collins:

The National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission ("ULC"), opposes the provisions of S. 2956 (Incorporation Transparency and Law Enforcement Assistance Act) that would require an entity to file information with the Secretary of State in the jurisdiction in which it is formed relating to its beneficial owners.

The ULC is comprised of commissioners from all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands who have been appointed by the legislature or executive of the jurisdiction they represent. For over 100 years, the ULC has worked to draft uniform acts that it judges represent sound public policy and are appropriate for the states and territories to enact to make the laws of the several states as coherent and consistent as possible.

The ULC supports the goal of S. 2956 to combat the use of shell entities in money laundering, terrorist financing, and tax evasion, but the ULC believes that there are more workable and less intrusive ways to accomplish that goal than the approach taken in S. 2956. The ULC also believes that any approach to combating the misuse of shell entities must respect the traditional role of state law in the formation and governance of the affairs of private entities.

At the request of the National Association of Secretaries of State ("NASS"), the ULC has undertaken a project to develop amendments to the various uniform entity laws to combat the misuse of shell entities. The Committee on Corporate Laws (the "CCL") of the American Bar Association, which prepares the Model Business Corporation Act ("MBCA"), is preparing similar amendments to the MBCA at the request of NASS. Private business entities are creatures of state law, and the ULC and the CCL believe that any effort to prevent the misuse of shell entities should be focused on state law. Thus the ULC has been working closely with NASS and the CCL to develop an approach that can be applied across the board to all state entity laws.

During its just completed 2008 Annual Meeting, the ULC considered on first reading two sets of amendments to the Uniform Limited Liability Company Act (2006) to combat the misuse of shell entities:

- One set of amendments follows the approach recommended by NASS and establishes a system to facilitate the disclosure of information regarding the record owners of a limited liability company (“LLC”).
- The other set of amendments includes the amendments recommended by NASS and also provides for a new system of disclosure of the identities of the persons in charge of the affairs of an LLC.

The membership of the ULC unanimously approved continuation of work on both sets of amendments. Our drafting committee, along with the CCL, will be reaching out to interested constituencies for their reactions and input on the amendments.

The amendments the ULC is pursuing that provide for the disclosure of the persons in charge of the affairs of an entity arose during discussions with representatives from the Department of Treasury. The advantages of these amendments include:

- Identification of the persons in charge is much easier than correctly identifying an entity’s beneficial owners as required by S. 2956.
- Identification of the persons in charge should satisfy the need of law enforcement to obtain information about the affairs of an entity. While the use of “nominee directors” may be countenanced by the laws of some other countries, directors of a corporation and managers of an LLC have fiduciary duties that preclude their serving purely as nominees for hidden principals. If this focus on the persons in charge of an entity is adopted, the ULC intends to make clear that “nominee” managers of an LLC are not permissible and that the fiduciary duties of managers require them to have enough information about the affairs of their LLC so that they can judge what is in its best interests.

The ULC understands that the CCL shares the views expressed above regarding “nominee directors” and is preparing similar amendments to the MBCA.

As the work of the ULC on this issue has proceeded, the ULC’s drafting committee has been guided by several important principles:

- Unmanageable workloads for the Secretaries of State must not be created.
- Foreign investment in the United States must not be discouraged.
- Legitimate privacy rights must be protected.
- Unnecessary and unworkable compliance burdens must not be imposed on legitimate businesses.

The ULC believes that the needs of law enforcement can be met and the misuse of shell entities can be combated in a manner consistent with these principles, and the ULC will continue to work toward that end.

The ULC has devoted a considerable amount of resources to this effort and we hope that action would not be taken on S. 2956 until the ULC and the CCL have been able to complete their work on this important issue.

Sincerely yours,



Martha Walters  
President