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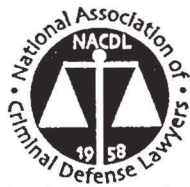
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# NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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organization has a prior violation or violations of any law (including civil administrative regulations) is not by itself inconsistent with the existence of an effective compliance program. Rather, the organization should merely be required to consider the factors set forth in proposed Application Note 4C (recency of violation(s), relation of violation(s) to current duties and whether or not there is a pattern of prior violations) in determining whether or not including the individual within the organization's substantial authority personnel presents a significant impediment to the effectiveness of the compliance program.

Proposed Application Note 2C to Section 8B2.1 should be eliminated. In accordance with the proposed change to make effective compliance programs responsible not merely for detecting and preventing criminal violations, but regulatory violations, this proposed Application Note would make it weigh against a finding that a program is effective if any standard required by any administrative regulation is not incorporated in the compliance program. A compliance program required to preclude punishment for violations of criminal law should not need to be a comprehensive regulatory compliance program.

Subsection (f) of Section 8C2.5 currently prohibits the three-level reduction in the culpability score even if the organization has an effective compliance program, if the organization unreasonably delayed reporting the offense to governmental authorities. Section 8C2.5(g) provides a five-level decrease based on cooperation, which includes timely notification of the offense. In light of this provision, a failure of timely notification should not preclude the application of the three-level decrease.

Subsection (f) of Section 8C2.5 also currently prohibits the three level-reduction in the culpability score even if the organization has an effective compliance program, if certain high-level officials within the organization were culpable in the offense. The proposed amendments change this prohibition to a rebuttable presumption that this reduction does not apply if certain high-level officials within the organization were culpable in the offense. This is a positive change that gives discretion to sentencing judges to assess the facts on a case-by-case basis. NACDL endorses this amendment and believes it should apply regardless of the size of the organization.

The Sentencing Commission seeks comments on whether the current three-level reduction under Section 8C2.5(f) should be changed to four levels to reflect the increased requirements of an effective compliance program. NACDL opposes the

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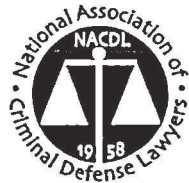
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increased requirements as discussed above. If, however, the requirements are to increase, it would be appropriate to increase the reduction for having an effective program to four levels.

Proposed Application Note 12 to Section 8C2.5 notes that if various criteria are met, waiver of the attorney-client privilege and the work product doctrine will not be a prerequisite to a reduction in culpability for "cooperation." However, the proposed Application Note states, waiver of the attorney-client privilege and the work product doctrine may be required in order to obtain the reduction for cooperation. NACDL believes that under no circumstance should waiver of the attorney-client privilege or the work product doctrine be a prerequisite to obtaining credit for cooperation. Respect for these privileges is necessary in order for the organization frankly and candidly to determine whether there have been criminal violations, the scope of any such violations and appropriate corrective actions. An organization can cooperate with the government without waiving these privileges and should not be required to waive these privileges in order to obtain appropriate recognition for its cooperation.

Proposed Application Note 4 to Section 8C2.8 says that in determining where within the applicable range to set a fine, the court "should" consider any prior criminal record of an individual within high-level personnel. This proposed Application Note should state that the mere fact of a prior criminal record of such an individual is not necessarily relevant to where within the range to set the fine. Based on the criteria set forth in Application Note 4C to Section 8B2.1(b)(3), such a criminal record may be wholly irrelevant to whether or not the organization had an effective compliance program. In such cases, it should likewise be irrelevant to where within the applicable range the fine is set.

