ESTABLISHING A FEDERAL SENTENCING GUIDELINES COMPLIANCE PROGRAM

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by

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Why Your Organization Should Adopt a Guidelines Compliance Program for Organizations

☞ To Assist In Preventing Violations Of Law

Corporations - especially large ones - are being investigated and charged with federal violations at an alarming rate. With the expansion of the number and scope of federal statutes with which corporations must comply, doing business has become a walk through a minefield. Studies have shown that most violations are committed because of lack of knowledge. The implementation of a Guidelines Compliance Program will aid in educating your employees and agents and, thereby, in preventing violations.

☞ To Assist In Remedying Violations Of The Law Prior To Outside Complaint Or Investigation

If your corporation identifies potential violations of the law before outside complaint or investigation, your corporation may avoid, or at the very least, mitigate its liability for damages. Internal investigation and remedying of violations indicates your company's good faith and dedication to lawful practice, and that is what the Guidelines are all about.

☞ To Mitigate Against Heavy Fines Under The Sentencing Guidelines

The Guidelines take a "carrot and stick" approach to sentencing organizations. Heavy fines serve as the main deterrent and punishment against organizational criminality, but the Guidelines also include motivation for an organization to prevent intentional or unintentional criminal acts, in the form of mitigating factors that a court can consider in order to lower fines from an initially high level. The mitigating factor with the most potential for reducing an organization's penalty is the implementation of an "effective program to prevent and detect violations of the law."

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[1] *Authored by Cynthia Marcotte Stamer.*

The existence of a compliance program can drastically affect the size of a fine imposed on an organization. For example, if an organization is convicted of racketeering, the base fine required under the Guidelines would be $500,000. The base fine is then multiplied by range multipliers, which in turn are determined by the culpability score of the organization. The presence of an effective Compliance Program is considered a mitigating factor, and reduces the culpability score by three. In addition, if the organization discovers and reports the offense to proper authorities, a possibility strengthened by the existence of an effective Compliance Program, the culpability score can be reduced by as many as five. The potential impact of the federal sentencing guidelines is sufficiently devastating that an organization can ill afford to ignore the benefits of having an effective compliance program.

☞ To Avoid Civil Liability for Fines, Penalties or Civil Judgments

Whether or not your organization incurs criminal liability as a result of the illegal actions taken by its employees, a substantial likelihood exists that it will face civil lawsuits by the individuals injured as a result of the improper actions of its employees and agents.

☞ To Avoid Public Embarrassment and Business Disruption

Accusations and findings of misconduct are embarrassing to organizations. The backlash that may result from this misconduct can disrupt customer, employee, and stockholder relations. Dealing with these concerns will disrupt your organization's ability to devote attention to its business.

Executive Summary of Federal Sentencing Guidelines for Organizations

☞ Applicability of the Guidelines

The sentencing guidelines generally apply to the sentencing of all organizations for federal *felony* and *Class A misdemeanor* offenses other than environmental crimes, food and drug offenses, or civil rights violations.

☞ General Principles Reflected in the Guidelines

- Whenever practicable, the court must order the organization to remedy any harm caused by the offense
- If the organization operated primarily for a criminal purposes or by criminal means, the fine should be set high enough to destroy the organization
- For any other organization the fine should be based on the seriousness of the offense and the culpability of the organization
- Probation for an organization is appropriate when needed to ensure that another sanction will be fully implemented or to ensure that steps will be taken to reduce the likelihood of further criminal conduct within the organization

Application of the Guidelines

There are four basic parts to the Guidelines that combine to determine the final sentencing requirement for an organization:

- restitution, remedial orders, community service, and notice to victims
- fines
- probation
- special assessments, forfeitures, and costs

Workings of the Guidelines

☞ **Step 1: Determine The Base Fine By Selecting The Highest Of:**

- The Monetary Gain To The Defendant
- The Monetary Loss To The Victim
- The Amount Specified In The Fine Table

☞ **Step 2: Determine The Culpability Score:**

- Aggravating And Mitigating Factors
- Convert To Multipliers Using Culpability Table

