Corporate Compliance System

—The present status and issues of the corporate compliance mainly with the Antimonopoly Act—

I. Preface

Currently the circumstances surrounding corporate compliance are largely changing. Moves are gaining momentum to transform the legal system to put more emphasis on corporate compliance, as seen in the amendment to the Antimonopoly Act, the creation of protection system for public interest informants and the establishment of the legal status of internal control under the Corporate Law and the Securities and Exchange Law.

The amendments to the Antimonopoly Act include the increase of general surcharge rates; a 50% extra charge on top of the normal respective surcharge on repeat offenders; and a 20% deduction in the surcharge applicable to early corrective actions. A leniency program has also been introduced. Under this program, surcharge payment may be exempted or reduced for an offending company, if it reports its offense for itself and meets certain requisites. Thus, incentives are provided for companies to enhance their legal compliance.

Turning an eye to actual corporate activities, there are arising so many misconducts in violation of the laws and ordinances, and such situation vitally needs enhancement of compliance. As regards the Antimonopoly Act, collusive biddings are continuing both nationally and locally. In September 2005, the Japan Highway Public Corporation received a recommendation concerning its order for a steel-made bridge superstructure after the so-called collusive biddings under the initiative of a governmental agency were revealed. In addition, in 2005 the Fair Trade Commission of Japan (JFTC) issued a recommendation to aluminum foil manufacturers concerning their cartel, and also to leading banks against the abuse of their advantageous status. As such, many instances of contravention are seen with the involvement of leading companies, even though their systems for corporate compliance are fairly well established. Nevertheless, many cases of repeated violations have been observed.

Amidst such situation, JFTC conducted an inquiry survey for the purpose of grasping the reality of corporate compliance. Also conducted was a survey on voluntary disclosure of noncompliance in reports on marketable securities filed with the Securities and Exchange Surveillance Commission. The data and materials of the cases in foreign countries were collected and compiled as well.

Based on these surveys, this report is to overview the current situation in order to develop measures to be taken for improving corporate compliance and to provide support for upgrading corporate compliance.

II. Recent Changes in the Circumstances Surrounding Corporate Compliance

1. Recent Revisions Concerning Corporate Compliance System

With respect to the enhancement of corporate compliance system and compliance awareness, companies should endeavor voluntarily, judging from the nature of the matter. However, companies are now legally required to structure a system to ensure the properness of their business activities under the amended Corporate Law. Besides, the bill for amendment to the Securities and Exchange Law aims to stipulate mandatory reporting on internal control. The system to urge corporate compliance indirectly by protecting whistleblowers (public interest informants) has also been introduced. Furthermore, a leniency program to provide immunity from or reduction in surcharge payment has been also introduced under the Antimonopoly Act. Thus, the incentive schemes have been introduced for the purpose of encouraging companies to try to improve compliance voluntarily.

These recent systemic revisions are deemed to strongly urge the enhancement of corporate compliance. However, specific methods or details for deploying a compliance system are left to each company's own decision. From such viewpoint, it is vital that a company itself shall endeavor to improve its compliance level.

(1) Reinforcement of the Antimonopoly Act

The amendment to the Antimonopoly Act was enacted in April 2005, and enforced from January 2006. Among the revisions, the introduction of a leniency program as well as the increase in the general surcharge rates applied to enterprises that violate the Act are closely related to corporate compliance.

A. Increasing the Surcharge Rate

There seems to be no end to repeating offenses by enterprises under the current scheme of surcharge rate, and it was considered insufficient as a deterrent. Therefore, the surcharge rate has been raised from 6% to 10% of the amount of sales of the products or service that are related to the offense committed for large-scaled manufacturers, from 2% to 3% for retailers, and from 1% to 2% for wholesalers. The rate applicable to small and mid-sized companies has also been raised.

As the normal surcharge rate was considered insufficient as a deterrent for enterprises that have a history of repeated violations, it was decided to impose an extra 50% charge on the increased normal surcharge payment on a repeat offender who had been ordered to pay the penalty charge for a violation within the past 10 years.

In addition, a 20% deduction in the surcharge rate was stipulated for the purpose of urging an offender to terminate inappropriate activities at an early chance. This deduction is applicable to those enterprises whose duration of violation is less than two (2) years and who have stopped such unlawful conducts more than one (1) month before the JFTC begins an investigation.

・ Increase in the Surcharge Rate

①manufacturers, etc.＝Large-scaled 6%, Small & mid-sized 3%
②retailers＝Large-scaled 2%, Small & mid-sized 1%
③wholesalers＝Large-scaled 1%, Small & mid-sized 1%

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①manufacturers, etc.＝Large-scaled 10%, Small & mid-sized 4%
②retailers＝Large-scaled 3%, Small & mid-sized 1.2%
③wholesalers＝Large-scaled 2%, Small & mid-sized 1%

- 20% reduction in the above-said surcharge rate applicable to early termination of violation
- 50% extra charge added to the above-said surcharge rate applicable to repeat offenders
- Scope of conducts subject to the surcharge system expanded (Price cartel, etc. → Cartel & private monopoly restraining price, quantity, market share or customer, and purchasing cartel)
- Adjustment measure is provided to deduct half the amount of the criminal fine from the surcharge.

B. Introduction of a Leniency Program

The leniency program is to exempt or reduce the surcharge payment for a voluntary reporter of its own violation. This program is not unique in Japan, but the similar systems were adopted commonly in the US, the EU, other European countries, Australia, South Korea, etc. When a company reports violation concerning cartel or bid collusion that it has involved and submits evidence of the unlawful conduct, the surcharge payment is exempted or reduced according to the reporting order.

This leniency program has been introduced for the purpose of facilitating the establishment of a prosecutable case by enabling a violating company to provide information and defect a cartel or collusion. The first informant before the start of investigation or the on-site inspection by the JFTC shall be totally exempted from a charge, and a 50% and 30% surcharge reduction are applicable to the second and third informants respectively. An informant after the initiation of an on-site inspection is also exempted from a charge by 30% (the program is applicable to the first three informants) .

・Surcharge payment is exempted or reduced if the statutory requisites (e.g. voluntary reporting of a violation by an offender) are met.

1st applicant before initiation of investigation＝total immunity
2nd applicant before initiation of investigation ＝50% deducted
3rd applicant before initiation of investigation ＝30% deducted
An applicant after initiation of investigation＝30% deducted

The total number of enterprises that may be applied to the leniency program is no more than three.

C. Other

In addition, compulsory measures for criminal investigation have been introduced for criminal indictment. The procedures for inspections and trials are reviewed and amendments have been made to provide a preliminary procedure for making an opinion statement before the issuance of a cease of desist order and the

initiation of a trial for a dissatisfied defendant (the recommendation system was abolished).

(2) Amendments to the Commercial Code

In order to correspond to recent changes in the economic and social circumstances, the drastic and systematic reviewal was conducted on the minimum capital system, formation of corporate bodies and other various systems. After the subsequent procedures, the Corporate Law was enacted in April 2005. Among all, it is intended to reinforce the system to ensure the properness of corporate activities (so-called "internal control system") in response to the recent need to strengthen the audit of large-scale companies, and the board of directors is obligated to make a decision on the basic policy concerning the establishment of a system necessary to ensure the compliance by the directors in executing duties with the laws and articles of association and other system to secure the properness of the corporate activities. Correspondingly the ordinance of the Ministry of Justice obliges companies to establish the system to ensure employees' compliance with the laws and ordinances as well as the articles of association in executing duties, and the framework to ensure the properness of the activities of the group of companies including the subject company, its parent company and subsidiaries.

