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Dear Sirs,

House of Commons Public Bill Committee – Call for Evidence – Small Business, Enterprise and Employment Bill

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of EuropeanIssuers, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Corporate Governance Expert Group has examined your proposals and advised on this response. A list of members of the Expert Group is at Appendix A.

Response

We have focused our response on ‘Part 7 – Companies: Transparency’ and ‘Part 8 – Company Filing requirements’ of the Small Business, Enterprise and Employment Bill, as these are the areas of greatest significance to small and mid-size quoted companies.

Small and mid-size quoted companies are a key driver of growth in the economy. We welcome and support changes to legislation which promote and facilitate good corporate governance. As we state in our *Corporate Governance Code for Small and Mid-Size Quoted Companies* (the QCA Code), “good corporate governance provides a powerful management tool to ensure that the values of a public company and the related structures and corporate behaviours are optimised to create long term shareholder value with management compensated in a complementary fashion”.

Nonetheless, we are very concerned with the proposed rules on registers of persons with ‘significant control’ (Part 7 – 70/71). We understand that this requirement will not apply to companies applying DTR 5, thus effectively excluding companies on the Main List and the growth markets AIM and ISDX. However, this could be dependent on the outcome of the negotiations to adopt the EU’s 4th Money Laundering Directive (MLD) proposal on beneficial ownership.

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Article 29 of the 4th MLD proposal requires all companies to “obtain and hold adequate, accurate and current information on their beneficial ownership”. As it is currently phrased, companies on regulated markets will be exempt from this requirement. However, companies on MTFs with a primary market function, such the growth markets AIM and ISDX in the UK, will have to report their beneficial owners.

We believe that this was not intended by the spirit of the directive – the recommendation of the Financial Action Task Force was not to apply these rules to companies quoted on markets subject to disclosure requirements and it appears particularly obtuse for the burden to be placed on growth businesses. To apply these rules to companies quoted on MTFs with a primary market function would negatively affect small and mid-size quoted companies’ ability to grow and create jobs. It would also create the perverse situation where small and mid-size companies would have to report more information than their larger counterparts on the London Stock Exchange’s Main List.

Moreover, quoted companies would face significant difficulties identifying their beneficial owners since it is sometimes impossible for them to identify beneficial owners through the multiple layers of ownership which often occur. The current text of the proposed 4th MLD, in its article 29, 7, establishes that Member States will impose sanctions on companies failing to comply with the requirements to obtain and disclose information on their beneficial owners.

We believe that, with the EU Market Abuse Regulation now extended to all markets, there is no reason why companies on MTFs with a primary market function should not be exempt too.

We believe that companies on SME Growth Markets (as defined in MiFID II and which we expect AIM and ISDX to be classified as once MiFID II comes into effect on 1 January 2017) should be exempt from the requirement to report on their beneficial owners and would urge the UK Government to pursue this policy change in the EU ahead of the adoption of the 4th MLD.

Accordingly, it will be very useful for the consideration of this Bill to be coordinated with an initiative to remedy this aspect of the 4th MLD. The UK and EU initiatives in this regard should be better coordinated.

Responses to specific sections

Part 7 – Companies: Transparency

70/71 – As mentioned above, we note that the ongoing efforts to amend the current text of the proposed Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (4th MLD). Article 29 of the 4th MLD proposal requires all companies must hold adequate, accurate and current information on their beneficial ownership. We also note the ongoing negotiations on the Shareholder Rights Directive proposal, which will also establish requirements regarding the identification of shareholders.

Therefore, we believe that it would be advisable to see the transparency elements of the Small Business, Enterprise and Employment Bill developed once the pending legislative changes at EU level are finalised. Otherwise, very substantial changes may be required to the UK provisions, which would both place an unnecessary burden on business and would leave the UK legislation open to major criticism. A bill intended to support small business should not be subject to criticism as to its detail which challenges small businesses.

More generally, we believe that creating a new public register for persons with significant control will increase the administrative burden on companies for little tangible benefit and also have unnecessary costs related to introducing new systems to store data and potential consequences for failure to comply (e.g. sanctions). We would urge the House of Commons Public Bill Committee to conduct a thorough cost-assessment analysis prior to the introduction of such a register. Such an assessment must also include the data protection issues arising.

