PROPOSED AMENDMENT: CORPORATE FRAUD

Synopsis of Proposed Amendment: This proposed amendment implements the Sarbanes-Oxley Act of 2002, Pub. L. 107–204 (the "Act"). The Act requires the Commission to promulgate guideline amendments under emergency amendment authority not later than January 25, 2003. In addition to several general directives regarding fraud and obstruction of justice offenses, the Act also sets forth specific directives that require the Commission to promulgate amendments addressing, among other things, officers and directors of publicly traded companies who commit fraud and related offenses, offenses that endanger the solvency or financial security of a substantial number of victims, fraud offenses that involve significantly greater than 50 victims, and obstruction of justice offenses that involve the destruction of evidence.

First, the proposed amendment sets forth two options for amending §2B1.1 (Theft, Fraud, and Embezzlement) to address the directive contained in section 1104 of the Act pertaining to fraud offenses involving significantly greater than 50 victims. Option One expands the victims table in §2B1.1(b)(2). Currently, subsection (b)(2) provides a two level enhancement if the offense involved more than 10, but less than 50 victims, or was committed through massmarketing, or a four level enhancement if the offense involved 50 or more victims. Option One provides an additional two levels, for a total of six levels, if the offense involved 250 victims or more. Alternatively, Option Two provides an encouraged upward departure provision if the offense involved substantially more than 50 victims.

Second, the proposed amendment modifies subsection (b)(12)(B) of §2B1.1 to address directives contained in sections 805 and 1104 of the Act pertaining to securities and accounting fraud offenses and fraud offenses that endanger the solvency or financial security of a substantial number of victims. Subsection (b)(12)(B) currently provides a four level enhancement and a minimum offense level of 24 if the offense substantially jeopardized the safety and soundness of a financial institution. The proposed amendment expands the scope of this enhancement to apply to offenses that substantially endanger the solvency or financial security of a publicly traded company. The enhancement does not require the court to determine whether the offense endangered the solvency or financial security of each individual victim. Such a determination likely would unduly complicate the sentencing process. Instead the enhancement is based on a presumption that if the offense conduct endangered the solvency or financial security of a publicly traded company, the offense similarly affected a substantial number of individual victims. The proposed amendment also contains options for extending the scope of the enhancement to include other organizations with a substantial number of employees. This extension might be appropriate because offenses that endanger other large organizations may, like offenses that endanger publicly traded companies, affect the solvency or financial security of a substantial number of victims.

The corresponding application note to the new enhancement sets forth instances of when

an offense shall be considered to have endangered the solvency or financial security of a publicly traded company. The note, which is modeled after an analogous note for the financial institutions prong of the enhancement, includes references to insolvency, filing for bankruptcy, substantially reducing the value of the company's stock, and substantially reducing the company's workforce among the list of instances that would trigger application of the new enhancement.

Third, the proposed amendment addresses the directive contained in section 1104 of the Act pertaining to fraud offenses committed by officers or directors of publicly traded corporations by providing a new two level enhancement at §2B1.1(b)(13). This enhancement would apply if the offense involved a violation of any provision of securities law and, at the time of the offense, the defendant was an officer or director of a publicly traded company. This enhancement would apply regardless of whether the defendant was convicted under a specific securities fraud statute (e.g., 18 U.S.C. § 1348, a new offense created by the Act specifically prohibiting securities fraud) or under a general fraud statute (e.g., 18 U.S.C. § 1341 prohibiting wire fraud), provided that the offense involved a violation of securities law. The corresponding application note provides that in cases in which the new enhancement applies the current enhancement for abuse of position of trust at §3B1.3 (Abuse of Position of Trust or Use of Special Skill) does not apply. Although the directive only specifically addresses officers and directors of publicly traded companies, the proposed amendment provides an option to include registered brokers or dealers because they also are subject to certain requirements under securities law and as such may be considered to hold a heightened position of trust to investors.

Pursuant to the corresponding application note, "securities law" (i) means 18 U.S.C. §§ 1348, 1350, and the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(47)); and (ii) includes the rules, regulations, and orders issued by the Securities and Exchange Commission ("SEC") pursuant to the provisions of law referred to in section 3(a)(47).