Proposed Application Note 2 to Section 8C4.1 states that if various criteria are met, waiver of the attorney-client privilege and the work product doctrine will not be a prerequisite to a providing "substantial assistance." However, the proposed Application Note states, the Government may determine that waiver of attorney-client privilege or work product doctrine may be necessary to ensure that a substantial assistance departure motion will be made. NACDL believes that under no circumstance should waiver of the attorney-client privilege or the work product doctrine be a prerequisite to obtaining credit for substantial assistance. Respect for these privileges is necessary in order for the organization frankly and candidly to determine whether there have been criminal violations, the scope of any such violations and appropriate corrective actions. An organization can substantially

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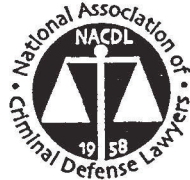
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# NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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assist the government without waiving these privileges and should not be required to waive these privileges in order to obtain appropriate recognition for its substantial assistance.

Very truly yours,

**Barry J. Pollack**  
Co-chair, White Collar Committee  
National Association of Criminal  
Defense Lawyers

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Ralph Grunewald

202-872-8600

1150 18th Street, NW ♦ Suite 950 ♦ Washington, DC 20036

Fax 202-872-8690

assist@nacdl.org

www.nacdl.org



March 1, 2004

**VIA HAND DELIVERY AND ELECTRONIC MAIL**

United States Sentencing Commission  
One Columbus Circle, N.E.  
Suite 2-500  
Washington, D.C. 20002-8002  
Attention: Public Affairs

Re: Request for Public Comment by the United States Sentencing Commission  
on Proposed Amendments to Sentencing Guidelines

Dear Commissioners:

We are writing on behalf of 21 pharmaceutical companies,<sup>1</sup> in response to the request for public comment issued by the United States Sentencing Commission (USSC) on December 30, 2003.<sup>2</sup> Our comments concern the proposed amendments to Chapter Eight (the Organizational Guidelines), which describes the elements of effective compliance programs.

By way of background, the group of pharmaceutical companies we represent has substantial experience with voluntary compliance programs, and a long-standing commitment to compliance. That commitment is reflected both in individual companies' compliance efforts, and in a variety of collective efforts to improve compliance practices. Along with a number of other pharmaceutical companies, the group's members have been meeting semi-annually for the past five years to identify "best practices" for promoting compliance. Most of the group's current members also submitted comments to the Department of Health and Human Services Office of Inspector General (OIG) to

<sup>1</sup> These companies are: Abbott Laboratories, Alcon Laboratories, Inc., Allergan, Inc., Amgen Inc., AstraZeneca Pharmaceuticals LP, Aventis Pharmaceuticals, Inc., Bayer Corporation, Boehringer Ingelheim Corporation, Bristol-Myers Squibb Company, Daiichi Pharmaceutical Corporation, Eli Lilly & Company, Fujisawa Healthcare, Inc., Genentech, Inc., GlaxoSmithKline, ICOS Corporation, Johnson & Johnson, Merck & Co., Inc., Novartis Pharmaceuticals Corporation, Pfizer Inc., TAP Pharmaceutical Products Inc., and Wyeth Pharmaceuticals.

<sup>2</sup> Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment, including public comment regarding retroactive application of any of the proposed amendments, 68 Fed. Reg. 75340 (Dec. 30, 2003).

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help the OIG develop its voluntary compliance guidelines for the pharmaceutical industry,<sup>3</sup> and submitted comments responding to requests for public comment by the USSC Advisory Group on the Organizational Guidelines. We appreciate the Advisory Group's recognition of our comments. Given the seminal role that the Organizational Guidelines have played in fostering effective compliance programs, we welcome the USSC's initiative to update and refine the Guidelines' criteria.

Our previous comments to the USSC Advisory Group emphasized two key principles: (1) articulating core compliance program standards that give individual companies the flexibility necessary to create "customized" programs tailored to their unique circumstances; and (2) encouraging vigorous self-policing, by reducing the penalties associated with organizational self-analysis and self-reporting. As discussed below, we believe that the proposed amendments promote these principles and will advance the goals of the Organizational Guidelines, although in some instances revisions to the proposal can further advance these goals. Our comments also address: (1) ethics-based compliance approaches; (2) the effect of misconduct by high-level personnel on organizational sentencing; (3) responsibility for compliance program implementation; and (4) proposed language on "model" compliance practices. We hope that these comments will be of assistance to the USSC in finalizing its amendment to the Organizational Guidelines.

