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February 27, 2004

SENT BY EMAIL AND UNITED STATES MAIL

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

Michael Courlander, Public Affairs Officer
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

Re: Public Comment Regarding Proposed Amendments to Chapter Eight
(Sentencing of Organizations)

Dear Commission:

The following sets forth our Public Comment relating to Proposed Amendment 2:
Effective Compliance Programs in Chapter Eight.

Public Comment Overview

After carefully reviewing the Public Comments I have submitted over the past years relating to Chapter Eight, the Ad Hoc Advisory Group on the Organizational Sentencing Guidelines' Report and Proposed Amendment 2, organizations will now have greater guidance for the design, implementation and enforcement of organizational compliance programs. With that said, I must still express my concerns surrounding the amendments relating to reduction with effective program AND waiver of the attorney-client privilege.

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My extensive professional experience in corporate criminal liability compliance stems from years and years of involvement in all angles of corporate compliance even BEFORE the Organizational Guidelines were implemented in 1991, excluding prosecutorial enforcement. Having this practical experience and expertise BOTH internally and externally with employers, employees and administrative agencies alike provides me a broader view of the EFFECT of regulations within organizations. INTERNAL DETECTION AND APPROPRIATE REMEDIAL ACTION are KEY components in any organizational compliance program. Therefore, I must urge the Commission to reevaluate Amendment 2 as follows:

Section 8C2.5(f):

"(f) Effective Program to Prevent and Detect Violations of Law

- (1) If the offense occurred even though the organization had in place, at the time of the offense, an effective program to prevent and detect violations of law, as provided in §8B2.1 (Effective Program to Prevent and Detect Violations of Law), subtract 3 points."

AMENDED TO READ

- (1) *If the offense occurred even though the organization had in place, at the time of the offense, an effective program to prevent and detect violations of law, as provided in §8B2.1 (Effective Program to Prevent and Detect Violations of Law), subtract 3 points ONLY if the organization took appropriate remedial action once the offense was discovered.*

Commentary to 8C2.5(Application Notes):

"If the defendant has satisfied the requirements for cooperation set forth in this note, waiver of the attorney-client privilege and of work product is not a prerequisite to a reduction in culpability score under subsection (g). However, in some circumstances, waiver of the attorney-client privilege and of work product protections may be required in order to satisfy the requirements of cooperation."

AMENDED TO READ

If the defendant has satisfied the requirements for cooperation set forth in this note, waiver of the attorney-client privilege and of work product is not a prerequisite to a reduction in culpability score under subsection (g). However, in some circumstances, waiver of the attorney-client privilege and of work product protections may be required in order to satisfy the requirements of cooperation ONLY after considering the defendant's efforts relating to appropriate remedial action.

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Commentary to 8C4.1(Note 2):

- "2. Waiver of Certain Privileges and Protections.--If the defendant has satisfied the requirements for substantial assistance set forth in subsection (b)(2), waiver of the attorney-client privilege and of work product protections is not a prerequisite to a motion for a downward departure by the government under this section. However, the government may determine that waiver of the attorney-client privilege and of work product protections is necessary to ensure substantial assistance sufficient to warrant a motion for departure."

AMENDED TO READ

2. *Waiver of Certain Privileges and Protections.--If the defendant has satisfied the requirements for substantial assistance set forth in subsection (b)(2), waiver of the attorney-client privilege and of work product protections is not a prerequisite to a motion for a downward departure by the government under this section. However, the government may determine that waiver of the attorney-client privilege and of work product protections is necessary to ensure substantial assistance sufficient to warrant a motion for downward departure ONLY after considering the defendant's efforts relating to appropriate remedial action.*

Thank you very much for the opportunity to have provided the above Public Comments.

Sincerely,

/s/

L.A. Wright
Legal Criminalist/Consulting Expert

/law

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