

B. Todd Jones, Chairman
Advisory Group on Organizational Guidelines
c/o Office of Public Affairs
United States Sentencing Commission
Suite 2-500 South Lobby
One Columbus Circle, N.E.
Washington, D.C. 20002

October 29, 2002

Dear Mr. Jones:

Thank you for the invitation to offer commentary to the Advisory Group on Organizational Guidelines on November 14, 2002. I will be attending the hearing and look forward to providing additional information to the Advisory Group in relation to questions 1(e) through 1(h) and 3 of Attachment A that was enclosed with your letter of invitation.

Before providing specific commentary to the above noted questions, I would like to reiterate the basic premise of our position in relation to Chapter Eight of the Sentencing Guidelines.

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. Prescriptive rules could lead to a dilution of one of the underlying tenets of the Guidelines themselves - that standards be tailored to the individual organization. Without the flexibility to tailor standards, communications, training, monitoring, etc., individual compliance programs are likely to become less, not more, effective. In addition, we believe that detailed prescriptions will limit the creativity in developing new practices, some of which may become best practices.

Questions:

1(e) - Communication/Training

We agree that the language should be clarified to make it clear that both training and other methods of communication are necessary components of "an effective" compliance program because training and communication each accomplish different goals. While communication is effective for such things as raising awareness of the compliance

program and conveying resource availability to employees, our experience is that communication alone cannot address the complexities of the situations people encounter. Training can accomplish several goals that communication alone cannot, including: helping to ensure that employees know how to recognize compliance events and providing a safe environment to discuss ethical issues and practice ethical decision making.

We would also support replacing the term “disseminating publications” with more flexible language, such as the proposed “other forms of communications” to further clarify this section.

We would not support any notion to prescribe the types of training (i.e., one-on-one, web-based, video, etc.) that organizations should employ per the reasoning in our overall viewpoint noted above. For example, an approach mandating instructor-led, facilitated group training would have precluded the development of very effective computer-based training media. For many organizations, the ability to use technology for certain types of training enables them to reach their employees on a more timely and targeted basis than instructor-led training. By allowing for this flexibility, organizations can identify their specific training objectives and design appropriate learning activities to meet these objectives.

1(f)(i) -- Whistleblowing protections

It is our position that the current guideline in §A1.2, comment 3(k)(5) regarding the implementation and publicizing of a reporting system that fosters reporting without fear of retribution could be enhanced by specifically noting that such a reporting system should allow for anonymous reporting. While our organization, and most that we are aware of with an established reporting mechanism, already have anonymous reporting capabilities, the addition of such a specific requirement would provide good guidance for those organizations that develop such reporting capabilities in the future.

1(f)(ii) -- Privilege or policy for good faith self-assessment and corrective action

Given that the Guidelines define an effective compliance program as one designed to “prevent and detect violations of the law,” it is inherent within the definition that organizations need to perform due diligence and develop information within the organization to know best where to focus compliance risk management efforts. One such source is the information reported through the confidential reporting mechanism established by the organization. We believe that the absence of an effective and comprehensive self-evaluative privilege continues to be a barrier to full implementation of effective compliance programs. Without the protection of self-evaluative privilege, organizations could be hesitant to conduct expanded self-evaluations, reviews, investigations and auditing programs (of their confidential reporting mechanisms or other sources of information), fearing that the information uncovered may be used against them. With a self-evaluative privilege, it is our opinion that organizations would be encouraged to perform more proactive compliance auditing, leading to quicker discovery

of compliance issues and swifter corrective action.