\* \* \*

**I. Enhancing Compliance Program Effectiveness by Defining Fundamental Standards that Preserve Flexibility**

The companies in our group support the proposed amendments, which would retain the seven-element framework of the existing Guidelines, while also creating a number of new obligations and broadening the required scope of effective compliance programs. For instance, the proposed Guidelines would require that companies: establish compliance programs designed to prevent and detect any violations of law or regulation (rather than violations of criminal laws, as in the current Guidelines);<sup>4</sup> promote an "organizational culture" encouraging a commitment to compliance;<sup>5</sup> satisfy new

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<sup>3</sup> See 66 Fed. Reg. 31246 (June 11, 2001) (OIG notice requesting comment on the development of voluntary compliance program guidance for pharmaceutical manufacturers); 67 Fed. Reg. 62057 (Oct. 3, 2002) (draft OIG guidance and request for comment); 68 Fed. Reg. 23731 (May 5, 2003) (final OIG guidance).

<sup>4</sup> Proposed Commentary to § 8B2.1.

<sup>5</sup> Proposed § 8B2.1(a).

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internal reporting and more detailed oversight requirements;<sup>6</sup> provide compliance training;<sup>7</sup> periodically evaluate the effectiveness of their compliance programs;<sup>8</sup> provide incentives to employees to follow compliance policies,<sup>9</sup> in addition to enforcing compliance standards through disciplinary measures; and conduct ongoing risk assessments.<sup>10</sup>

These various changes reflect sound compliance principles that have crystallized since the initial adoption of the Organizational Guidelines, and we support their incorporation into the Guidelines.<sup>11</sup> At the same time, we hope the USSC will emphasize that - - within the parameters set by this new and more rigorous framework - - flexibility is still essential for companies to build compliance programs that are genuinely effective. As the USSC has explained previously, the Organizational Guidelines were designed “to encourage flexibility and independence by organizations in designing programs that are best suited to their particular circumstances.”<sup>12</sup> Encouraging flexibility and independence is equally critical today. Without the freedom to use their best judgment - - to develop customized compliance programs tailored to their individual needs and circumstances, their past experience with compliance strategies that have proved successful or disappointing, and their insights on innovations likely to strengthen their compliance efforts - - companies would lack “ownership” of their compliance programs and may not feel empowered to design their programs for maximum effectiveness. The Organizational Guidelines have been “a real success story for the United States

<sup>6</sup> Proposed § 8B2.1(b)(2) requires that: (1) the organizational leadership be knowledgeable about the content and operation of the compliance program; (2) the organization’s board of directors be knowledgeable about the content and operation of the program, and exercise reasonable oversight over implementation and effectiveness of the compliance program; (3) specific individuals within high-level personnel have overall responsibility to oversee the compliance program; and (4) these individuals provide periodic reports on compliance matters to the organization’s board. The current Guideline commentary only requires (3).

<sup>7</sup> Proposed § 8B2.1(b)(4) makes compliance training a requirement, as opposed to an option, and extends the training requirement to the organization’s upper levels as well as its employees and agents.

<sup>8</sup> See proposed § 8B2.1(b)(5).

<sup>9</sup> See proposed § 8B2.1(b)(6).

<sup>10</sup> See proposed § 8B2.1(c).

<sup>11</sup> Recognizing that the amended Guidelines would create “heightened requirements” for an effective compliance program, the USSC asked whether the credit organizations receive for effective compliance programs should be increased from three to four points. 68 Fed. Reg. at 75359-60. Because these heightened requirements would “raise the bar” for effective compliance programs in a number of significant respects, we believe such a change is warranted. Coupling heightened requirements with a modest increase in the incentives for satisfying these requirements would be a useful step.