☞ **Step 3: Determine The Guideline Range:**

- Interaction Of The Base Find And Culpability Score

☞ **Step 4: Imposition Of Fine Within The Guideline Range:**

- Factors
- Departures

The Culpability Score

+ **Start With A Score Of 5**

+ **Add Aggravating Factors**

+ **Subtract Mitigating Factors**

  - Effective Compliance Program
    (Subtract 3 Points)

  - Self-Reporting Cooperation, Acceptance Of Responsibility
    (Subtract 1, 2 or 5 Points)

+ **Apply Minimum And Maximum Multipliers**

Culpability Score	Minimum Multiplier	Maximum Multiplier
10+	2.00	4.00
9	1.80	3.60
8	1.60	3.20
7	1.40	2.80
6	1.20	2.40
5	1.00	2.00
4	0.80	1.60
3	0.60	1.20
2	0.40	0.80
1	0.20	0.40
0 or less	0.05	0.20

Components Of An Effective Compliance Program

The Guidelines describe generally the type of program an organization should implement in order to reduce possible penalties as a result of criminal activity, whether intended or unintended. The Guidelines define an effective program as one that has been reasonably designed, implemented, and enforced so that it generally will be effective in preventing and detecting criminal conduct. The hallmark of an effective program is that the organization exercised due diligence in seeking to prevent and detect criminal conduct by its employees and other agents. In order to satisfy the standard of due diligence, the Guidelines require that an organization must, at a minimum, take the following steps:

- Establish compliance standards and procedures to be followed by employees and other agents that are reasonably capable of reducing the prospect of criminal conduct

- Assign overall responsibility to oversee compliance with such standards and procedures to specific individuals within high-level personnel of the organization

- Use due care not to delegate substantial discretionary authority to individuals whom the organization knew, or should have known through the exercise of due diligence, had a propensity to engage in illegal activities

- Take steps to communicate effectively its standards and procedures to all employees and other agents

- Take reasonable steps to achieve compliance with its standards

- Consistently enforce standards through appropriate disciplinary mechanisms, including discipline of individuals responsible for the failure to detect an offense. The form of discipline appropriate will be case specific

- Take all reasonable steps, after an offense has been detected, to respond appropriately to the offense and to prevent further similar offenses

Actions Necessary for An Effective Compliance Program

The Guidelines note that the specific actions necessary for an effective program will depend on a number of factors, which include:

- *The size of the organization.* The larger the organization, the more formal the program should be. A larger organization should have established written policies defining the standards and procedures to be followed by its employees and other agents.

- *The likelihood that certain offenses may occur because of the nature of the business.* If, because of the nature of an organization's business, there is a substantial risk that certain types of offenses may occur, management must have taken steps to prevent and detect those types of offenses. For example, organizations that handle toxic substances must have established standards and procedures designed to ensure that those substances are properly handled at all times

- *The prior history of the organization.* An organization's prior history may indicate types of offenses that it should have taken actions to prevent. Recurrence of misconduct similar to that which an organization has previously committed casts doubt on whether it took all reasonable steps to prevent such misconduct.

In addition, the Guidelines note that an organization's failure to incorporate and follow applicable industry practices or the standards called for by an applicable governmental regulation weighs against a finding of an effective program. Our Compliance Program will be tailored to the nature of your business.

Implementing An Effective Guidelines Compliance Program

☞ Getting Started

Before beginning any Guidelines Compliance Program, it is critical to take steps to safeguard your corporation's ability to protect the confidentiality of the sensitive information and analysis gathered and evaluated as part of your corporation's program. By necessity, execution of an effective Guidelines Compliance Program will result in the collection and evaluation of a wide range of politically and legally sensitive information about your corporation and its decision-making processes. Furthermore, the findings and conclusions that your corporation reaches in conjunction with its execution of a Guidelines Compliance Program and the decisions that it makes regarding the actions that it will or will not take in response to these findings also can be legally and politically sensitive. Where the execution of a Guidelines Compliance Program identifies areas of legal exposure, involuntary or uncontrolled disclosure of potentially damaging information could have serious political and legal repercussions. Therefore, Guidelines Compliance Programs generally should be conducted only within the scope of attorney-client privilege and after careful establishment of appropriate safeguards for protecting the confidentiality of the process.