Such a legal structure concerning corporate compliance was created under the Corporate Law. However, statutory provisions are not given on the specific details of such systems for corporate compliance but they are left to each company's own judgment and decision.

（Note) Corporate Law（effective as from May 1, 2006）
Article 348
2 When there are two or more directors, the majority of the directors shall make a decision on operations of a company, except where stipulated otherwise under the articles of association and by-laws.
3 In making a corporate decision under the preceding clause, a director may not delegate a decision of the following matters to other directors;
(iv) Structuring of a system to ensure the compliance of directors' execution of the business with the laws and ordinances and articles of association and bylaws and other statutory systems necessary to ensure the properness of the business operation of the company
4 In a large company, directors shall decide the matters listed under the item 4 of the preceding clause.

（A large company is defined as a company which meets any of the following criteria (Item 6 of Article 2).
a. The amount of capital stated in the balance sheet for the latest business year amounts to 500 million yen or more（with the said balance sheet being the one reported at the annual general assembly of shareholders under the provision of Article 435 when provided under the first paragraph of Article 439, and the one under Clause 1 of Article 435 for the period from incorporation to the first meeting of the annual general assembly of shareholders. The same shall apply to clause b.）.
b. The total amount of the liabilities booked in the balance sheet for the latest business year amounts to 20,000 million yen or more.

Enforcement Regulations for the Corporate Law（Ordinance No. 12 of the Ministry of Justice dated February 7, 2006）
Article 98 The systems prescribed under the ordinance of the Ministry of Justice as provided under Item 4, Clause 3 of Article 348 shall be the ones as listed below;
1 System for preservation and management of information concerning the execution of the business by the director
2 System of the rules and other matters concerning the management of risks of loss
3 System to secure the efficient execution of the business by the directors
4 System to ensure the compliance with the laws and ordinances and the bylaws by the employee in executing his/her duty

（３）Revision of the Securities and Exchange Law

As regards financial statements, which are regulated under the Securities and Exchange Law, the cabinet office ordinance concerning disclosure of corporate information was revised in March 2006 and corporations are now required to state the situation of corporate governance in the “Reference Information of the Submitting Company”.

Also, in December 2005 the Subcommittee on Internal Control under the Business Accounting Council compiled a report titled “On Standards for Evaluation and Audit of Internal Control concerning Financial Reporting.” Accordingly, the structuring of evaluation system to ensure the adequacy of the documents relating to financial accounting and other information was included in the bill for amendment to the Securities and Exchange Law submitted to the regular session of the Diet for 2006. Thus, the preparation of an internal control report has just been made mandatory. A chartered accountant or an auditing firm should certify such an internal control report. Furthermore, a confirmation letter to approve financial statements by a representative of the reporting company also needs to be submitted, while it was voluntary before.

Thus, corporate compliance by listed corporations is to be given a valid legal status.

（Note）Bill of the Partial Amendment of the Securities and Exchange Law
Article 24.4.4.
Among those companies which shall submit financial statements under the provision of Article 24.1, （including the companies which have submitted the said report under the provision of Article 23.3.4., with the same applicable to the next clause）, the company which is an issuer of securities listed under Article 24.1.1or otherwise designated under the ministerial ordinance shall submit to the Prime Minister the report on evaluation conducted pursuant to the provision of the cabinet office ordinance of the system prescribed under the cabinet office ordinance for ensuring the properness of the document concerning the financial accounting of the group of companies including the reporting company, its parent company and subsidiaries（hereinafter referred to as “Internal Control Report”）together with the financial reports（or the foreign company report if the said report shall be submitted in place of the financial report under Clause 8 of the same Article）.

(Companies which shall submit financial reports under the provision of Clause 1, Article 24, are issuers of marketable securities and have capital not less than 500 million yen.)

（４）Creation of Whistleblower Protection System

In recent years a string of corporate scandals were revealed, triggered by internal information disclosed by whistleblowers. Under such circumstances, the Law for Protection of Public Interest Informant was enacted in June 2004 for the purpose of prohibiting undue treatment of and protecting a whistleblower (a public interest informant), who is a worker of the accused company, from prejudicial treatment including dismissal because of his/her information disclosure of the existence of illegal activities subject to reporting to his/her employer or to a governmental authority, without his/her having any dishonest intention to obtain unfair profit or other advantage. The information subject to disclosure shall be the fact of a criminal act including a violation of the Antimonopoly Act. If an employee makes a disclosure about such an improper activity, his/her employer shall try to report the result of corrective steps to the employee later. The law has just taken effect on April 1, 2006.

In July 2005 the Cabinet Office also compiled and made public the guideline concerning the Law for Protection of Public Interest Informant, based on the purpose of this law. This guideline sets forth the establishment of a scheme to handle information disclosed by an informant and the installment of so-called "Helpline" within the company in order for accepting such notification. It also suggests it is desirable to place a management member as the responsible officer of the scheme and to establish and properly manage the system to deal with the disclosed information from the company-wide standpoint, irrespective of division, department or section in order to respond properly from acceptance of information through investigation of the case, implementation of a corrective measure, and development of a preventive measure to avoid recurrence. Due to the enforcement of this law, the systemic rules are clarified in respect of the protection of public interest informants, whereby it shall be facilitated for a company to receive information about a fact of criminal act. Thus, it is also expected that the compliance system shall be installed through setting up a contact desk for accepting information and implementing investigation, etc. At the same time, an adequate response to information disclosed by an employee shall also be essential and each company is required to consider a specific procedure in advance on how to process such information, including a further notice to a governmental authority.

（Note）Law for Protection of Public Interest Informant (enforced on April 1, 2006)

Article 1

The purpose of this law is to provide the invalidity of dismissal of an employee being a public interest informant because of his/her public interest information disclosure and the measures to be taken by a company and administrative organization concerning the said disclosure, whereby it is intended to protect a public interest informant, to enforce the observation of the laws and ordinances relating to the protection of the life, body, property and other interests of people, and to aim to contribute to the stable life of people and the sound development of the society and economy.

Article 2

The "Public Interest Information Disclosure" hereunder shall be the reporting by a worker of the fact subject to disclosure that is already existent or arising with the company for which the worker is serving or its business, director, officer, employee, agent or others to the said company for which the worker is serving or to a person designated by the said company in advance, or to the administrative organization authorized to make a decision or issue a recommendation concerning the said fact subject to disclosure or to a certain person who is deemed to be able to prevent the occurrence or escalation of the fact subject to disclosure by knowing it.

2 "Public interest informant" means a worker who has made a public interest information disclosure herein.

3 "Fact subject to disclosure" hereunder means any of the following facts;

ⅰ the fact of a criminal act as provided under the laws listed in the attached Appendix as the law concerning the protection of the life or body of a person, protection of consumer's interest, environmental preservation, securing of fair competition or other protection of the life, body , property other or interest of people (including the orders based thereon, with the same inclusion being applicable to the following item).