<sup>12</sup> An Overview of the Organizational Guidelines, Paula Desio, Deputy General Counsel, United States Sentencing Commission, available on the USSC website, <http://www.usc.gov>.



Sentencing Commission in its work to deter crime and encourage compliance with the law,”<sup>13</sup> and the Guidelines’ balance between structure and flexibility has been an important part of that success story. We believe the amended Guidelines can best stimulate ongoing improvements in companies’ compliance practices if accompanied by commentary emphasizing that their revised criteria must be interpreted in the same flexible spirit that has characterized the Guidelines since their inception.

One example of why flexibility is important involves the proposed requirement to give employees “appropriate incentives to perform in accordance with [the compliance program].”<sup>14</sup> Companies must be able to implement this provision in a way that reinforces their efforts to make compliance an ingrained part of the organizational culture. We would be concerned with any interpretation of this requirement that mandated “bonuses” for adherence to the law and company policy, which should be a basic obligation of every company employee rather than something “above and beyond” employees’ normal duties. Individual companies need the freedom to design incentive systems carefully, so as to ensure that their incentive systems do not inadvertently undermine or dilute the message that compliance with the law and company policy is expected of all employees as an ordinary part of their day-to-day responsibilities.

## II. Encouraging Self-Policing

Vigorous self-policing by organizations - - the “first line of defense” in the effort to detect and prevent violations of the law - - is critical to achieving the goals of the Organizational Guidelines. The proposed amendments include two changes that would encourage self-policing, which we strongly support. We hope the USSC will also consider additional measures that would complement these changes: creating a presumption that a company that voluntarily discloses self-discovered violations has an effective compliance program; removing current Guideline language that reduces the incentive for effective compliance programs by tying the credit for an effective compliance program to a requirement for self-reporting; and working with stakeholders to address the “litigation dilemma” confronting companies that embrace self-policing.

Companies today face significant penalties for engaging in candid self-analysis and for reporting self-discovered improprieties to the Government. The USSC Ad Hoc Advisory Group’s report on the Organizational Guidelines<sup>15</sup> provides a thoughtful analysis of this problem. According to the Advisory Group, “[a] central objective of the organizational sentencing guidelines is to deter criminal conduct by creating incentives

<sup>13</sup> Diana E. Murphy, The Federal Sentencing Guidelines for Organizations: A Decade of Promoting Compliance and Ethics, 87 Iowa L. Rev. 697, 719 (Jan. 2002).

<sup>14</sup> Proposed § 8B2.1(b)(6).

<sup>15</sup> See Report of the Ad Hoc Advisory Group on the Organizational Sentencing Guidelines (Oct. 7, 2003), available on the USSC website, <http://www.usc.gov>.

for voluntary compliance and by rewarding organizations that help the government discover misconduct.”<sup>16</sup> However, the “litigation dilemma” creates countervailing incentives that can discourage vigorous self-policing. As the Advisory Group explained:

[T]he same information that an organization should use to improve its compliance and training efforts is also of potentially enormous value to those who may become involved in litigation with the organization, whether it be administrative, civil or criminal litigation. This gives rise to the “litigation dilemma” and often a justifiable reluctance by many organizations to “dig deep” for fear of creating a roadmap for litigants against it.<sup>17</sup>

In elaborating on the risks of effective compliance programs, the Advisory Group noted, for example, that “audits and investigative reports may become litigation roadmaps for potential adversaries” and even compliance training programs are “potentially riddled with peril because of the litigation dilemma.”<sup>18</sup> Moreover, since “[u]nder present law, compliance program and audit materials are rarely confidential,” they are often subject to disclosure. “[I]f such disclosures are routinely allowed,” the Advisory Group warned, “they will undermine the law enforcement policies upon which the organizational sentencing guidelines . . . are premised: that corporate good citizenship can be induced through incentives that promote self-policing.”<sup>19</sup> In short, the litigation dilemma “is recognized as one of the major greatest impediments to the institution or maintenance of truly effective compliance programs.”<sup>20</sup>

