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May 20, 2002   DELIVERED BY FAX

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, DC 20002

Re: Nature and Scope of Advisory Group

Dear Members of the Advisory Group:

My purpose in writing is to urge the Advisory Group to consider one area in its
examination of the design and implementation of effective programs and to be mindful of
the challenges facing one sector of our business community. I write to you as a
consultant in the broad area of ethics and compliance and as a member of the Coalition
for Ethics and Compliance Initiatives (CECI), an informal association of individuals and
organizations interested in contributing toward the development of environments more
conducive to the implementation of effective organizational ethics and compliance
programs.

The area that I urge the Advisory Group to treat is the notion of organizational culture. In
my view, an understanding of the context in which the organization seeks to survive and
thrive is a predicate to designing and implementing an ethics and compliance program.
The Organizational Guidelines recognize this by requiring that the organization set
standards and procedures that reflect "applicable industry practice or the standards called
for by any applicable governmental regulation." But I also believe that the Organizational
Guidelines should refer to the importance of designing and implementing ethics and
compliance programs with a view to the culture of the organization.

There is much academic research to support this notion, such as Linda K. Trevino, et al.,
"Managing Ethics and Legal Compliance: *What Works and What Hurts*" 41
CALIFORNIA MANAGEMENT REVIEW 131-151 (Winter 1999). This article was
based upon the results of a study funded by Arthur Andersen, which released the study
declaring:

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> In many boardrooms, attention to ethics or compliance programs begins with a
> boardroom discussion regarding the requirements set forth by the US Sentencing
> Commission and ends with a program designed around the Sentencing
> Commissions Guidelines. . . .   Surprisingly, the Arthur Andersen study found that
> these commonly adopted program components, which meet the letter, but not the
> spirit, of the law [sic], *were relatively unimportant* in affecting desired
> outcomes—particularly the reduction of unethical activity. In contrast,
> employees' perception of an "ethical" organizational culture proves far more
> powerful in terms of reducing unethical activity. (emphasis added) Arthur
> Andersen http://www.arthurandersen.com January 25, 1999.

Moreover, there is a developing body of experience in Australia, which looks primarily at
the culture of the organization for both liability and sentencing. Under Australian law a
corporation can be criminally responsible if:

> A corporate culture existed within the body corporate that directed, encouraged,
> tolerated or led to non-compliance with the relevant provision.

> or

> [It] failed to create and maintain a corporate culture that required compliance with
> the relevant culture. [Criminal Code Bill 1994, Part 2.5, Division 12, Section
> 12.3(2) (c) and (d)]

In my experience, it is often the case that ethics and compliance programs are designed
and implemented with but cursory regard for organizational culture, let alone considering
national culture in any system and systematic way. I have conducted a number of
evaluations of ethics and compliance programs of various sorts of organizations under
various forms of government scrutiny, and have found organizational culture to be the
essential component of program evaluation. For example, only when one understands the
organizational dynamics of employee involvement and knowledge sharing can one
determine what structures and systems to implement to meet the requirements of element
five of the Organizational Guidelines for any given organization.

Because of the importance I have come to attach to organizational culture, I have begun
researching the Australian experience. I will be happy to provide my research findings on
request.

Finally, the segment of business whose challenges need to be addressed is that of the
small to medium enterprise (SME). Many of the standards set in the form of best
practices are cost effective only for large businesses. Moreover, as large prime
contracting organizations shrink their preferred supplier lists, even the large organizations
have a stake in finding a cost-effective way for the SME to design and implement
effective programs. The challenges the SME confronts deserve your special attention.

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Best of luck in your important work. Please do not hesitate to contact me if I can be of assistance.

Very truly yours,

KENNETH W. JOHNSON