A second important component of any Guidelines Compliance Program is the establishment of effective and open communications between your counsel and your organization. Clear understandings about your business, its policies, and its practices are vital to the ability to accurately identify and develop workable strategies for addressing exposures through the Guidelines Compliance Program.

☞ Legal Inventory

Once appropriate confidentiality safeguards are in place, the first stage of any Guidelines Compliance Program is to take a legal inventory to identify business activities most likely to fall within the scope of the Guidelines. Your corporation's business will be evaluated to determine what federal criminal laws might be violated by its employees in the course of their work. Your corporation's legal history and records will be examined to determine where it has experienced problems in the past within the scope of the Guidelines. Also, the recent legal history of your competitors and other companies in your industry group will be reviewed to identify areas of risk and current government enforcement efforts within the scope of the Guidelines.

☞ Audit of Policies

Based upon the legal inventory, the next step involves conducting an audit to evaluate your corporation's current compliance policies as they relate to the Guidelines. We will determine whether your corporation has an existing Code of Conduct which accurately reflects the current law for each substantive area of the law which relates to your business. We will determine whether your existing Code of Conduct is consistent with industry standards and regulatory requirements within the scope of the Guidelines. As part of this process, it also is important to assess whether your corporation's existing Code of Conduct is written in a manner which is understandable to all employees who are in a position to subject your corporation to liability under the Guidelines and whether your corporation's existing Code of Conduct sets the proper tone for your employees.

☞ Audit of Procedures

In addition to evaluating the official policies of your corporation, it also is vital to conduct an audit to evaluate your corporation's existing practices and compliance procedures as they relate to laws that the legal audit identifies as likely to subject your corporation to liability under the Guidelines. This evaluation should include a review of the procedures your corporation uses to communicate its compliance procedures to its employees and other means that your corporation uses to educate employees concerning legal policies. In this regard, it is important to examine your corporation's existing compliance procedures to determine whether the procedures identify situations where employees should report suspected violations. We will evaluate whether your corporation employs appropriate methods of monitoring compliance such as periodic audits, questionnaires, or hotlines. This component of the Guidelines Compliance program also should seek to determine whether your corporation's personnel policies and practices incorporate procedures designed to identify and monitor employees with a propensity to violate the law, including whether a disciplinary system is in place to punish and deter violations of law by employees and agents. Finally, during the compliance audit, special attention should be focused on any areas of concern which the audit indicates might require further action and which are not within the scope of the development of the Compliance Program.

☞ Drafting of Compliance Program

After the compliance audit, a custom-made written Guidelines Compliance Program designed to prevent and detect violations of laws subject to the Guidelines should be prepared for your corporation. This Guidelines Compliance Program should be tailored to the findings realized by the legal, policies and practice audit. Your corporation should periodically review and update this program based in responses to changes in the legal risks, exposures, practices, procedures, and newly identified problem areas which emerge in the future.

☞ Implementation of the Compliance Program

After development of the Compliance Program, we recommend that your corporation arrange for comprehensive employee training and education to be conducted and that detailed records of those programs be retained for evidentiary purposes. Such programs should include seminars designed to teach your corporation's employees about the program. The areas of your corporation which are at particularly high risk due to the nature of your business should be identified so that resources can be first devoted to those areas. Ideally, the attorneys that you select to perform or contribute to the design and implementation of your Guidelines Compliance Program should be experienced in advising businesses about how to effectively communicate the Compliance Program to your employees and agents.

☞ Oversight and Enforcement Compliance Program

Your organization's implementation of Compliance Program is not the end of the process. On the contrary, an effective Compliance Program is one that incorporates procedures that identify new areas of potential abuse and concerns and allows your organization to rapidly and effectively respond to those risks. Accordingly, once the Compliance Program is in place, your organization will need to implement procedures to monitor its operations and environment for new risks and tailor compliance programs to respond to these new areas of concern.

