

**TESTIMONY SUBMITTED BY THE SOCIETY OF CORPORATE
COMPLIANCE & ETHICS
UNITED STATES SENTENCING COMMISSION MARCH 17, 2010**

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1. SCCE. Thank you for inviting the Society of Corporate Compliance & Ethics to participate in today's hearing. SCCE is a professional organization that champions ethical practice and compliance standards in organizations of all kinds and provides the necessary resources for compliance professionals. With its sister organization, HCCA, we represent over 8000 members, and have certified over 3000 compliance and ethics professionals.
2. Importance of the Sentencing Guidelines. As an active participant globally in this field, including as a consultative partner to the OECD Antibribery Working Group in its own work in promoting compliance and ethics programs, we have seen how important the Sentencing Commission's trailblazing leadership in this field has been. We have drawn on this leadership in promulgating a code of professional ethical standards for compliance and ethics professionals that we publish for global use in 8 different languages. We have developed books, articles, videos, conferences and an interactive social network and web site dedicated to proselytizing the Sentencing Commission's underlying message of responsible corporate citizenship through the use of effective compliance and ethics programs.

I would like to focus on three points in these remarks, two related to the discussion topic of giving credit for programs despite high-level participation in misconduct, and one to suggest an additional modest revision to the Guidelines standards related to incentives.

3. High-level personnel involvement. First, we believe the proposal to provide that a compliance and ethics program still be able to receive credit even if a high-level person is involved in an offense, as long as the organization has taken certain responsible steps is an excellent and important change. It recognizes that the involvement in an offense by one manager, whatever the position, is not the same as involvement by “senior management.” This change would conform the Sentencing Guidelines to actual practice, where corporations today may employ dozens if not hundreds of managers in positions of high responsibility. It is not only possible but unfortunately likely that there will be infractions involving at least a limited number of such persons. No program can prevent all such violations, but an effective program should be able to achieve the steps called for in this proposed change. A company that has fully empowered its compliance officer and that at some point discovers and reports a violation involving a senior manager has gone quite far in qualifying as a good citizen corporation.
4. Compliance officer reporting authority. The Commission has hit a key point in the focus on having the compliance person report to the highest governing authority as one condition for this credit. In a groundbreaking study including all three of the organizations testifying in this panel – ERC, ECOA and SCCE – it was reported that many compliance professionals in the current environment are set up

for failure. (See Leading Corporate Integrity: Defining the Role of the Chief Ethics and Compliance Officer (August 2007)

http://www.corporatecompliance.org/Content/NavigationMenu/Resources/Surveys/CECO_Definition_8-13-072.pdf). For compliance programs to work in addressing the most serious forms of corporate crime, the compliance professionals need this positioning to get the job done.

However, the reference to the compliance officer's "reporting authority" to the board needs to be clarified and enhanced. In the business context the word "reporting" could mean simply sending reports to the board, which may be more or less detailed and informative (and more or less censored by senior management). It can also mean being the one who determines whether you get promoted, financially rewarded or fired. If the compliance officer is to be positioned so that he or she can stand up to a senior manager determined to engage in illegal conduct, both types of reporting relationship to the board are important. It requires empowerment and independence for a compliance officer to do this. We suggest specific language in our comments to achieve this result.

5. Incentives. And finally, although the reference to incentives was added into the standards in 2004, application of this element in practice has been limited. SCCE in a recent survey on this point heard back from compliance professionals that incentives are being underutilized in compliance programs. ("Compensation, Performance, Compliance and Ethics," SCCE, May 2009)

[\(http://www.corporatecompliance.org/Content/NavigationMenu/Resources/](http://www.corporatecompliance.org/Content/NavigationMenu/Resources/)

[Surveys/default.htm](#)). In fact, when the Federal Acquisition Regulation was recently revised to require compliance programs among major government contractors, the significance of this point was so poorly understood that the reference was completely missed in the mandatory standards. Yet incentives are clearly drivers in organizational conduct and are included in a variety of other compliance and ethics program standards that SCCE has reviewed around the world, ranging from compliance program standards published by competition law enforcement authorities in India and the UK, to generic cross-industry standards published in Australia. SCCE has even produced and posted on our web site a full white paper on incentives in compliance programs. (“Building Incentives in Your Compliance & Ethics Program” (SCCE; January 2009)

http://www.corporatecompliance.org/Content/NavigationMenu/Resources/Issues/Answers/BuildingIncentivesInYourComplianceProgram_NonMemb.pdf). We recommend adding to the existing, one word reference to “incentives” in the Sentencing Guidelines item 6, an explanation in the commentary, drawn from excellent material promulgated by the Canadian Competition Bureau in its 2008 Compliance Program Bulletin.

Respectfully submitted,

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