A closely related problem addressed by the Advisory Group, which exacerbates the litigation dilemma, is that companies that voluntarily disclose suspected misconduct to the Government may be required to turn over privileged documents to the Government as a condition of cooperation. However, as the Advisory Group noted, voluntary disclosure of privileged documents may waive the privilege as to all parties who seek the disclosed documents.<sup>21</sup> Consequently, even otherwise-privileged documents generated by a company’s voluntary self-policing efforts may become available to litigation adversaries and harm the company. All of these problems penalize companies for

<sup>16</sup> Id. at 92.

<sup>17</sup> Id. at 109.

<sup>18</sup> Id. at 108, 116.

<sup>19</sup> Id. at 117.

<sup>20</sup> Id. at 6.

<sup>21</sup> Id. at 118.



building strong compliance programs and work against the USSC's goal of rewarding vigorous self-policing.

The USSC proposed two changes designed to help rectify these problems. First, the Guidelines currently require "disclosure of all pertinent information known by the organization" to obtain the 5-point credit for cooperation with authorities.<sup>22</sup> This "all pertinent information" standard requires disclosing enough information to allow law enforcement to identify the nature, extent, and individuals involved in criminal conduct. The proposed amendments clarify that meeting this standard does not necessarily require waiver of the attorney-client and work product privileges.<sup>23</sup> In addition, the proposed amendments would add a similar clarification concerning downward departures for providing substantial assistance to Government authorities.<sup>24</sup> We strongly support these proposals and hope the USSC will also take further steps to bolster the incentives for voluntary self-policing. As noted earlier, we have three specific suggestions in this regard.

First, the current and proposed Guidelines specify certain circumstances that create a presumption that an organization's compliance program is not effective, but do not specify any circumstances that create the opposite presumption. To provide stronger incentives for self-analysis and self-disclosure, we suggest adding a presumption that a compliance program is effective if the company voluntarily self-reports a violation of law to the Government. Where a violation by any company employee (including high-level personnel) is discovered by the company's own efforts and voluntarily disclosed to authorities, the company should benefit from a rebuttable presumption that its compliance program is effective.

Second, organizations that unreasonably delay reporting legal violations to the Government are now penalized, since they are prohibited from receiving credit for effective compliance programs.<sup>25</sup> The USSC noted that "elimination of this prohibition may be appropriate" in light of the fact that § 8C2.5(g) provides a credit for cooperation with Government authorities (including self-reporting), and requested comment on this issue.<sup>26</sup> We agree that self-reporting should be eliminated as a requirement to receive credit for an effective compliance program, and encourage the USSC to do so in the final amended Guidelines. Given the current disincentives for self-policing, fairness suggests that organizations should be rewarded for self-reporting, not denied credit for an effective compliance program if they fail to self-report. Moreover, the risks that may accompany

<sup>22</sup> See current § 8C2.5(g) and accompanying Commentary 12.

<sup>23</sup> See proposed Commentary 12 to § 8C2.5(g).

<sup>24</sup> See proposed Commentary 2 to § 8C4.1.

<sup>25</sup> See current § 8C2.5(f).

<sup>26</sup> 68 Fed. Reg. at 75359.

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self-reporting - - Government requests that the company turn over privileged documents, which may waive the privilege as to all potential litigation adversaries - - means that conditioning the credit for effective compliance programs on self-reporting diminishes the incentive for developing effective compliance programs that can prevent violations from occurring.

Finally, the USSC's Advisory Group recommended that the USSC become a "fulcrum to advance the debate [regarding the litigation dilemma] among policy makers."<sup>27</sup> Specifically, the "Sentencing Commission should consider how . . . it can advance and further the dialogue among the branches of government and interested members of the public," since "a dialogue seeking to resolve the litigation dilemma is fundamental to the full and effective operation of the organizational sentencing guidelines and public policies that they are intended to advance."<sup>28</sup> We endorse this recommendation and encourage the USSC to act on it.