The proposed amendment also includes an issue for comment regarding, in addition to the two level enhancement, whether a minimum offense level should be provided for such offenses committed by officers and directors of publicly traded companies. The issue for comment also requests comment regarding whether the scope of the enhancement should be broadened to apply to an officer or director of other large organizations.

Additional issues for comment follow the proposed amendment regarding whether other enhancements, possibly to apply cumulatively, should be added to §2B1.1 in response to the Act, as well as whether further guidance should be provided regarding the calculation of loss in complex white collar cases.

Fourth, the proposed amendment provides an option for expanding the loss table at

subsection (b)(1). Currently, the loss table provides sentencing enhancements in two level increments up to a maximum of 26 levels for offenses in which the loss exceeded \$100,000,000. The proposed amendment provides an additional two level increase for offenses in which the loss exceeded \$250,000,000, for a total enhancement of 28 levels for offenses in which the loss exceeded \$250,000,000. This proposed addition to the loss table would address congressional concern expressed in the Act regarding particularly extensive and serious fraud offenses, and would more fully effectuate increases in statutory maximum penalties, for example the increase in the statutory maximum penalties for wire fraud and mail fraud offenses from five to 20 years (section 903 of the Act). An issue for comment follows the proposed amendment regarding whether more extensive modifications to the loss table should be made in response to the Act, particularly for offenses involving significantly lower loss amounts.

Fifth, the proposed amendment implements the directives pertaining to obstruction of justice offenses contained in sections 805 and 1104 of the Act. The proposed amendment adds a new two level enhancement to §2J1.2 (Obstruction of Justice) that applies if the offense (i) involved the destruction, alteration, or fabrication of a substantial amount of evidence; (ii) involved the selection of especially probative or essential evidence to destroy or alter; or (iii) was otherwise extensive in scope, planning, or preparation. An issue for comment follows the proposed amendment regarding whether the base offense level in §2J1.2 should be increased and whether an enhancement for the use of sophisticated means should be included in §2J1.2. There is an additional issue for comment regarding whether modifications also should be made to the guideline covering perjury offenses, §2J1.3 (Perjury or Subornation of Perjury; Bribery of Witness), in light of the proposed amendment to the obstruction of justice guideline, in order to maintain sentencing proportionality between the two types of offenses.

Finally, the proposed amendment addresses new offenses created by the Act. Section 1520 of title 18, United States Code, is referenced to §2E5.3 (False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act; Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act). This offense provides a statutory maximum of 10 years' imprisonment if the defendant certifies the publicly traded company's periodic financial report knowing that the statement does not comply with all SEC requirements (and 20 years' imprisonment if that certification is done willfully). The proposed amendment also expands the current cross reference in §2E5.3(a)(2) specifically to cover fraud and obstruction of justice offenses. Accordingly, if a defendant who is convicted under 18 U.S.C. § 1520 certified the financial report of a publicly traded company in order to facilitate a fraud, the proposed change to the cross reference provision would require the court to apply §2B1.1 instead of §2E5.3. Other new offenses are proposed to be included in Appendix A (Statutory Index) as well as the statutory provisions of the relevant guidelines.

 $\label{eq:rescaled} F:\label{eq:rescaled} F:\label{eq:rescaled} where the rescaled rescaled$

Proposed Amendment:

Part One: Directives Relating to Officers and Directors and to Endangering Financial Security

§2B1.1.Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen
Property; Property Damage or Destruction; Fraud and Deceit; Forgery;
Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit
Bearer Obligations of the United States

* * *

- (b) Specific Offense Characteristics
 - (1) If the loss exceeded \$5,000, increase the offense level as follows:

Loss	(Apply the Greatest)	Increase in Level
(A)	\$5,000 or less	no increase
(B)	More than \$5,000	add 2
(C)	More than \$10,000	add 4
(D)	More than \$30,000	add 6
(E)	More than \$70,000	add 8
(F)	More than \$120,000	add 10
(G)	More than \$200,000	add 12
(H)	More than \$400,000	add 14
(I)	More than \$1,000,000	add 16
(J)	More than \$2,500,000	add 18
(K)	More than \$7,000,000	add 20
(L)	More than \$20,000,000	add 22
(M)	More than \$50,000,000	add 24
(N)	More than \$100,000,000	add 26 [.
(0)	More than \$250,000,000	add 28.]

