

Attention of the Advisory Group on Organizational Guidelines
c/o Office of Public Affairs
United States Sentencing Commission
Suite 2-500 South Lobby
One Columbus Circle, NE
Washington, D.C. 20002

May 20, 2002

To The Advisory Group:

In response to your request for public comment on how the Chapter Eight guidelines could be made more effective, PricewaterhouseCoopers has composed the following comments for your consideration. We have only commented on those areas of the Chapter Eight guidelines where we believe some further enhancements could be of value.

Overall, we believe that the guidelines have contributed greatly to furthering an ethical climate in American business. We also believe that the guidelines, as they currently exist, provide an appropriate framework for the development of compliance programs. However, further specificity regarding the guidelines in relation to how the Commission applies the guidelines in evaluating the effectiveness of a compliance program would be of value. In suggesting further specificity, we recommend a "points of focus" approach rather than prescriptive rules.

S8A1.2 *Application Notes*

We believe that two distinct elements of §8A1.2(k) would benefit the most from added specificity: §8A1.2(k)(5) and §8A1.2(k)(6). These two elements deal primarily with an organization taking "reasonable steps to achieve compliance with its standards, e.g., by utilizing monitoring and auditing systems" and that "standards must have been consistently enforced". While we believe that the spirit of these elements is appropriate, we also believe that it is unclear how the Commission evaluates an organization's adherence to this guidance. Greater clarity around these issues would allow organizations to more confidently deploy appropriate systems and processes for monitoring and auditing compliance and for ensuring consistent enforcement. We believe the Advisory Group should provide suggestions on such "points of focus" for the Commission's consideration in order to ensure that the resulting

guidance is achievable. We would be pleased to provide input to such guidance, if appropriate.

While not explicitly referenced as an element of an effective compliance program, an organization's measurement of the effectiveness of its compliance program can be inferred as a requirement of the guidelines. Clarification of any intended requirement for organizations to measure the effectiveness of their programs and the definition of appropriate measures to do so would assist organizations in understanding how the Commission would evaluate the effectiveness of a compliance program.

We also believe that the absence of an effective self-evaluative privilege continues to be a barrier to full implementation of effective compliance programs. In view of the Guidelines' assertion that "The precise actions necessary for an effective program to prevent and detect violations of law will depend upon a number of factors. Among the relevant factors are (i) Size of the organization... (ii) Likelihood that certain offences may occur because of the nature of its business... and (iii) Prior history of the organization." it is important to encourage organizations to undergo a risk assessment periodically. For example, re: (i), an organization that has grown significantly will have an evolving risk profile; re: (ii), an effective program should take account of known and emerging risks relevant to its industry; re: (iii), an effective program should be especially vigilant to prevent and detect issues that have resulted in prior misconduct (criminal or not). Without the protection of self-evaluative privilege, organizations are often hesitant to conduct expanded self-evaluations, reviews, investigations and auditing programs, fearing that the information uncovered may be used against them.

§8C2.5(f) Effective Program to Prevent and Detect Violations of Law

We believe that a review of the provision that results in a rebuttable presumption (and possible loss of credit toward the overall culpability score) that the organization did not have an effective program to prevent and detect violations of law based on high-level personnel participating in, condoning, or being willfully ignorant of an offense would be appropriate. We agree that situations in which high-level personnel either condone or are willfully ignorant of an offense suggest an ineffective program. However, we believe that solely the participation in an offense by high-level personnel does not necessarily mean that the program is ineffective. An organization could have established compliance standards and procedures

Advisory Group on Organizational Guidelines

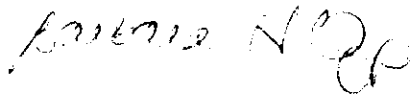
May 20, 2002

that are reasonably capable of reducing the prospect of criminal conduct; assigned specific high-level individuals to oversee compliance; used due care not to delegate substantial discretionary authority to individuals who had a propensity to engage in illegal activity; taken steps to communicate its standards and procedures effectively; taken reasonable steps to achieve compliance with its standards; consistently enforced its standards; taken reasonable steps, after detecting an offense, to respond appropriately to the offense; and, despite all of these measures, still find itself in a situation where a high-level employee is responsible for a criminal offense. Evaluation of the compliance program in these situations should carefully consider the frequency of such an event and action taken by management upon occurrence or discovery.

We recommend that, in this area, the culpability score should be calculated on a graduated scale similar to the scale used in §8C2.5(g), in which certain mitigating factors of cooperation lead to lesser or greater subtractions from the overall culpability score.

In summary, while we believe that the guidelines have proven to be valuable since they were originally formulated, there are some overall improvements that we believe could lead to a better understanding of the Commission's vision of effective compliance programs. Thank you for considering the above comments.

Sincerely,



Barbara H. Kipp
Partner, Global Leader Ethics & Business Conduct