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Commissioners
United States Sentencing Commission
Suite 2-500, South Lobby
One Columbus Circle N.E.
Washington, DC 20002

Re: Proposed Amendments to Chapter 8 / Focus on Smaller Businesses

Dear Commissioners:

In response to your request for responses to the Proposed Amendment 2: Effective Compliance Programs in Chapter Eight, I would like to add the following comments:

Comment 2 regarding high-level individuals.

I agree with the Commission's position that the three-point reduction be changed to a rebuttal presumption if certain high-level individuals were involved or willfully ignorant. With the passage of Sarbanes-Oxley and stricter SEC regulations, all officers, directors, and senior managers of large organizations are well aware of the higher standards to which they are held and of the well-publicized examples of those organizations that did not conform to these standards. However, to automatically preclude the reduction without giving the defendant organization an opportunity to provide facts in rebuttal could place an undue burden on the organization. This is particularly true with small organizations. As stated in your Issue, by their very nature small organizations almost necessarily will have high-level individuals involved in the offense. To automatically preclude the reduction does not allow the prosecutor leeway in determining the ultimate score and, by extension, increases the maximum of the range within which the prosecutor can set fines. Because smaller organizations are only now beginning to address their compliance program needs, they should be allowed, in effect, a "grace period" of time wherein prosecutors could levy smaller fines and penalties. As compliance programs within smaller organizations mature, small defendants would have to present a stronger rebuttal argument in order to be granted the reduction. But the flexibility should be available while these programs are developed. The Commission could use this "grace period" as an incentive to small organizations to institute their compliance programs earlier rather than later.

Comment 3 regarding increasing reduction to 4 points.

As stated in Issue 3, requirements for an effective compliance program under the proposed amendment are more stringent than in the existing Guidelines. Given the additional requirements and expectations, and the associated cost and use of resources involved, recognition of an organization's efforts should be recognized and rewarded by providing a greater reduction for an effective program. Again, increasing the reduction for a good program should provide an incentive to all organizations, large and small, to implement an effective program sooner rather than later.

[2-41]

Comment 4 regarding other factors to provide incentives to small and mid-size organizations.

Consideration should be given to the progress being made in establishing a program given fewer resources than that available to large organizations. If a small organization is spending a proportionately larger portion of its revenues than larger organizations in order to comply with the Guidelines, it should be given credit for this, not necessarily with a reduction in the Culpability Score, but with the fine or penalty ultimately selected by the prosecutor within the determined range.

Final comments.

Finally, many smaller organizations are unaware of their requirements under the Guidelines. In my initial interviews with very small organizations, some did not even know that they fit within the definition of "organization". Educating the public at events such as the annual EOA conference, management forums and the like is an excellent way to publish your message, but the audience at these events usually consists of representatives of larger organizations. An outreach program that educates small and mid-size organizations, either through advertising or speaking at functions where representatives of these smaller organizations attend, would greatly enhance the awareness of and receptiveness to the Guidelines.

I would appreciate the opportunity to work with the Commission on such an outreach program.

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[2-42]