[Option 1 for Substantial Number of Victims (Victim Table):

- (2) (Apply the greater) If the offense—
 - (A) (i) involved more than 10, but less than 50, victims; or (ii) was committed through mass-marketing, increase by 2 levels; or
 - (B) involved at least 50 or more victims, but less than 250 victims, increase by 4 levels; or
 - (C) involved 250 or more victims, increase by **6** levels.]

- * * *
- (12) (Apply the greater) If—
 - (A) the defendant derived more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the offense, increase by **2** levels; or
 - (B) the offense substantially jeopardized the safety and soundness of a financial institution, increase by 4 levels.
 - (B) the offense (i) substantially jeopardized the safety and soundness of a financial institution; or (ii) substantially endangered the solvency or financial security of an organization that, at the time of the offense, [(I)] was a publicly traded company[; or (II) had [200][1,000][5,000] or more employees,] increase by 4 levels.

If the resulting offense level determined under subdivision (A) or (B) is less than level **24**, increase to level **24**.

(13) If the offense involved a violation of securities law and, at the time of the offense, the defendant was (i) an officer or a director of a publicly traded company[; or (ii) a registered broker or dealer], increase by **2** levels.

Commentary

<u>Statutory Provisions</u>: 7 U.S.C. §§ 6, 6b, 6c, 6h, 6o, 13, 23; 15 U.S.C. §§ 50, 77e, 77q, 77x, 78j, 78ff, 80b-6, 1644, 6821; 18 U.S.C. §§ 38, 225, 285-289, 471-473, 500, 510, 553(a)(1), 641, 656, 657, 659, 662, 664, 1001-1008, 1010-1014, 1016-1022, 1025, 1026, 1028, 1029, 1030(a)(4)-(5), 1031, 1341-1344, 1348, 1350, 1361, 1363, 1702, 1703 (if vandalism or malicious mischief, including destruction of mail, is involved), 1708, 1831, 1832, 1992, 1993(a)(1), (a)(4), 2113(b), 2312-2317, 2332b(a)(1); 29 U.S.C. § 501(c); 42 U.S.C. § 1011; 49 U.S.C. §§ 30170, 46317(a), 60123(b). For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. <u>Definitions</u>.—For purposes of this guideline:

* * *

"Financial institution" includes any institution described in 18 U.S.C. § 20, § 656, § 657, § 1005, § 1006, § 1007, or § 1014; any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; any health, medical, or hospital insurance association; brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission; futures commodity merchants and commodity pool operators registered, or required to be registered, with the Commodity Futures Trading Commission; and any similar entity, whether or not insured by the federal government. "Union or employee pension fund" and "any health, medical, or hospital insurance association," primarily include large pension funds that serve many persons (e.g., pension funds of large national and international organizations, unions, and corporations doing substantial interstate business), and associations that undertake to provide pension, disability, or other benefits (e.g., medical or hospitalization insurance) to large numbers of persons.

* * *

"National cemetery" means a cemetery (A) established under section 2400 of title 38, United States Code; or (B) under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of the Interior.

"Publicly traded company" means an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 780(d)). "Issuer" has the meaning given that term in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. § 78c).