Article 5

In addition to the provision of article 3 （Invalidation of Dismissal）the company shall not demote, decrease the salary of or otherwise prejudicially treat a public interest informant the company is employing or employed by reason of his/her public interest information disclosure stipulated under each item of Article 3.

Appendix

8 the laws set forth under the ordinance as those concerning the protection of life or body of a person, or protection of consumer's interest, environmental preservation, securing of fair competition or other protection of the life, body, property or other interest of people in addition to the laws listed under the

preceding items.

Ordinance for designating the laws under the attached Appendix No.8 of the Law for Protection of Public Interest Informants （Cabinet Order No.146 dated April 1, 2005）
The Cabinet Office establishes this Cabinet Order under the provision of Attached Appendix No. 8 of the Law for Protection of Public Interest Informants.
20 The Law for Prohibiting Private Monopoly and Securing Fair Trade （Law No. 54 of 1947）

2 Situation of Offenses against the Antimonopoly Act

（1）Trend in Legal Measures

A Recent Conditions

In 2005 the Fair Trade Commission of Japan made 20 recommendations in total, concerning 1 private monopoly violation, 11 bid collusion cases, 4 price cartel cases and 4 unfair trade cases. Besides, the Commission ordered 121 companies in total to pay the surcharges totaling 8,369.1 million yen concerning 26 cases of price cartel and bid collusion. Thus, the Fair Trade Commission has been pouring the significant amount of administrative resources into bid collusion cases.

Among them the criminal accusations were filed with the Public Prosecutor General against 26 companies and involved parties, etc. in respect of the bid rigging concerning a construction of steel bridge superstructure ordered by the Ministry of Land, Infrastructure & Transport, and also against 6 companies and involved parties, etc. as well as a vice governor of the Japan Highway Public Corporation on another bid rigging case for a construction of steel-made bridge superstructure ordered by the Corporation. A demand for an improvement measure was just made to the former Japan Highway Public Corporation under the provision of the Act concerning the Elimination and Prevention of Involvement in Bid Rigging, etc.

Furthermore, in 2005 the JFTC made a decision against a leading bank on the abuse of its advantageous status and another against aluminum foil manufacturers on their cartel. Thus, there arose many comparatively large-scale cases in 2005.

(No. of legal measures taken by the Fair Trade Commission of Japan from FY1998 to FY2004)

Type \ FY(% to total)	12	(%)	13	(%)	14	(%)	15	(%)	16	(%)	Total	(%)
Price Cartel	1	5.56	3	7.89	2	5.41	3	12.00	2	5.71	11	7.19
Bid Rigging	10	55.56	33	86.84	30	81.08	14	56.00	22	62.86	109	71.24
Private Monopoly	0	0.00	0	0.00	0	0.00	1	4.00	2	5.71	3	1.96
Unfair Trade Practice	6	33.33	2	5.26	3	8.11	7	28.00	8	22.86	26	16.99
Others	1	5.56	0	0.00	2	5.41	0	0.00	1	2.86	4	2.61
Total	18		38		37		25		35		153	

B Major Cases of Repetitive Violations

The offense against the Antimonopoly Act, when committed by a large company, is often repeated more than once in many cases. The major cases involving the companies that were ordered to pay the surcharge are the following;

（Note）（Month Day, Year）after the name of each case represents the date of the order for the surcharge

payment, and the later cases are those for which the order for charge payment was determined.

① Leading civil work contractors violated the Antimonopoly Act for bid rigging concerning a harbor civil work project ordered by Nagasaki prefecture (February 19, 2003). Four of them had been accused of bid rigging in a civil work ordered by Saitama prefecture (September 18, 1992) and five of them had been indicted for bid riggings concerning the U.S. Army Safety Technology Research Institute（December 8, 1988), etc. Thus, it turned out that they had a history of violation against the Antimonopoly Act in the past.

② A large electric company repeatedly committed offenses against the Antimonopoly Act, as seen in the cases of bid rigging on large-sized color imaging equipment (March 28, 1995), specified electric equipment ordered by the Japan Sewage Works Agency (July 12, 1995), and batteries for communication equipment ordered by the Ground Self-Defense force (July 30, 2001).

③ A large aerial photogrammetry company caused several cases of offense against the Antimonopoly Act such as the aerial photogrammetry work ordered by the local governments in Miyagi and Fukushima prefectures (March 29, 2002), bid rigging on the tender for a surveying contract ordered by Chiba City, etc. (July 17, 2000) and the similar case for aerial photgrammetry work in Tohoku, Tokai and Shikoku regions (March 15, 1994).

④ As regards the tenders for water meters ordered by the Tokyo metropolitan government, a leading water meter manufacturer violated the Antimonopoly Act three times in 15 years, in 1992, 1997 and 2003. For two times of them the violation was accused as a criminal case.

In these cases even large and well-known companies, which are recognized to represent Japan, successively violated the Antimonopoly Act. Such instances have proved that repeated violations could not be prevented by a well-developed corporate compliance system.

Meanwhile, sampling was made from 4,802 companies in total including repeat offenders, which were subjected to the order for surcharge payment for the decade from 1995 to 2004, and that result indicated that repetitive violators numbered 77 companies (1.6%). Since the orders for surcharge payment were issued to a wide variety of companies, the ratio itself is not so high. But 17 (9.4%) repeat violators were noted among the 180 companies (in total including repetition) listed on the Tokyo Stock Exchange, which were ordered to pay the violation charge. The reason why so many of the listed companies on the Tokyo Stock Exchange is deemed to be attributable to their geographical wide area of activities, many divisional activities and possible significant impact on the market.

Furthermore, a survey for the history of repeating violation was made on the 45 companies (24 listed on TSE) that had received recommendations concerning the bid rigging case related to the order by the Japan Highway Public Corporation, which was a recent major incident. Then, 9 companies (20%) were found to have repeated violation in the past 10 years. Three companies (7%) among the nine had received recommendations

three times before. These nine companies are all large and listed on the Tokyo Stock Exchange, accounting for 38% of these 24 listed companies being repeat violators. Although most of them have been already equipped with adequate compliance systems, they repeated violations. Such a fact is deemed to indicate that corporate compliance remains perfunctory yet. Efforts are required to substantialize the purpose.

(2) Problem concerning Bid Rigging

Concerning a bid rigging, the Fair Trade Commission of Japan may take legal measures such as a cease and desist order, surcharge payment order and criminal indictment. Besides, an organization that places an order may take such a step against a violator as cancellation of the designated contractor status or demand for damage claim. A bid rigging may be punished as the crime of bid rigging or fraudulent intervention of bidding also under the criminal law.

These sanctions are prepared for a wide scope, but still bid rigging is said to be taking place everywhere in Japan, and is considered to pose the largest problem in the aspect of corporate compliance.

And the Law for Prevention of Participation in Bid Rigging has been enforced since 2003 to cover both of a contractor receiving an order and the governmental organizations placing such an order. Under the law, if participation in a bid rigging is noticed, the JFTC shall demand a governmental body that has ordered the concerned project to take a corrective measure, not only limited to a contractor. These demands for corrective measures were so far made against Iwamizawa City, Niigata City and the Japan Highway Public Corporation. At the end of 2005 the so-called government-led bid rigging cases were discovered with the involvement of the old Narita Airport Authority and the Defense Facilities Administration Agency. In December 2005 the prime minister gave directives; ① to develop and compile a draft of an amendment to the so-called law for prevention of government-led bid rigging; and ② to make an improvement to the contract bidding system within the government for the purpose of terminating any collusive case. In response the ruling party made up a draft amendment to the Law for Prevention of Participation in Bid Rigging, and submitted it to the Diet in February 2006. Meanwhile, a report titled “Action to improve governmental procurement” was just completed by the government in the same month.