Implementing A Compliance Program for Foreign Corrupt Practices Act and Insider Trading[2]

RETAINING AN AGENT

☞ Checking Out the Agent

Due diligence in selecting an agent is required to ensure that the company is prudent and lawful in pursuing business in foreign countries. A company considering doing business abroad with a local agent, business partner or consultant should perform adequate research into the reputation, background and past performance of that person or entity. Here are some of the steps that should be taken to obtain the necessary information:

- Obtain a list of references, a resume, a complete employment history, and a strategy plan or similar proposal that describes in detail the specific services the agent will provide.

- Contact all of the agent's references and former employers. Document these contacts so you can prove in the future that you did your "due diligence" before retaining the agent.

- Call the appropriate Country Desk at the State Department and ask if they have any information about the agent. Document the response, including the person with whom you spoke and what you were told, even if no information was available concerning the agent.

- Make the same inquiry at the Department of Commerce, and contact the commercial attaché at the United States Embassy in the country where the agent will be working and ask for information about the agent. Document the response and the name of the persons with whom you spoke.

- For a significant transaction or a transaction in a country that is known to present heightened FCPA risks, or if other circumstances surrounding a transaction raise a "red flag," retain a reputable private investigator or law firm in the foreign country to do a complete background check on the agent and prepare a written report for the company.

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[2]*Michael T. Tarski compiled these policies and procedures from a variety of sources, some of which were commercial, some of which were private and the origins of some of which are lost in the mists of antiquity. While certain parts of the material is original, no claim of authorship to all this material is made.*

It is essential that due diligence measures be documented. Each contact or business check should result in a memorandum.

☞ Contracts with Agents

After the background check is complete, and assuming it comes up clean, the agent should be engaged pursuant to a written contract that contains contractual provisions that the Department of Justice has recognized as effective in preventing FCPA violations. Including appropriate contractual language can reduce the risk of a violation and demonstrate an intent to comply with the FCPA. These provisions include:

- Specify payment terms: The contract should state that all payments to the foreign agent will be by check or bank transfer only -- no payments will be made in cash. The contract should also provide that all payments will be made to the agent in the country in which the services are to be provided - no payments to Swiss banks or numbered offshore accounts without special authorization.

- Include FCPA assurances: The contract should state that both parties are familiar with the prohibitions of the FCPA and will conduct their business pursuant to the contract accordingly. State that no payments to be made under the contract will go to any foreign official for the purpose of: (1) influencing an act or decision in an official capacity; (2) inducing the official to use his or her influence with the foreign government; or (3) assisting the company in obtaining or retaining business.

- Include agent representations: The agent should affirm that none of its owners, principals or employees are officers or representatives of any government or political party or candidates for political office. The agent should also represent that it will take no action pursuant to the contract which would violate the laws of any jurisdictions in which it is acting or of the United States. The company can also confirm in the contract that it is not seeking and will not request any services from the agent that would constitute a violation of local of U.S. law.

- Prohibit assignment of contract duties: The contract should state that the agent will have no right or authority to assign any portion of its rights or obligations under the contract to a third party without the written consent of the company and, unless otherwise agreed by the company in writing, all services rendered under the contract will be performed by the partners, principals, and regular staff members of the agent.

- Prohibit unauthorized agreements with third parties: The contract should state that the agent has no authority to obligate the company to third parties with whom the agent may make agreements or to whom the agent may direct payments, unless approved in writing by the company. The contract should also provide that this provision is not intended to authorize payments to any foreign official, government agency, political party, or political candidate and the agent has no

authority to give any directions, either written or oral, relating to the making of any commitment by the agent to any third party in violation of the terms of the contract.

- Provide for termination at will upon breach of contact terms: The contract should provide that the company can terminate its relationship with the agent at any time and without any liability if it believes that there has been a breach of the contract terms. The contract can also state that any action which would or might constitute a violation of the FCPA, or a request for such action from a representative of either party, will result in immediate termination of the agreement.

- Provide for full disclosure: The contract should provide for full disclosure of the existence and terms of the agreement between the company and the agent, including the compensation provisions, at any time, for any reason, and to whomever the company determines has a legitimate need for that information, including the government of any country where services are being performed, the United States government, and clients or business associates of the company.

- Require detailed documentation of expenses and reimbursements: The agent should be required to provide documentary support to the company for expenses incurred in connection with the rendering of services on the company's behalf.