* * *

- 9. <u>Gross Receipts Enhancement under Subsection (b)(12)(A)</u>.—
 - (A) <u>In General.</u>—For purposes of subsection (b)(12)(A), the defendant shall be considered to have derived more than \$1,000,000 in gross receipts if the gross receipts to the defendant individually, rather than to all participants, exceeded \$1,000,000.
 - (B) <u>Definition</u>.—"Gross receipts from the offense" includes all property, real or personal, tangible or intangible, which is obtained directly or indirectly as a result of such offense. <u>See</u> 18 U.S.C. § 982(a)(4).
- 10. <u>Application of Subsection (b)(12)(B)</u>.—
 - (A) Enhancement for Substantially Jeopardizing the Safety and Soundness of a Financial Institution under Subsection (b)(12)(B)(i).—For purposes of subsection (b)(12)(B), an offense shall be considered to have substantially jeopardized the safety and soundness of a financial institution, if, as a consequence of the offense, the institution (A)(i) became insolvent; (B)(ii) substantially reduced benefits to pensioners or insureds; (C)(iii) was unable on demand to refund fully any deposit, payment, or investment; (D)(iv) was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or (E)(v) was placed in substantial jeopardy of any of subdivisions (A)(i) through (D) (iv) of this note.
 - (B) <u>Enhancement for Endangering the Solvency or Financial Security of a Publicly</u>

Held Company [or An Organization with more than [200][1000][5000] Employees under Subsection (b)(12)(B)(ii).—

- (i) <u>Definitions</u>.—For purposes of this subsection, "organization" has the meaning given that term in Application Note 1 of §8A1.1 (Applicability of Chapter Eight).
- *(ii)* Application.—An offense shall be considered to have substantially endangered the solvency or financial security of an organization that was a publicly traded company[or that had more than [200][1000][5000] employees] if, as a consequence of the offense, the organization (I) became insolvent; (II) filed for bankruptcy under Chapters 7, 11, or 13 of the Bankruptcy Code (title 11 of the United States Code); (III) suffered a substantial reduction in the value of [its equity securities][a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781)] or the value of its employee retirement accounts; (IV) substantially reduced its workforce; (V) substantially reduced its employee pension benefits; (VI) was so depleted of its assets as to be forced to merge with another company in order to continue active operations; or (VII) was placed in substantial endangerment of any of subdivisions (I) through (VI) of this note. "Equity securities" has the meaning given that term in section 3 of Securities Exchange Act of 1934 (15 U.S.C. § 78c).
- 11. <u>Application of Subsection (b)(13)</u>.—
 - (A) <u>Definitions</u>.—For purposes of this subsection:

"Registered broker or dealer" has the meaning given that term in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. § 78c).

"Securities law" (i) means 18 U.S.C. §§ 1348, 1350, and the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(47)); and (ii) includes the rules, regulations, and orders issued by the Securities and Exchange Commission ("SEC") pursuant to the provisions of law referred to in section 3(a)(47).

- (B) <u>In General</u>.—A conviction under securities law is not required in order for subsection (b)(13) to apply. This subsection would apply in the case of a defendant convicted under a general fraud statute if the defendant's conduct violated securities law. For example, this subsection would apply if an officer of a publicly traded company violated SEC regulations by fraudulently influencing an independent audit of the company's financial statements for the purposes of rendering such financial statements materially misleading, even if the officer is convicted only of wire fraud.
- (C) <u>Nonapplicability of §3B1.3 (Abuse of Position of Trust or Use of Special Skill)</u>.—If

subsection (b)(13) applies, do not apply §3B1.3.

{Notes 11 through 15 are redesignated as Notes 12 through 16, respectively.}

[1516. Departure Considerations.—

(A) <u>Upward Departure Considerations</u>.—There may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such cases, an upward departure may be warranted. The following is a non-exhaustive list of factors that the court may consider in determining whether an upward departure is warranted:

* * *

(v) The offense endangered the solvency or financial security of one or more victims.

Option Two for Substantial Number of Victims (Upward Departure):

[(v) The offense involved substantially more than 50 victims.]

* * *

- §2E5.3.False Statements and Concealment of Facts in Relation to Documents Required
by the Employee Retirement Income Security Act; Failure to Maintain and
Falsification of Records Required by the Labor Management Reporting and
Disclosure Act; Destruction and Failure to Maintain Corporate Audit Records
 - (a) Base Offense Level (Apply the greater):
 - (1) **6**; or
 - (2) If the offense was committed to facilitate or conceal (A) a theft, or fraud, or an embezzlement offense; (B) or an offense involving a bribe or a gratuity; or (C) an obstruction of justice offense, apply §2B1.1, or §2E5.1, or §2J1.2, as applicable appropriate.

