



27 January 2020

By email to [int-sec@lawcommission.gov.uk](mailto:int-sec@lawcommission.gov.uk).

Prof Sarah Green  
Commercial and Common Law Team,  
Law Commission,  
1st Floor, Tower,  
52 Queen's Anne Gate,  
London, SW1H 9AG.

Dear Prof Green,

## **Sirius Minerals and the Law Commission Review on Intermediated Securities**

Current events at Sirius Minerals represent a stark illustration of the need for rapid change in the law on intermediated securities, as well as new evidence of the detriment for private investors that can arise from the current law. Many individuals who hold via nominees will not see the full details of why their company is being taken over and the Court Hearing will scandalously ignore most individuals' views. We are writing on behalf of ShareSoc, the champion for individual investors, and UKSA to ask you to expedite your review of intermediated securities so that no future investors suffer similar detriment. Please also ensure that a thorough assessment of the Sirius Minerals case is included in your evidence base.

It is a national scandal that:

- i. Sirius and its advisers are making it so difficult to for its shareholders to communicate with each other.
- ii. the law as currently written and interpreted produces unnecessary barriers to shareholders in Sirius talking to each other.
- iii. the nominee system as operated by platforms makes it well nigh impossible to find out who owns shares in Sirius and obtain that information in a way and format that makes it possible to communicate with those end investors who hold Sirius shares via nominee.
- iv. platforms are able to refuse to communicate important information to those who hold Sirius's shares by nominee, thereby disproportionately increasing the importance and value of shares held by institutional and large shareholders and reducing the value of shares held by individual (private) investors.

This results in an inability of Sirius to act fairly between shareholders, as required by CA2006 S172.

There are 85,000 shareholders in Sirius. However, the shareholder register only shows 7,000. The difference is because the other shareholders are holding their shares via nominees.

ShareSoc and the ShareSoc Sirius Shareholder Group (SSSG) have requested a copy of the shareholder register. This shows the 7,000 members, with their names and addresses, but does not include emails:

- i. This makes it impossible to communicate with other members quickly and efficiently. In a takeover situation speed is of the essence.
- ii. This puts individual investors at a disadvantage to large investors, who are able to communicate with the company, its advisers and between themselves quickly via various modern media methods.
- iii. We are therefore forced to either communicate with other members by post, which is expensive and slow, or not at all.

In respect of the 78,000 (90% of the total) shareholders who hold their shares in Sirius via nominee the problems are **FAR WORSE**:

- i. The register of interests is not structured in a user friendly format. All we obtain is a pdf of various requests for nominees to disclose interests. For all intents and purposes this is useless for us.
- ii. Platforms will not pass information from us onto their customers. There is no legal requirement for them to do so. Hence they shy away from doing so. As this is such a special case, I have asked Hargreaves Lansdown if they will send out information about our investor group SSSP and its objectives. I will let you know if I am successful with this request.
- iii. The consequence of the above is that we have no practical means of contacting 90% of the shareholders in Sirius. This makes it extremely difficult for us to create a large campaign group. Without a large representation in our campaign group, the impact we can have is severely limited. Hence I call the current circumstances a national disgrace.
- iv. The scheme of arrangement will require court approval, but will only consider the numbers of members and their views: it will ignore the 90% who hold via nominee.

We have gone into considerable detail about these issues in our submission to the Consultation, see <https://www.sharesoc.org/sharesoc-news/sharesoc-ukxa-response-law-commission-review-of-intermediated-securities-call-for-evidence/>

I know the date for submitting consultation responses has now past, but nevertheless I thought I should bring to your attention this specific and very topical issue and I hope you will study it carefully. Please also feed this into the call for evidence.

You can see further background in these links to a recent Daily Mail article and on our website <https://www.thisismoney.co.uk/money/comment/article-7922163/ALEX-BR...>  
<https://www.sharesoc.org/blog/company-news/sharesoc-sirius-shareholder-group-ssg/>  
<https://sharesoc.ning.com/forum/topics/sirius-forum>

We will also be highlighting the deficiencies of the current law in this situation to BEIS and other interested parties.

Yours sincerely

Cliff Weight  
ShareSoc, Director of Policy and Campaigns

Peter Parry  
UKSA, Policy Director

cc. Rt Hon Andrea Leadsom MP, Secretary of State, for Business, Energy and Industrial Strategy  
Christopher Woolard, Chief Executive, Financial Conduct Authority  
Sir Jon Thompson, Chief Executive, Financial Reporting Council