### **III. Ethics-Based Approach to Compliance Programs**

The proposed Guidelines would require that organizations exercise due diligence to prevent and detect violations of law and "otherwise promote an organizational culture that encourages a commitment to compliance with the law."<sup>29</sup> In its synopsis describing the amendments, the USSC explained that this proposal "is intended to reflect the emphasis on ethics and values incorporated into recent legislative and regulatory reforms, as well as the proposition that compliance with all laws is the expected behavior within organizations."<sup>30</sup> The companies in our group strongly support an ethics-based approach to compliance. Nevertheless, "ethics and values" are terms that might inject an unwarranted degree of subjectivity into Government determinations about whether a company's compliance program was effective; whether the company acted diligently to prevent and detect violations of announced legal standards is a more straightforward and objective inquiry. Consequently, we hope the USSC will emphasize the textual requirement that companies "promote an organizational culture that encourages a commitment to compliance with the law,"<sup>31</sup> and make clear that companies have the flexibility to incorporate ethics-based approaches into their compliance programs in a manner best suited to their individual circumstances.

<sup>27</sup> Advisory Group Report at 129.

<sup>28</sup> Id.

<sup>29</sup> Proposed § 8B2.1(a).

<sup>30</sup> 68 Fed. Reg. at 75355.

<sup>31</sup> Proposed § 8B2.1(a) (emphasis added).



**IV. Misconduct By High-Level Personnel**

Under the proposed amendments, high-level personnel participating in, condoning, or being willfully ignorant of an offense would create a rebuttable presumption that the organization's compliance program was ineffective, instead of the current conclusive presumption.<sup>32</sup> We support this change. Organizations should be allowed to demonstrate that their compliance programs are effective, and to receive credit for the program if they do so, even in circumstances where an individual at a high level of the organization engaged in misconduct or malfeasance.

The USSC requested comment on: (1) whether the conclusive presumption should continue to apply in the context of large organizations; and (2) whether the rebuttable presumption should apply in the context of small organizations "in which high-level individuals within the organization almost necessarily will have been involved in the offense."<sup>33</sup> We believe it is unfair and counterproductive to apply the conclusive presumption to any organization. We understand the USSC's concern that even a rebuttable presumption can create special problems for small companies, and believe that eliminating the rebuttable presumption for small companies may be an appropriate step to address this concern.

**V. Responsibility For Compliance Program Implementation**

The proposed amendments add new language stating that "specific individual(s) within high-level personnel [*i.e.*, the compliance officer] shall be assigned direct, overall responsibility to ensure the implementation and effectiveness" of the compliance program,<sup>34</sup> whereas the current Guidelines only require that "[s]pecific individuals within high-level personnel of the organization . . . have overall responsibility to oversee compliance."<sup>35</sup>

We are concerned that the proposed language could be misinterpreted to relieve company managers of their responsibilities for ensuring the implementation and effectiveness of the compliance program - - essentially making compliance efforts a discrete area that can be assigned exclusively to compliance professionals, rather than an integral part of the whole organization's culture. For a compliance program to succeed, all of the organization's operating management must embrace the program, feel a personal investment in its success, and assume accountability for its effective implementation. The compliance officer has critical duties - - providing leadership and

<sup>32</sup> See proposed and current § 8C2.5(f).

<sup>33</sup> 68 Fed. Reg. at 75359.

<sup>34</sup> See proposed § 8B2.1(b)(2).

<sup>35</sup> Current Commentary to § 8A1.2.

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coordination of the compliance program, monitoring the program's performance, and keeping the company's management and board apprised of program implementation issues - - but cannot be held exclusively responsible for the overall success or failure of the program. We urge the USSC to clarify this point, emphasizing that effective compliance programs call for an organization-wide commitment involving all of the company's management.