In these years, thus, there are moves to improve the contract bidding system or reinforce sanction measures as seen in the submission of the draft amendments for enhancement of the Antimonopoly Act and the Law for Prevention of Participation in Bid Rigging, and it is expected that bid collusions will decrease.

In this connection, additionally, on the part of the business community, three bodies, namely the Japan Federation of Construction Contractors, the Japan Civil Engineering Contractors’ Association and the Building Contractors Society issued a notification requiring legal compliance, and the actual practice is strongly expected.

(3) Deterrence Measure Other Than the Antimonopoly Act

A　Claim for Damage, etc.

When the Fair Trade Commission of Japan makes a decision to issue a cease and desist order to a company or a person that has participated in a cartel or otherwise violated the Antimonopoly Act, the said

company or person shall be subjected to damages liability without fault for the victim (Article 25 of the Antimonopoly Act). And, even without a determined cease and desist order, the victim may also claim for damages under Article 709 of the Civil Code. Based on these provisions, an action was brought for restitution of unjust enrichment in the bid rigging concerning the jet fuel procurement by the Japan Defense Procurement Headquarters, and with respect to the bid rigging relating to the aerial photogrammetry project ordered by a governmental body in Miyagi Prefecture, Sendai City has sued for damages under Article 709 of the Civil Code.

Although an action for damages should be brought based on the judgment of an ordering organization, it is regulated under the Guideline concerning the Measures for Securing Justness in Bidding and Contract for the Public Works (Cabinet Decision dated March 9, 2001), as regards a public work, that "the head of each ministry or agency shall try to claim for damages caused as a result of injustice under the Civil Code from the viewpoint of preventing a repetition of bid rigging, when the amount of the damages are determinable (e.g., money is given and received in functioning the bid rigging)." Recently many regional autonomous governments have stipulated the penalty clause as a guaranty for future damages.

B Suspension of Tender Bid Participation

The policy statement titled "Action to Secure Justness in Public Procurement," which was completed by the Government in February 2006, aims at strengthening the penalty system and clarifying the rules, for instance, "when a bid rigging is of a large scale and systematic, the suspension of tender bid participation, particularly in the case it is markedly vicious, shall continue for a period of up to 24 months." Thus, the attempts have been made to lengthen the period of suspension of bid participation and to reinforce the penalty clauses.

Additionally, an administrative sanction (business suspension, etc.) may be imposed under the Construction Industry Law.

As explained above, not only the surcharge for punishment but also the economical loss to a possible violator has been raised against a violation of the Antimonopoly Act. Therefore, companies are bound to address compliance seriously.

(4) Utilization of Compliance System for Cease & Desist Measure

The cease and desist measure in recent violations against the Antimonopoly Act was often taken to issue orders to violators to take compliance measures. Such instances seem to be increasing, even though it is difficult to say categorically what could be a compliance measure. Since around 1991 the violators have been required to educate their employees thoroughly, and accordingly, employee training and education on the Antimonopoly Act and regular auditing were incorporated in the measures in 2004. Furthermore, in 2005 the development of the code of conduct and other internal rules, and establishment of in-house notification system, etc. were added.

In order to prevent violations, it is essential to enhance corporate compliance and the effectiveness of a

cease and desist measure at the same time. As said above, such a measure often includes the mandatory efforts to establish and/or improve compliance, and they are hence expected to take effect in preventing violations. In taking such a cease and desist order, it is considered necessary to grasp the reality on how well compliance is operative and to discuss the measure based on such reality.

Cease and Desist Measure that Ordered Compliance Efforts （FY2003 to FY2005）

FY	No. of Recommendation（Note）	Compliance Efforts Ordered in the Text of Order						
		Thorough Education of Employees	Training on the Antimonopoly Act	Periodic Audit	Guideline for Conduct under the Antimonopoly Act	Establishment of Punishment Clause	Establishment of Reporting System	Reassignment for Violator
2003	25	4 (16%)	5 (20%)	5 (20%)	2 (8%)	0 (0%)	0 (0%)	0 (0%)
2004	35	19 (54.3%)	14 (40%)	14 (40%)	1 (2.3%)	0 (0%)	0 (0%)	0 (0%)
2005	19	19 (100%)	14 (73.7%)	14 (73.7%)	5 (26.3%)	2 (10.5%)	2 (10.5%)	2 (10.5%)
3 Years Total	79	42 (53.2%)	33 (41.8%)	33 (41.8%)	8 (10.1%)	2 (2.5%)	2 (2.5%)	2 (2.5%)

（Note）For 2005 the elimination measures issued after the enforcement of the revised law are included.

A　Thorough Education of Employees

So far the cease and desist order was used to be composed of the imperatives requiring the addresee ① to cease and desist from violating, ② to repeat no similar violation in the future and ③ to keep each of their customers and venders informed of the fact about item ①.

As regards the case against Alpine Electronics in 1991 (April 25, 1991 (1991 Recommendation No.5)), the judicial decision stated in its text that “the employees must be made to fully know” the termination of the violating act. Thus, it has become more often to see similar decisions to order offenders to keep their own employees fully informed that the violating act was totally terminated and no similar violation shall be committed any longer.

B　Training on the Antimonopoly Act, Periodic Audit and the Provision of the Guideline for Business Conduct

The judicial decision requiring the full knowledge by all employees is increasing in number. In addition, in the recommendation addressed to Nisshin Steel Co. and other 5 companies (January 27, 2004 (2003 Recommendation No.33)) the offenders were ordered to provide “trainings on the Antimonopoly Act for sales staffers” and to conduct “periodic audit, etc. by legal affairs personnel.”

And in the recommendation against Posful Corp. in 2004 (April 14, 2004 (Recommendation No.2)) the violator was ordered to “make the guideline for business conduct concerning the Antimonopoly Act and take the necessary measures to conduct trainings …… and audit by the legal affairs personnel periodically, and to let the directors and employees have the full knowledge of these measures.” Thus, a cease and desist measure ordering specific actions for compliance has started since 2004.

C　Establishment of Internal Rules and In-house Reporting System

The elimination measures that have been recently issued got further into seeking actions for corporate compliance than the above said instance.

In the recommendation against JFE Engineering Corporation and other 39 companies in 2005 (November 18, 2005 (2005 Recommendation No.13)), the offenders were ordered to

① "prepare and amend the guidelines to comply with the Antimonopoly Act",

② "establish the rules concerning the punishment of the directors and employees responsible for a violation of the Antimonopoly Act",

③ "establish the in-house reporting system capable of granting effective immunity to the person reporting a violation against the Antimonopoly Act", and

④ "remove the sales staffer from sales activities concerning the ……project promptly", and

⑤ "the companies accepting retirees from the Japan Highway Public Corporation as director or employee shall not assign them to sales activities relating to the above said project to be ordered by the above said three corporations that have inherited the above said business from the Japan Highway Public Corporation."