Commentary

<u>Statutory Provisions</u>: 18 U.S.C. §§ 1027, 1520; 29 U.S.C. §§ 439, 461, 1131. For additional statutory provision(s), <u>see</u> Appendix A (Statutory Index).

§2J1.2. <u>Obstruction of Justice</u>

 $F: \texttt{document} \texttt{isheon} \texttt{osc} \texttt{meeting materials} \texttt{2002} \texttt{november2002mtg} \texttt{corporate} \texttt{fraud003.wpd} \hspace{0.1 in \texttt{9}} \texttt{11} \texttt{11} \texttt{12} \texttt{02}$

* * *

- (b) Specific Offense Characteristics
 - (1) If the offense involved causing or threatening to cause physical injury to a person, or property damage, in order to obstruct the administration of justice, increase by **8** levels.
 - (2) If the offense resulted in substantial interference with the administration of justice, increase by **3** levels.
 - (3) If the offense (A) involved the destruction, alteration, or fabrication of a substantial amount of evidence; (B) involved the selection of especially probative or essential evidence to destroy or alter; or (C) was otherwise extensive in scope, planning, or preparation, increase by [2] levels.

* * *

Commentary

<u>Statutory Provisions</u>: 18 U.S.C. §§ 1503, 1505-1513, 1516, 1519. For additional statutory provision(s), see Appendix A (Statutory Index).

* * *

APPENDIX A - STATUTORY INDEX

18 U.S.C. § 1347	2B1.1	
18 U.S.C. § 1348	2B1.1	
18 U.S.C. § 1349	2X1.1	
18 U.S.C. § 1350	2B1.1	
		*
18 U.S.C. § 1512(c)	2J1.2	
18 U.S.C. § 1512 (c) (d)	2J1.2	
18 U.S.C. § 1518	2J1.2	
18 U.S.C. § 1519	2J1.2	
18 U.S.C. § 1520	2E5.3	

* * *

* *

ISSUES FOR COMMENT

1. The Sarbanes-Oxley Act of 2002 requires the Commission to consider providing an enhancement for officers or directors of publicly traded companies who commit fraud and related offenses. The Act also requires the Commission to ensure that the enhancements relating to obstruction of justice are adequate in cases in which the offense involved an

 $\label{eq:F:document} \texttt{F:document} is heavised the the second state of the second state$

abuse of position of trust or use of a special skill. In response to these directives, the proposed amendment provides an enhancement in §2B1.1 specifically targeting officers and directors who violate securities law, including violations of the rules and regulations issues by the Securities and Exchange Commission. The Commission requests comment regarding whether it also should provide a minimum offense level for this proposed enhancement, and if so, what an appropriate offense level would be. Additionally, should this proposed enhancement apply to cases in which an officer or director of a large, nonpublic organization violates any provision of security law? Such a case may cause similar harm to the organization, its shareholders and employees even though the organization is not a publicly traded company and the offense typically would not undermine public confidence in the securities market. The Commission further requests comment regarding whether, as an alternative to the proposed enhancement, it should provide a series of enhancements, possibly to apply cumulatively, to address separate aspects of these directives. Specifically, should the Commission provide an enhancements in §2B1.1 that would apply if (a) the defendant used his or her position as officer or director of a publicly traded company in furtherance of a fraud or some other corporate crime; (b) the officer or director of a publicly traded company worked to defeat or compromise internal corporate controls, independent audits, or the oversight by a corporate governing board; or (c) an officer or director derived more than \$1,000,000 in personal gain from unlawful activity? If so, should the Commission also provide minimum offense levels for any such enhancements? What would be an appropriate minimum offense level for such enhancements?