- Require detailed invoices and a certification of compliance: Prior to each payment under the contract, the agent should be required to submit to the company an invoice showing all compensation earned, a detailed report of the services rendered by the agent under the contract, and a certification that the agent has complied with all applicable laws in connection with rendering those services.

- Provide that all payments are subject to audit: The contract should provide that all compensation and all expense reimbursements paid by the company under the contract are subject to audit by the company. The contract should authorize the company to audit the agent's expenses and invoices when, from all the circumstances, it appears reasonable to do so, taking into consideration (1) the amount paid in relation to the total payments under the contract; (2) the nature of the expenses; (3) the agent's services rendered during the period; and (4) the company's customers or potential customers with whom the agent had contacts. The contract should require the agent to keep records that describe all services and expenditures in detail and, upon notice of audit, the agent must make available to the company all invoices, supporting receipts, and detailed substantiation and original entry records for all charges invoiced to the company, as well as make available for interviews, if requested by the company, all employees who performed services or incurred expenses.

Important Compliance Warning Signals

Agent: For FCPA compliance purposes, a "know your agent" rule is essential. When retaining foreign nationals to assist in locating business opportunities or facilitating international transactions, U.S. companies should thoroughly check out the individuals involved. If an agent's sole qualification is his or her personal relationship with government officials, you should proceed with extreme caution.

Business: Review of FCPA cases quickly points to some businesses as presenting higher than average FCPA compliance risks. Weapons systems, aircraft contracts, and construction projects are probably the "big three" in terms of incidence of FCPA violations, but other industries are not exempt from risk. In particular, any industry where high-dollar, long-term contracts are awarded by foreign governments, or where foreign government approval is required for important, profitable contracts, should be reviewed carefully for FCPA compliance.

Cash Payments: The presence of large cash payments or checks made out to cash is a key indicator of potential problems. Cash payments raise compliance questions under both the accounting and the antibribery provisions of the FCPA. Like the refusal of an agent to provide assurances of FCPA compliance, discussed above, failure to investigate cash payments can support charges of corporate liability on a "conscious avoidance" theory.

Country: FCPA violations are most likely to occur in countries where the established methods of "doing business" can include pay-offs, bribes, or "gifts" to government officials. Middle Eastern monarchies and Latin American dictatorships have traditionally been the leading candidates for FCPA violations, but since the collapse of the former Soviet Union the corruption in that region, coupled with the significant business activity (and opportunities for profits) accompanying the privatization of sectors of the economy which previously were controlled by the state, has made that part of the world a new high-risk area for FCPA violations.

Large Bonuses: Large payments to employees or representatives in foreign countries should be monitored closely and documented carefully. A large bonus payment or reimbursements for unusually high entertainment, advertising, or other administrative expenses may be used as a means to cover up illegal payments to third parties. Similarly, the presence on the payroll of persons who are relatives or associates of foreign government officials raises serious FCPA compliance concerns.

Payment Terms: Like cash payments, the payment of commissions or fees through third parties or in third counties, if not satisfactorily explained, is an important "red flag" for FCPA compliance. While there may be legitimate reasons for directing an agent's payments to a foreign bank or to an entity other than the agent, such payment terms should be investigated and the reasons for them should be documented to avoid the suggestion that the company consciously disregarded evidence of possible FCPA violations.

Public Reports: It is important to monitor what is going on in the foreign countries in which your company does business. Publicly reported cases of bribery, pay-offs, and public corruption in a particular country should prompt a careful review of your company's operations in that region. Most important, if you learn that your competitors are involved in pay-offs or other activities that may violate the FCPA, you should immediately investigate your own operations -- in a difficult competitive environment your employees may learn of competitors' tactics and follow suit to avoid falling behind in that region.

Relationships: Agents who have held government positions in the past or who have some present relationship with a government official should be scrutinized closely. Any time you employ an agent in a foreign country solely because of "connections" to a foreign government, you are entering an FCPA danger zone. Never engage an agent who is a government official or employee.

Use and Public Disclosure of Insider Information

☞ Purpose

The purpose of this policy is to establish guidelines for contacts with investors and compliance with United States federal statutes and regulations of the Securities and Exchange Commission ("SEC") and the New York Stock Exchange ("NYSE") regarding the use and public disclosure of inside information.