Thus, the content of the order clearly aimed at the enhancement of corporate compliance.

Thereafter, the recommendation against Toyo Aluminum Co. and other 5 companies (December 12, 2005 (2005 (Recommendation No.18)) ordered them "to prepare or amend the guidelines for compliance with the Antimonopoly Act," and also in the recommendation against Sumitomo Mitsui Banking Corporation (December 26, 2005 (2005 Recommendation No.20)), the bank was ordered to "establish the internal rules relating to the handling of interest rate swap transactions from the viewpoint of the Antimonopoly Act" or other individual and specific actions for compliance were directed. The trend for recommendations to include similar orders has been continuing.

III. Current Conditions of Corporate Compliance

For the purpose of grasping the reality of corporate compliance with the Antimonopoly Act 1,696 companies listed on the first section of the Tokyo Stock Exchange (as of January 6, 2006) were chosen to conduct a paper research in January 2006. 1,214 companies or 71.6% returned their responses. These respondents are classified by the size of capital; 10 companies in the bracket of capital less than 500 million yen, 14 companies in the bracket of capital not less than 500 million yen but less than 1 billion yen, 271 companies in the bracket of capital not less 1 billion yen but less than 5 billion yen, 261 companies in the bracket of 5 billion yen or more but less than 10 billion yen and 658 in the bracket of capital amounting to 10 billion yen or more.

Inquiries were made about the conditions of corporate compliance relating to the Antimonopoly Act selectively on the following 5 points; ① establishment and conditions of compliance system, ② efforts relating to compliance with the Antimonopoly Act, ③ securing of the effectiveness of compliance with the Antimonopoly Act, ④ review of actions for compliance with the Antimonopoly Act after its revision and ⑤ comparison with the U.S.A. and European countries. Also surveyed were the statements in the financial and business reports of the companies that had been subjected to the legal disposition under the Antimonopoly Act.

1 Establishment and Conditions of Compliance System

○ Majority or 86% of the respondents have compliance manuals, but about half of them created the manuals in or after 2003.

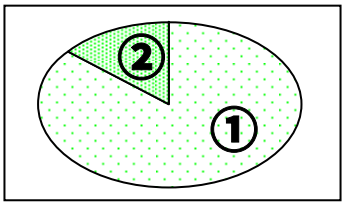
○ 80% of the respondents set the director or equivalent officer in charge of compliance. However, the companies the president or vice president of which takes charge of compliance account for only 20%.

○ 61% have the department or other organization dedicated to compliance and 72% have established compliance committee.

（1）Compliance Manual

In order to grasp the conditions of basic equipment with corporate compliance, inquiries were made on the availability of a so-called compliance manual, regardless of the titles of the manual, such as guideline for conduct, ethical code or CSR rules, from the viewpoint of legal compliance. 86 % of the respondents answered “available” and 14% said “not available.”

	No. of Answers	%
① available	1041	86.0
② not available	170	14.0
Total	1211	100.0



As a reference, 40% of the respondents had a compliance manual according to the survey in 1998 (Note).

（Note）In January 1998 a commissioned survey was conducted for the companies listed on the stock

exchanges in Tokyo, Osaka and Nagoya (2,732 companies in total) about the system for compliance with the Antimonopoly Act (Response ratio 43%).

As regards the inquiry into the manner of description contained in the compliance manual, 54% answered that "the sales manual, code of conduct, etc. were separately prepared in addition to the general provisions," 32% had "the general provisions like the ethical standards", and 15% said that "the rules are unified into the detailed compliance manual."

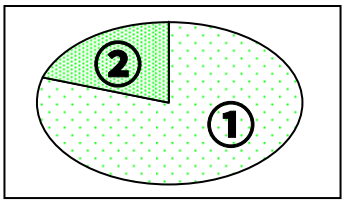
Inquired on the time when the compliance manual was laid down, 48% prepared theirs "in or after 2003," 20% did "from 2001 to 2002," and 31% did "in 2000 or before".

Inquired on the reasons for establishment of compliance manual, 72% prepared theirs because of "the rise in the social attention," 8% did so responding to "the request within the company and/or from shareholders," and 5% answered that it was because of "the punishment for a legal offense."

（2）Director or comparable officer in charge of Compliance

As regards the inquiry into the availability of an officer or director in charge of legal compliance（including the appointee named as CSR officer or alike), 80% answered "available."

	No. of Answers	%
① available	969	80.1
② not available	241	19.9
Total	1210	100

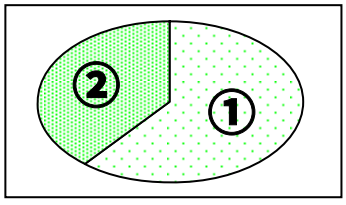


As for the inquiry made among the companies with a compliance officer into the position of the officer in charge of compliance, 9% answered "president," 11% "vice president," and 50% "senior managing director or managing director."

（3）Establishment of an Organization Dedicated to Compliance

Inquired about the existence of the in-house organization specialized in legal observance and compliance, 61% answered "established" and 39% "not established."

	No. of Answers	%
① Established	734	60.9
② Not Established	472	39.1
Total	1206	100



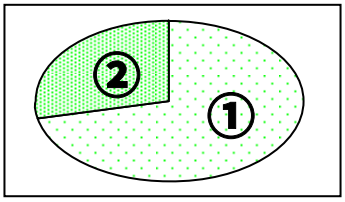
The companies with specialized department or other organization for compliance were inquired about the number of staff members engaged in development, dissemination, training concerning legal observance or compliance (including those with double assignments). 63% answered "less than 5 persons," and 23% "5 or more but less than 10."

（4）Establishment of Compliance Committee

Inquired into the existence of ethical committee, compliance committee, etc. taking charge of legal

observance or compliance, 72% answered “established” and 28% “not established.”

	No. of Responses	%
① Established	867	71.7
② Not Established	342	28.3
Total	1209	100



As regards the position of the chairman of compliance committee, 38% answered “president” and 10% “vice president.”

Inquired on whether the compliance committee has an outside person like a lawyer as a member or not, 22% said “Yes” and 78% “None.”

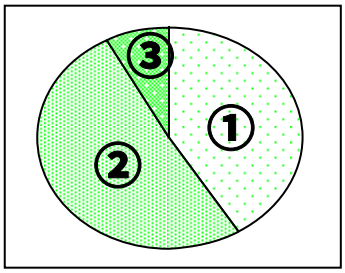
2 Compliance relating to the Antimonopoly Act

- ○ About the offense against the Antimonopoly Act, 51% consider that possible violation is likely within their own companies or groups and have the sense of crisis.
- ○ 81% have the clauses on the Antimonopoly Act contained in their compliance manuals.
- ○ As regards the compliance with the Antimonopoly Act, 44% provide no training and 56% conduct no internal audit.
- ○ 77% or a large majority have established helpline, but 88% have no record of actual use.

（1）Awareness of Offense against the Antimonopoly Act

The sense of crisis regarding a possible offense against the Antimonopoly Act within their own company is considered to be the background of efforts for compliance with the said law. With respect to the possibility of violation against the Antimonopoly Act within their own companies, 41% answered “unlikely” and 51% replied that “such violation would be likely within their own companies or groups of companies and the respondents had a sense of crisis.”