- 2. The proposed amendment expands the scope of §2B1.1(b)(12)(B) to apply to offenses that substantially endanger the solvency or financial security of a publicly traded company. This proposed enhancement is in response to directives pertaining to securities and accounting fraud offenses and fraud offenses that endanger the solvency or financial security of a substantial number of victims. The proposed corresponding application note sets forth instances of when an offense shall be considered to have endangered the solvency or financial security of a publicly traded company. The note includes references to insolvency, filing for bankruptcy, substantially reducing the value of the company's stock, and substantially reducing the company's workforce among the list of instances that would trigger application of the new enhancement. The Commission requests comment regarding whether additional factors should be included in the list of instances that would trigger application of the enhancement.
- 3. The Commission requests comment regarding whether the loss definition in §2B1.1 should be amended to provide further guidance as to how to calculate loss in complex white collar crime cases. For example, should loss in such cases be based on a change in the market capitalization of a corporation, a change in the value of corporate assets, or some other economic effect?
- 4. The current loss table in §2B1.1 provides sentencing enhancements in two level increments up to a maximum of 26 levels for offenses in which the loss exceeded \$100,000,000. The proposed amendment provides an additional two level increase for offenses in which the loss exceeded \$250,000,000, for a total enhancement of 28 levels for offenses in which the

loss exceeded \$250,000,000. This proposed addition to the loss table would address congressional concern expressed in sections 805, 905, and 1104 of the Sarbanes-Oxley Act regarding particularly extensive and serious fraud offenses, and would more fully effectuate increases in statutory maximum penalties, for example the increase in the statutory maximum penalties for wire fraud and mail fraud offenses from five to 20 years (section 903 of the Act). Should the Commission modify the loss table more extensively to provide increased offenses levels at significantly lower loss amounts? For instance, should the Commission modify the loss table to result in a Zone D offense level (assuming a two level reduction for acceptance of responsibility) for offenses involving more than \$50,000? Similarly, should the Commission modify the loss table to restrict Zone A offense levels (which provide sentences of straight probation) to offenses involving loss amounts of \$10,000 or less (assuming a two level reduction for acceptance of responsibility)? In addition, the Commission requests comment regarding whether the base offense level in \$2B1.1 should be increased from level 6 to level 7.

- 5. In response to the directives in the Sarbanes-Oxley Act pertaining to obstruction of justice offenses, the proposed amendment sets forth a new two level enhancement in §2J1.2 (Obstruction of Justice) that applies if the offense (a) involved the destruction, alteration, or fabrication of a substantial amount of evidence; (b) involved the selection of especially probative or essential evidence to destroy or alter; or (c) was otherwise extensive in scope, planning, or preparation. The Commission requests comment regarding whether, in addition to this enhancement, it should provide an enhancement that is based on the number of participants recruited to commit the obstruction of justice offenses. Additionally, should the Commission provide an enhancement for obstruction of justice offenses committed through the use of sophisticated means, perhaps in lieu of the proposed subdivision (c) prong, and if so, what characteristics would be common to such an offense? Finally, given congressional concern with obstruction of justice offenses, should the Commission increase the base offense level in §2J1.2 from level 12 to level 14?
- 6. Part Three of the proposed amendment addresses the emergency amendment directives in the Sarbanes-Oxley Act pertaining to the Chapter Two guidelines for obstruction of justice offenses. Specifically, the proposed amendment would provide a new enhancement in *§2J1.2 (Obstruction of Justice) addressing the directive relating to the destruction of* evidence and offenses that are otherwise extensive in scope, planning, or preparation. Currently, defendants sentenced under §2J1.2 or §2J1.3(Perjury or Subornation of Perjury; Bribery of Witness) are sentenced proportionately because these guidelines have the same base offense level and provide substantially parallel enhancements. The Commission requests comment regarding whether, in light of the proposed changes to *§2J1.2, modifications also should be made to §2J1.3 in order to maintain proportionate* sentencing between these two guidelines. For example, should the Commission increase the base offense level in §2J1.3 or increase the magnitude of the enhancement of the current specific offense characteristics? Any such amendment to §2J1.3 would be made when the Commission re-promulgates as a permanent amendment any emergency amendment made to §2J1.2.

F:\document\jsheon\osc\meeting materials\2002\november2002mtg\corporatefraud003.wpd 13 11/12/02