☞ Discussion

The SEC and the NYSE have promulgated various regulations regarding the use and public disclosure of corporate inside information. The purpose of such regulations is to protect the interests of shareholders by providing them with prompt and complete information about significant corporate developments which might affect the value of their investments and to assure that insiders do not profit from information not available to the investing public. These regulations and the underlying statutes require the Company and its directors and employees to ensure that information about the Company is not used unlawfully in connection with the purchase and sale of securities.

All employees and agents should pay particularly close attention to the applicable laws against trading while in the possession of inside information. The federal securities laws are based on the belief that all persons trading in a company's securities should have equal access to all "material" information about that company. For example, if an employee of a company possesses material nonpublic financial information regarding a company or its securities, that employee is prohibited from buying or selling stock in the company until the information has been disclosed and disseminated to the public. This is because the employee knows information that will probably cause the stock price to change, and it would be unfair for the employee to have an advantage that the rest of the investing public does not have.

In general, it is a violation of state and federal securities laws for any person to buy or sell securities if he or she is in possession of material inside information relating to those securities. Information is "material" if it could affect a person's decision whether or not to buy or sell the securities. Information is "inside information" if it has not been publicly disclosed. It is also illegal for any person in possession of material inside information to provide other people with such information or to recommend that they buy or sell the securities. (This is called "tipping.") In such case, both the person who provides and the person who receives the information may be held liable.

A violation of the insider trading laws can expose the insider to criminal fines of up to three times the profits earned (or losses avoided) and imprisonment for up to ten years, in addition to civil penalties of up to three times the profits earned (or losses avoided), and injunctive actions. The securities laws also subject controlling persons to civil penalties for

illegal insider trading by employees. Controlling persons include the Company and may also include directors, officers and supervisory personnel. These persons may be subject to fines up to the greater of $1,000,000 or three times the profits earned (or losses avoided) by the inside trader.

Inside information (including information about companies other than the Company and obtained as a result of working for the Company) does not belong to the individual directors, employees or agents who may handle it or otherwise become knowledgeable about it, but instead it is an asset of the Company. A person who uses such information for personal benefit or discloses it to others outside the Company commits a fraud against members of the investing public and against the Company.

The insider trading prohibitions also apply to trading in options, such as put and call options. Selling a security "short" is a highly speculative transaction wherein the trader sells stock that he does not yet own on the assumption that the stock price will go down in the immediate future so that the trader may purchase the stock at the lower price and deliver such stock to the buyers of the stock he previously sold. For those reasons, when a person trades in options in an employer's securities or sells an employer's securities "short," regulators will become suspicious that the person was trading on the basis of inside information, particularly where the trading occurs prior to an announcement or major event. It is difficult for an employee to prove that he or she did not know about the announcement or event.

If information of a material nature regarding corporate activities, developments or discussions becomes or threatens to become known to outsiders, the Company is required to make prompt and thorough disclosure of such information to the public. (See paragraph 1 under "Policy" for comments on what is material.) The New York Stock Exchange has issued guidelines stating that, "where it is possible to confine formal or informal discussions to a small group of the top management of the company or companies involved, and their individual confidential advisors and where adequate security can be maintained, premature public announcement may properly be avoided." Corporate matters subject to this regulation have been declared to include negotiations leading to acquisitions and mergers, stock splits, the making of arrangements preparatory to an exchange or tender offer, changes in dividend rates or earnings, calls for redemption, new contracts, products or discoveries and other material developments.

☞ Policy

1. General Disclosure Policy.

It is the Company's policy to make prompt and complete disclosure of material information to the public when and as required by the rules of the SEC or the NYSE. Determinations regarding "materiality" involve subjective judgments; therefore questions of materiality will be determined by the General Counsel.

2. Trading While in Possession of Nonpublic Information.

Nondisclosure. Material inside information must not be disclosed to anyone other than persons within the Company whose positions require them to know it until it has been publicly released by the Company.