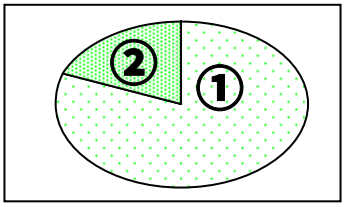
	No. of Answers	%
① unlikely	487	41.0
② likely within own companies or groups of companies and have a sense of crisis	607	51.1
③ not sure	93	7.8
Total	1187	100



（2）Availability of Regulations on Compliance with the Antimonopoly Act

Inquired about if the compliance manual contains the provisions or clauses on the compliance with the Antimonopoly Act, 81% replied “Included” and 19% replied “Not Included.”

	No. of Answers	%
① Included	880	80.8
② Not included	209	19.2
Total	1089	100



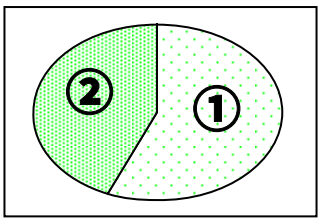
Inquired about what specific provisions are contained with respect of the compliance with the Antimonopoly Act if the respondent's compliance manual has the provisions concerning the compliance with the Antimonopoly Act (multiple selection permitted), 64% have the provisions on "price cartel," followed by 57% "delayed payment to subcontractors," 56% "bid rigging," 45% "false representation of goods or service," 44% "restraining resale price," 40% "dumping", etc.

On the other hand, if the respondent's compliance manual has no provision concerning the compliance with the Antimonopoly Act, the reason was questioned (multiple choice permitted). 47% answered that "the business of the respondent has nothing to do with the Antimonopoly Act," followed by 26% who said that "legal compliance has already been secured," 25% "voluntary efforts suffice the purpose," 17% "lack of human resources and money," etc.

（3）Training relating to legal compliance with the Antimonopoly Act

Questioned if the training takes place in relation to legal compliance with the Antimonopoly Act, 56% answered "Yes" and 44% answered "No".

	No. of Answers	%
① Training performed	672	56.3
② Training not performed	522	43.7
Total	1194	100



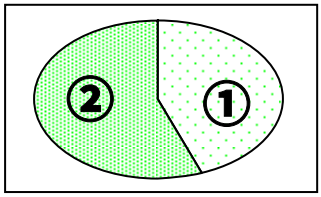
Inquired about the training on the Antimonopoly Act and the related compliance, the respondents providing such training answered as follows (multiple selection permitted). 44% replied that "the training is given to sales staffers only," 40% replied that "training is given for introduction purpose at the time of the employment," 34% did that "training is given to the managers and the superiors once or more per year," and 24% said that "all employees attend training once or more annually."

About the question on the method of the training regarding the compliance with the Antimonopoly Act (multiple selection permitted), 89% answered "training in the form of lecture," followed by 24% "only distribution of manuals," 13% "participation in the outside training," and 12% "training course using PC (e-learning, etc.)." As such, most of the respondents have adopted lecture-style trainings.

（4）In-house Audit relating to the Antimonopoly Act

Questioned if the in-house audit is performed in relation to the Antimonopoly Act and related compliance, 44% answered "Yes" and 56% replied "No".

	No. of Answers	%
① Performed	521	44.3
② Not performed	656	55.7
Total	1177	100



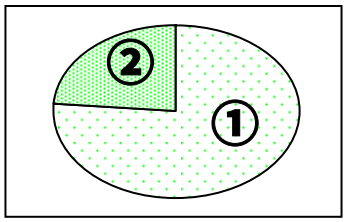
Limited to the companies that perform in-house audit relating to the compliance with the Antimonopoly Act, a question was made about the frequency of such audit. Then, 54% answered "once or more per year," 11% "biennially," and 19% "as needed."

As a reference, the survey done in 1998 indicated that the companies that performed in-house audit from the viewpoint of the compliance with the Antimonopoly Act accounted for 24.4%.

（5）Availability of Helpline in connection with the Antimonopoly Act

Recently more companies have set up the contact person/office named Helpline, etc. Asked if any contact person/office is provided and available to an employee who notices any suspicious conduct by some employees or officers and desires to consult or notify about such an act as a violation against the Antimonopoly Act, 77% answered "available" and 23% did "No".

	No. of Answers	%
① Available	918	76.5
② Not available	282	23.5
Total	1200	100



Limited to the companies that have established Helpline concerning the Antimonopoly Act, a question was posed what department or organization is operating the said Helpline (multiple choices permitted). The replies indicated that "in-house organization such as legal affairs dept. or personnel affairs dept." accounted for 62%, "outside organization like a law office" 36% and "compliance committee" 28%.

Asked about the annual frequency of consultations relating to the Antimonopoly Act, 15% answered "once or more but less than 5 times," 2% "5 times to less than 10 times," and 81% "never used."

As a reference, the 1998 survey indicated that the respondents that had Helpline accounted for 48.7%.

3 Securing Real Effectiveness of Compliance relating to the Antimonopoly Act

○ The companies that have determined the method of response to a possible offense against the Antimonopoly Act account for 63%. Among such companies, 88% replied "reporting to the top management," and 67% "deliberation with a lawyer," etc. as the first response.

○ As regards the compliance system relating to the Antimonopoly Act, 39% of the respondents consider their own systems inadequate in substance. And 52% consider theirs formally insufficient.

○ In order for thorough practice of compliance, 55% recognize that awareness by the top of management is vitally important. In respect of the top's involvement in compliance relating to the Antimonopoly Act, 71% pointed the top's daily advocacy of emphasis on compliance at every chance of meeting, training, etc. and

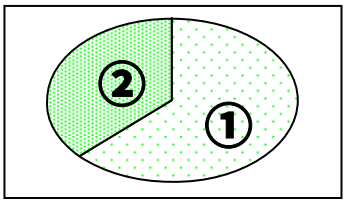
41% said that their top of management is serving as the top of compliance committee.

○ 81%of the respondents said that they would announce a statutory disposition due to violation against the Antimonopoly Act, if it happens, and 86% selected press release and 81% chose website as a medium of announcement.

（1）Response to Violation against the Antimonopoly Act

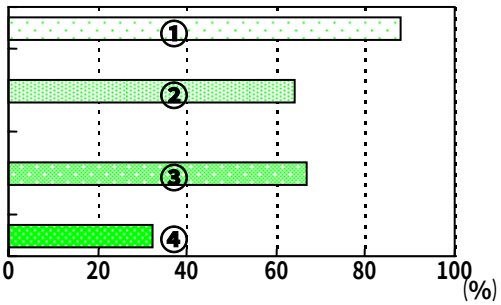
The responses that have been determined beforehand preparing for a possible violation against the Antimonopoly Act, are deemed to indicate what measure to be taken against such a violation, if occurred actually. Being questioned whether determined on a response in case any violation against the Antimonopoly Act is found within their own companies, 63% answered "determined" and 37% "undecided."

	No. of Answers	%
① Determined	745	63.0
② Undecided	437	37.0
Total	1182	100



A question was made to the companies that already determined the response to a possible violation on what kind of specific steps will be taken (multiple selection permitted). 88% answered "reporting to the chief executive officer (top of management)," 67% "deliberation on possible countermeasures with a law office or other outsiders," 64% "countermeasures to be taken by legal affairs dept. or other in-house organization," and 32% "reporting to the administrative authority."