71 - PSC Register

We have had discussions with BIS on this point and we appreciate that BIS has been advised by ministers that, from a policy perspective, amendments to part 22 Companies Act 2006 would not be sufficient and that it is necessary to create the new, complex part 21A with supporting subordinate legislation. However, we continue to believe that greater disclosure of beneficial ownership of equity ownership (and indeed non-equity securities) for all companies (not just public companies) could be achieved through minor amendment to the understood and respected part 22 regime together in combination with an expansion of the accounting disclosure of ultimate control as is required under relevant accounting standards.

76 - Corporate Directors

Whilst we may not agree with the current policy intention to prohibit corporate directors, we appreciate that this is a firm element of government policy.

Dilatory directors are best prevented and punished through proper enforcement of those Companies Act and Insolvency Act provisions which are already on the statute book.

However, on the basis that there is likely to be a general prohibition on corporate directors it is vital that a list of sensible exemptions is set out, including:

- use of directors throughout a group structure as an aspect of efficient and effective corporate governance oversight;
- corporate directors required under certain financial services regulatory requirements; and
- usage of corporate directors where outsourcing of functions take place.

In all of the above examples, the corporate directors and the persons standing behind the same cannot shirk from liability and exercise of proper oversight.

77 – We welcome the introduction of the need for the Secretary of State to carry out a review of the requirements of section 76 and publish a report setting out the conclusions gathered. We believe that this is necessary thoroughly to assess the impact of the legislation, ensuring that the objectives with the change of policy have been achieved or if further changes are necessary.

78/79 – It remains conceptually flawed to seek to apply statutory duties to shadow directors.

Shadow directors are not directors, but they are persons for whom policy, rightly, imposes certain specific liabilities. Accordingly, the legislation should be drafted along the lines that if a person is a shadow director that person's conduct will be viewed through the lens of statutory duties as if he/she were a director i.e. a comparative application. We consider it dangerous for duties to apply directly to shadow directors. We have no interest in seeking to protect the interest of shadow directors but are interested to ensure that the law is clear, effective and proportionate.

Part 8 – Company Filing requirements

80/81 – We do not believe that the change to confirmation statements instead of annual returns will have any material beneficial impact on the running of companies and, indeed consider it to be an unnecessary change to a system which is well understood and operates effectively.

82/83 – We welcome these proposed changes as we believe they offer flexibility to small and mid-size companies. To keep information on the register may decrease companies' administrative burdens and costs.

84 – We welcome the special attention that has been given to the protection of a person's date of birth, which should be restricted personal data.

If you would like to discuss any of our responses in more detail, we would be happy to attend a meeting.

Yours faithfully,



Tim Ward
Chief Executive

Quoted Companies Alliance Corporate Governance Expert Group

Edward Craft (Chairman)	Wedlake Bell LLP
Colin Jones (Deputy Chairman)	UHY Hacker Young
Anita Skipper	Aviva Investors
David Isherwood	BDO LLP
David Fuller	CLS Holdings PLC
Nicholas Stretch	CMS Cameron McKenna LLP
Louis Cooper	Crowe Clark Whitehill LLP
Nick Gibbon	DAC Beachcroft LLP
Andrew Hobbs	EY
Eugenia Unanyants-Jackson	F&C Investments
Melanie Wadsworth	Faegre Baker Daniels LLP
Rob Burdett	FIT Remuneration Consultants
Richie Clark	Fox Williams LLP
Victoria Barron	Hermes Equity Ownership Services
Julie Stanbrook	Hogan Lovells International LLP
Claire Noyce	Hybridan LLP
Peter Swabey	ICSA
Andy Howell	KBC Advanced Technologies PLC
Nicola Green	LexisNexis
Eleanor Kelly	
Jane Mayfield	
Anthony Carey	Mazars LLP
Mebis Dossa	McguireWoods
Gabriella Olson-Welsh	
Peter Fitzwilliam	The Mission Marketing Group PLC
Cliff Weight	MM & K Limited
Jo Chattle	Norton Rose Fulbright LLP
Julie Keefe	
Dalia Joseph	Oriel Securities Limited
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David Firth	Penna Consulting PLC
Kate Elsdon	PricewaterhouseCoopers LLP
Nick Janmohamed	Speechly Bircham LLP
Madeleine Cordes	TMF Corporate Secretarial Services Ltd
Edward Beale	Western Selection Plc
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