**VI. Proposed Language on "Model" Compliance Practices**

The proposed amendments include language suggesting that organizations' compliance programs be measured against "model" practices. Specifically, a proposed commentary states that the precise actions required for an effective compliance program depend partly on "compliance practices and procedures that are generally accepted as standard or model practices for businesses similar to the organization."<sup>36</sup> By contrast, the current Guidelines provide that failure to follow "applicable industry practice" weighs against the finding of an effective compliance program.<sup>37</sup>

Measuring compliance programs against industry practice is an important means to assess effectiveness. However, since industry guidelines describing "model" practices are often aspirational documents purposely designed to go beyond applicable industry standards - - to promote new approaches that would advance the state of the art in the compliance arena - - requiring compliance with these models is an unwarranted step that could actually discourage their creation. These aspirational models provide an important impetus for improvements in industry compliance practices, and should not be discouraged by making them mandatory. Industry groups may hesitate to develop model guidelines if they fear that the guidelines will be transformed into legal requirements, and there is no basis for a presumption that a company's compliance program is not effective unless it represents a "model" program. Instead, a company's adoption of model compliance practices should create a presumption that its compliance program is effective. We believe the "model" language in the proposed commentary to § 8B2.1 could be counterproductive, and should therefore be deleted. To advance the USSC's goals, industry groups should be encouraged to develop guidelines describing and promoting model compliance practices, and companies that adopt these model practices should be affirmatively rewarded for doing so.

\* \* \*

<sup>36</sup> Proposed Commentary 2(A) to § 8B2.1 (emphasis added.)

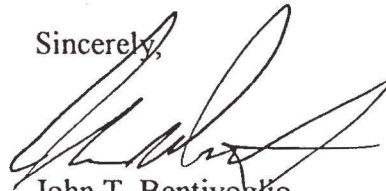
<sup>37</sup> Current Commentary to § 8A1.2.

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We hope that these comments will be useful to the USSC. We appreciate your consideration of these comments, and appreciate all of your efforts in this critical area.

Sincerely,



John T. Bentivoglio  
Arnold & Porter LLP  
(202-942-5508)

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**PRACTITIONERS' ADVISORY GROUP  
CO-CHAIRS BARRY BOSS & JIM FELMAN  
C/O ASBILL MOFFITT & BOSS, CHARTERED  
1615 NEW HAMPSHIRE AVENUE, N.W.  
WASHINGTON, DC 20009  
(202) 234-9000 - BARRY BOSS  
(813) 229-1118 - JIM FELMAN**

February 27, 2004

**VIA HAND DELIVERY**

United States Sentencing Commission  
One Columbus Circle, N.E.  
Suite 2-500, South Lobby  
Washington, D.C. 20002-8002

Re: 2004 Proposed Amendments and Issues for Comment

Dear Commissioners:

We write on behalf of the Practitioners Advisory Group to address the notice of proposed amendments and issues for comment published in the Federal Register notices of January 14, 2004. As always, we view our primary role as assisting the Commission by drawing on our expertise as defense attorneys to respond to the issues for comment and specific amendments proposed by the Commission.

**I. Proposed Amendments to Chapter 8 (Amendment #2)<sup>1</sup>**

Initially, the PAG applauds the Commission for the formation of this Ad Hoc Advisory Group. From our perspective, this is sentencing policy-making at its best, and it stands in unfortunate contrast to the process that has led to many of the recent amendments that have resulted from Congressional directive. We also wish to compliment the Ad Hoc Advisory Group on its excellent work product. It is refreshing to see sentencing policy formulated through a process that brings together experienced individuals from different backgrounds and ideological perspectives. Although we do not necessarily agree with all of the Group's recommendations, we hope that the Group's success can serve as a model for future policy-making in this arena. We do wish to provide input on the four issues for comment:

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<sup>1</sup> The PAG expresses its appreciation to Eugene Illovsy and Greg Smith for their assistance in preparing this portion of our submission.