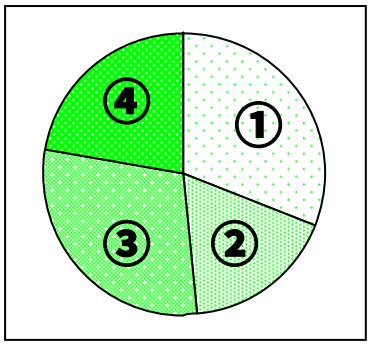
	No. of Answers	%
① Report to CEO	663	88.0
② Countermeasure to be taken by legal affair dept. or other in-house organizations	482	64.0
③ Deliberation on countermeasures with outsiders including a law office	503	66.8
④ Report to administrative authority	244	32.4
Total	753	100



（2）Self-evaluation of Compliance Efforts

Asked how the respondents see their own present compliance system relating to the Antimonopoly Act, they answered as follows. 31% answered that ① " the present system is formally sufficient and functioning well in substance," and 17% replied that ② "the present system is formally sufficient but not functioning so well in substance." 30% answered that ③ "the present system is not sufficient formally but functions adequately in substance." And 22% replied that ④ "the current system is not sufficient both formally and in substance."

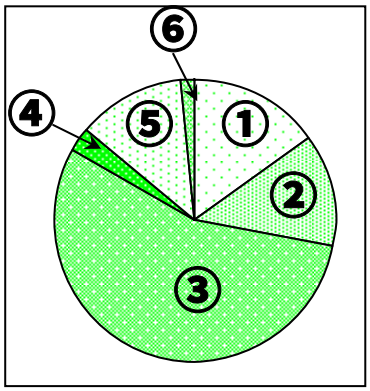
	No. of Answers	%
① Current system is adequate formally and also functioning well in substance	343	31.1
② Current system is adequate formally but not functioning so well in substance	191	17.3
③ Current system is inadequate formally but functioning well in substance	326	29.5
④ Current system is inadequate both formally and in substance	244	22.1
Total	1104	100



（３）Effective Efforts for Thorough Compliance

Questioned about what is the most effective factor for thorough compliance with the Antimonopoly Act, 55% pointed the “Awareness by top of management,” 15% said “Preparation and improvement of the compliance manual,” 13% “Establishment of monitoring system for legal compliance by the employees,” 12% “Industry-wide effort,” 3% “Guidance & stringent revelation by administration,” and 2% replied “Punishment such as reprimanding a violator against the laws and ordinances.”

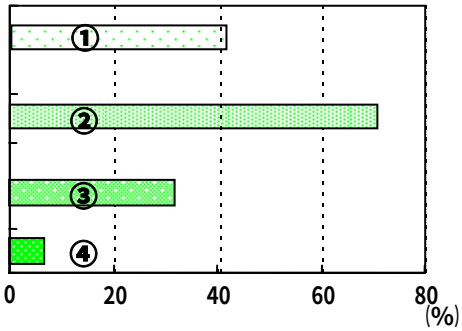
	No. of Answers	%
① Preparation or improvement of manual	144	15.2
② Establishment of monitoring system for legal compliance by employees	122	12.9
③ Awareness by top management	528	55.2
④ Administrative guidance & strict revelation	25	2.6
⑤ Industry-wide effort	116	12.3
⑥ Punishment like reprimanding a violator against laws & ordinances	16	1.7
Total	945	100



（４）Top Management’s Involvement in Compliance Effort

As it is said that the involvement by the top management is important in respect of corporate compliance, a question was made on how the top management is concerned with compliance relating to the Antimonopoly Act (multiple selections allowed). 71% pointed “Daily advocacy of emphasized importance of compliance by the top management at the chance of meeting or training,” 41% indicated “the top of management serving as the top of the compliance committee,” and 32% said the “judgment by the top in addressing a legal violation, if found.”

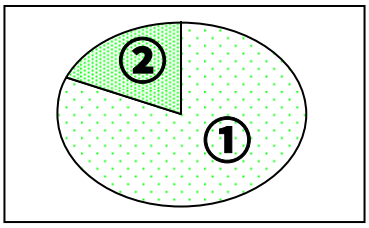
	No.of Answers	%
① Top of management being the top of compliance committee	480	41.4
② Daily advocacy of emphasized importance of compliance by the top management at the chance of meeting or training	822	70.9
③ Judgment by the top in addressing a legal violation, if found	368	31.7
④ Others	77	6.6
Total	1160	



（５）Voluntary Announcement of Legal Disposition

Inquiry survey was made about whether the company should make a voluntary announcement, if any legal disposition (either administrative or criminal) is imposed upon it for the reason of offense against the Antimonopoly Act. 81% said “Yes,” and 19% answered “No.” Thus, many companies are determined to announce a legal disposition publicly in some sort of way, if imposed.

	No. of Answers	%
① Yes	859	81.4
② No	196	18.6
Total	1055	100



As regards the companies that indicated their readiness to announce a legal disposition, a question was asked about the method of announcement (multiple selections allowed). “Press release” accounted for 86%. Next, “Announcement on the company’s Website” accounted for 81%. “Statement in the financial and business reports” was 51% and “Notice to shareholders” was 11%.

Seeing the websites of the companies that were subjected to the recommendation in the bid rigging in connection with the Japan Highway Public Corporation’s order for a bridge, as a specific case, among the 45 companies that received the recommendations (44 of them set up their own websites), 26 companies（58%）announced the recommendation by the Fair Trade Commission of Japan on their websites (as of March 31, 2006). Many read “We determined to accept the recommendation issued by the Fair trade Commission of Japan, and would like to try to recover confidence in us at an early time through addressing further and full compliance and promoting preventive measures to avoid repetition.” Thus, many of them mention the promotion of compliance.

4 Review of Compliance Effort along with Revision of the Antimonopoly Act

○ As regards a legal disposition imposed for a violation against the revised Antimonopoly Act, a question was made on the possible impact. 74% said that the company’s reputation in the society would be impaired to a large extent, not limited to earnings. And 14% expected that the company’s social reputation would be largely affected, although the impact on earnings would be limited.

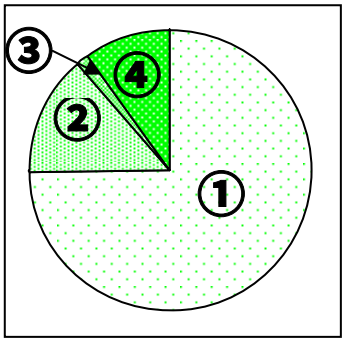
○ 21% reviewed their compliance manuals and 7% conducted internal audit after the revision of the Antimonopoly Act.

○ 23% take the surcharge leniency program into account.

（1）Legal Disposition under the revised Antimonopoly Act

As regards a legal disposition imposed for a violation against the revised Antimonopoly Act, a question was made on a possible impact. 74% said that the company's reputation in the society should be impaired to a large extent, not limited to earnings. And 14% expected that the company's social reputation would be largely affected, although the impact on earnings would be limited.

