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June 21, 2010

The Honorable Joseph Lieberman
Chairman
Homeland Security and Governmental Affairs Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the American Bar Association and its nearly 400,000 members, I am writing in regard to the proposed legislation prepared by the U.S. Department of the Treasury (the "Treasury Proposal") as a substitute for S. 569, the "Incorporation Transparency and Law Enforcement Assistance Act." The ABA continues to support all reasonable and necessary efforts of the United States government to combat money laundering and terrorist financing activity. To that end, we endorse the Treasury Proposal's focus on maintaining, at the state and territorial level, the regulation of those involved in the formation of U.S. business entities. We also appreciate that the Treasury Proposal recognizes the need for a more precise and workable approach to identifying the natural person "owners" of entities in such a way that assists law enforcement in their efforts without unduly hindering legitimate businesses. The Treasury Proposal is a viable framework that lays out a practical solution to the money laundering, terrorist financing and tax evasion threats law enforcement had identified.

We look forward to continuing our efforts with you, the Treasury Department, and others to ensure that the legislation combats the problems of money laundering and terrorist financing without burdening states and small businesses and without compromising the attorney-client privilege. However, the ABA has some practical concerns and suggested amendments to the Treasury Proposal. Specifically, we seek clarification and discussion on:

- The number of beneficial owners' identifications required under the Treasury Proposal (which we understand would be a maximum of two), the party responsible for updating such information (which we believe would be more workable if designated within the entity), and the timing for such updates (which should be periodic, tied to an internal corporate governance event of the entity);
- Alternative language to the requirement of the disclosure of natural persons who maintain "voting control" (where "voting control" should be more clearly defined to reflect different entity formation types);
- Which natural persons qualify for "management" (who we believe should be specific officers within the entity);

- The role of Documentation Agents and Licensed Documentation Agents (clarifying that the responsibility for verification is limited to document collection); and
- The scope of entities covered by this proposal (which we believe could be expanded).

In addition, we have concerns with the no tipping provision of the proposal, as it may conflict with lawyers' ethical obligations and compromise the attorney-client privilege. We also suggest limiting disclosure of beneficial ownership information to requests via subpoena, and, consistent with FATF Recommendation 33, affirmatively prohibiting bearer shares.

Thank you for the opportunity to provide these comments on the Treasury Proposal. We appreciate your willingness to address the problems of money laundering and terrorist financing and stand ready to discuss these issues in more detail with you at your convenience. If you have any questions or need more information, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Susman", with a long horizontal flourish extending to the right.

Thomas M. Susman

cc: Members, Senate Homeland Security and Governmental Affairs Committee