1(f)(iii) -- Creation of a neutral or ombudsman office for confidential reporting

We support the notion of a neutral resource for employees to go to for confidential reporting purposes. However, it is our position that specifying that the confidential resource needs to be an ombudsman is too prescriptive. Our Ethics & Business Conduct Office acts in the capacity of a confidential and neutral resource within our organization by being situated outside of our business units both from a reporting and funding perspective. This structure allows our Ethics & Business Conduct Office to be objective in the review and investigation of issues raised within our firm. We believe that, because this function is operated by individuals within our company that have a strong understanding of our businesses, organization and initiatives, they are in a better position to effectively engage appropriate people within PwC to investigate and resolve potential issues than a third party ombudsman is. We believe that the goal of prevention and early detection is, in our company's case, better met by an internal reporting/investigation/resolution approach. In other organizations, ombuds may be the most appropriate and effective confidential reporting vehicle, but not in all organizations.

Again, by being non-prescriptive on this issue, the Guidelines provide organizations with the flexibility to provide resources to their people in a manner that is consistent with tailoring compliance programs to the individual organization. We would not, however, object to expansion of the Guidelines to include examples of different methods organizations can employ to meet the requirement for a reporting system/process, including, ombuds, helplines, mail boxes or other mechanisms.

1(f)(iv) -- Some other means of encouraging reporting without fear of retribution

As noted under question 1(f)(iii) above, we believe that the Guidelines could be reasonably expanded to provide examples of the types of reporting systems or other means to encourage reporting. In our experience, most organizations provide multiple avenues of upstream reporting, including a confidential/anonymous reporting vehicle. We believe that any kind of confidential and anonymous reporting system is beneficial, but that the reporting system needs to fit the organization. In addition, it is our opinion that the process that is followed in regard to reports of potential misconduct is more important than the form of the reporting mechanism.

1(g) - Auditing and monitoring of compliance program

While the Guidelines imply that organizations' monitoring activities include periodic assessments of the effectiveness of their overall compliance programs, we believe that the Guidelines would be strengthened by specifically mentioning the importance of this activity. However, while we believe that the Guidelines should recognize the importance of self-assessment through auditing and monitoring activities, since the effectiveness of ethics and compliance management activities is multi-faceted, it is dangerous to suggest that one or more quantitative measures is more important than others. Instead, we

believe the Guidelines should provide examples of the types of monitoring and auditing activities that organizations should consider, such as periodic confirmations, review of statistics and trends related to reported incidents, periodic surveys or other assessments of organizational culture.

Greater clarity around these activities would allow organizations to more confidently deploy appropriate systems and processes for monitoring and auditing compliance. However, we do not think that the Guidelines should in any way be so prescriptive that there is a requirement for such things as third-party auditing and assessment of an organization's compliance program. Such a requirement would only drive up the cost of compliance programs and would likely act as a disincentive to the development of compliance programs.

1(h) - Disciplinary Consistency

As with our response to question 1(g), we believe that greater clarity around what the Commission and prosecutors expect in relation to consistent enforcement would allow organizations to more confidently deploy appropriate systems and processes for ensuring consistent enforcement. Also, we would support the notion raised in the question that credit should be given to organizations for the inclusion of compliance criteria in performance evaluations. In addition, we believe that the Guidelines should give credit to organizations that recognize ethical behaviors in their performance assessment and management systems. Given the varied nature and relative importance of compliance requirements in different industries, the specific compliance requirements should not be prescribed in the guidelines, as to do so could have unintended effects. For example, while our industry requires many of our professionals to comply with auditor independence requirements, independence is not a compliance issue for every job function within our organization. Furthermore, while this compliance requirement is paramount to auditing firms, it does not apply in the same manner to other industries.

3 - Encouraging auditing, monitoring and self-reporting

We believe that the development of a comprehensive self-evaluative privilege [see 1(f)(ii)] would result in increased and deeper auditing, monitoring and self-reporting activities. Without such a privilege, as the question acknowledges, "the risk of third-party litigation or use by government enforcement personnel realistically diminishes the likelihood of such auditing, monitoring and reporting."

Thank you for the opportunity to offer my input into the review of the Chapter Eight Guidelines. I look forward to testifying before the Advisory Group.

Sincerely,

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