Trading in Company Securities. No employee or agent shall place a purchase or sale order, or recommend that another person place a purchase or sale order, in the Company's securities when he or she has knowledge of material information concerning the Company that has not been disclosed to the public. Any employee or agent who possesses material inside information shall wait two business days after the information has been publicly released before trading or recommending that others trade.

Speculation. The Company discourages all Company employees and agents from speculating in Company securities. The Company does encourage its employees to invest in Company securities, but investing means buying to share in the growth of Company, it does not mean short term speculation based on fluctuations in the market.

Trading in Other Securities. No employee or agent shall place a purchase or sale order, or recommend that another person place a purchase or sale order, in the securities of another company (or related derivative securities, such as put or call options) if the employee or agent learns in the course of his or her employment confidential information about the other company that is likely to affect the value of those securities. For example, it would be a violation of the securities laws if an employee learned through Company sources that the Company intended to purchase assets from another company, and then bought or sold stock in that other company because of the likely increase or decrease in the value of its securities.

Persons Subject to Guidelines. These guidelines apply to directors, all employees and agents of the Company. All employees and agents of the Company must observe the prohibition on trading on material inside information. Because of their access to confidential information on a regular basis, Company policy subjects two groups of employees to additional restrictions on trading in Company securities. The first group (the "Executive Group") must trade only during a "window period". The second group (the "Restricted Group") may trade only during a "permitted period". The restrictions for the Executive Group and Restricted Group are discussed below. In addition, certain employees with inside knowledge of material information may be subject to additional restrictions on trading from time to time.

- ***Restrictions on the Executive Group.*** The Executive Group includes directors and officers of Company and their secretaries and employees of the Company and their secretaries designated by the Chief Executive Officer, Chief Financial Officer or General Counsel of Company. The Executive Group is subject to the following restrictions on trading in Company securities:

    - trading is permitted from two days after an earnings release for the preceding fiscal period until the end of the second month after the end of the period for which the release was made.

- all trades are subject to prior review and clearance by the General Counsel;

- there shall be no trading outside the Executive except for reasons of exceptional personal hardship and subject to prior review by the above-named officers; and

- individuals in the Executive Group are also subject to the general restrictions on trading applicable to all employees set forth above in this Policy paragraph 2.

- ***Restrictions on the Restricted Group.*** The Restricted Group consists of all persons (other than those included in the Executive Group) who report directly to an officer of Company, such persons' secretaries, and certain other employees, and their secretaries, designated from time to time by the Chief Executive Officer, Chief Financial Officer or General Counsel of Company. The Restricted Group is subject to the following restrictions on trading in Company securities.

  - trading is permitted from two days after an earnings release for the preceding fiscal period until the end of the third month of the fiscal quarter in which the release was made (the "Permitted Period") subject to the restrictions below;

  - there is no general prior review;

  - there shall be no trading outside of the Permitted Period except for reasons of exceptional personal hardship and subject to prior review by the General Counsel of Company or such officer's designee; and

  - individuals in the Restricted Group are also subject to the general restrictions on trading applicable to all employees set forth above in this Policy paragraph 2.

3. Equal Access.

No preferential treatment will be given to any shareholder, potential investor or security analyst; therefore, the release to any such person of any material financial or operating data relating to the Company must be available to all such persons.

4. Forecasts.

Revenue and profit tends may be forecasted in general terms. It is the Company's policy, however not to make any specific public projections of future operating results.

5. Authority to Release.

No financial data regarding the Company will be released to the public except as authorized, specifically or generally, by the Chief Financial Officer of the Company.

6. Analysts.

Due to the sensitive nature of investor relations and federal regulations relating thereto, all interviews with shareholders, potential investors and security analysts must be coordinated through the Vice President - Investor Relations of the Company.

7. Transfers to Company.

As used in this policy, the term "trading" and variations thereof do not include sales or other transfers of stock to the Company.

☞ Procedures

When leaks of material information are suspected, rumored or discovered, the fact must be reported immediately to the General Counsel.

All announcements and news releases subject to statutes and regulations herein discussed must be made through the Office of the Chief Executive Officer.

If an employee or agent desiring to purchase or sell any Company securities is uncertain as to his responsibilities hereunder, the employee or agent should contact the General Counsel for advice in this regard.