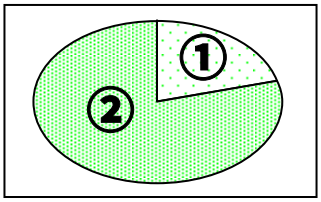
	No. of Answers	%
① Not only earnings but also social reputation would be affected very severely	868	74.4
② Earnings would not affected much, but social reputation would be affected largely	164	14.1
③ Not much impact either on earnings or social reputation	19	1.6
④ Unknown	116	9.9
Total	1167	100



（2）Review of Compliance Manual in Accordance with the Revised Antimonopoly Act

A question was made on the review of compliance manual after the revision of the Antimonopoly Act, which was answered as follows. 21% answered that they reviewed their compliance manuals after the revision of the Antimonopoly Law and 79% said that they did not do so.

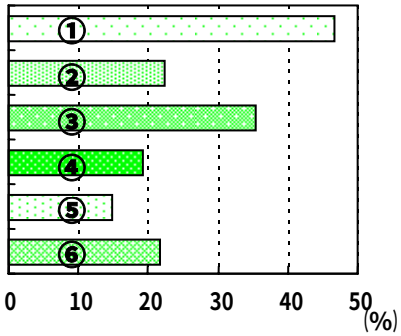
	No. of Answers	%
① Reviewed	235	21.2
② Not reviewed	875	78.8
Total	1110	100



（3）In-House Information Dissemination about the Revised Antimonopoly Act

With respect to the details of the revised Antimonopoly Act, an inquiry was made into the method to be or have been adopted in disseminating the related information within their companies (multiple selections permitted). "Personnel training and in-house seminar" accounted for 47%. "Insertion to intranet" was for 35%, and "Leaflet distribution" for 22%, "Participation in an outside seminar such as a meeting for fair trade training" for 19%, etc.

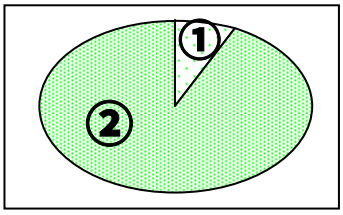
	No. of Answers	%
① Personnel training, in-house seminar	536	46.6
② Leaflet distribution, etc.	257	22.3
③ Insertion onto Intranet	407	35.4
④ Participation in outside meeting for fair trade training or other seminars	221	19.2
⑤ Voluntary effort by each employee	172	14.9
⑥ Nothing particular done	250	21.7
Total	1151	



（４）Internal Audit on Violation against the Antimonopoly Act

In connection with the increase in the surcharge rate and the introduction of the leniency program, which are the main points of the revision of the Antimonopoly Act, an inquiry was made into the implementation of internal audit on a possible violation against the Antimonopoly Act. 7% answered that they "did such audit" and 93% answered "they didn't."

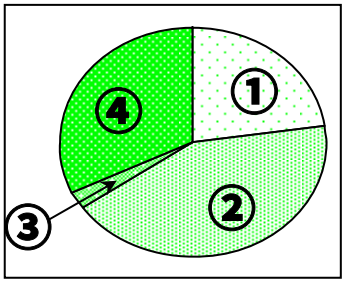
	No. of Answers	%
① Performed	86	7.3
② Did not perform	1086	92.7
Total	1172	100



（５）Use of Charge Reduction/Exemption System

As regards the inquiry into the use of the leniency program in case a violation is found against the Antimonopoly Act through internal audit or otherwise, 23%of the respondents answered that they "considered to use the program," and 42% expressed they "would like to study the program," 3% said they "did not think of the use," and 32% answered they "did not know the program well."

	No. of Answers	%
① Considering to use the program	267	23.2
② Would like to study the program	485	42.1
③ Not considering to use	29	2.5
④ Do not know the program	372	32.3
Total	1153	100



5　Comparison with the U.S. & European Countries

○　Among the companies operating in the U.S. and/or Europe, it is recognized that the law concerning competition is the strictest in the U.S., and Europe comes at the second place and Japan positions last in terms of the strictness of the law.

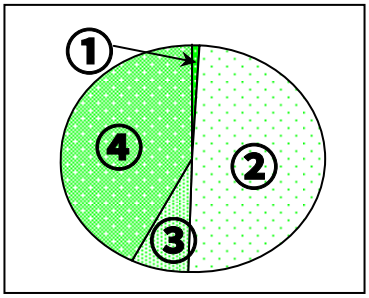
○　In terms of the amount of financial cost used for compliance, Japan is the first, the U.S. is the next, and Europe is the last.

As for the question on operation in the U.S. and/or Europe, 9% said they were "operating only in the

U.S.," 1% said that they were "operating only in Europe," and 41% answered "both in the U.S. and Europe." 50% replied that they were "not operating either in the U.S. or Europe."

As regards the question made to the companies operating either in the U.S. or Europe about their impressions on which country or region has the most strict laws concerning anti-trust or competition among the U.S., Europe and Japan after the recent revision of the Antimonopoly Act, 1%, 49%, and 7% of the respondents picked "Japan," "U.S.A.," and "Europe," respectively and 43% answered "not known." Thus, many companies think that the anti-trust law of the U.S. is the strictest.

	No. of Answers	%
① Japan	7	1.2
② U.S.A.	295	49.2
③ Europe	40	6.7
④ Not known	257	42.9
Total	599	100



As regards the question made to the companies operating either the U.S. or Europe about which country or region they are paying attention most including the cost and expenses needed for legal compliance and related personnel, 74%, 10%, and 2% of the respondents chose "Japan," "U.S.," "Europe," respectively and 15% answered "not known."

6 Characteristics by Industry

○ In the construction industry many companies consider that the most effective method for fully compliance concerning the Antimonopoly Act would require the industry-wide effort. And the ratio of such companies is the highest in the construction industry. The ratio of the companies that have completed the review of their compliance manuals, based on the revision of the Antimonopoly Act, is also is high.

○ In the financial and insurance industries the ratio of the companies that have prepared the compliance manuals at earlier time is high.

An analysis by industry was conducted on each respective question item, and the following points were noted as characteristic;

○ In the construction industry many companies consider the most effective method for full compliance concerning the Antimonopoly Act would require the industry-wide effort. And the ratio of such companies is the highest (33% vs. all industries' average 12%) in the construction industry. And the ratio of the companies that consider it unlikely for them to violate the Antimonopoly Act, is low (31% vs. all industries' average 41%). The ratio of the companies that have completed the review of their compliance manuals, based on the revision of the Antimonopoly Act, is high (34% vs. all industries' average 21%).

○ In the transportation industry and information & communication industry the ratio of the companies that consider it important to establish a monitoring system for legal compliance by the employees is high (21%

vs. all industries' average 13%).

○ In the real estate industry the ratio of the companies that evaluate that their current compliance systems as a result of their efforts are inadequate both in form and substance, is high (50% vs. all industries' average 22%). The ratio of the companies that consider it unlikely that they themselves might commit an offense against the Antimonopoly Act, is high (61% vs. all industries' average 41%).

○ In the service industry the ratio of the companies that evaluate that their current compliance systems as a result of their efforts are inadequate in form but have the adequate capability in substance, is high (37% vs. all industries' average 30%).

○ In the financial and insurance industries the ratio of the companies that have prepared the compliance manuals is high (99% vs. all industries; average 86%), which have been developed and made ready at an early time (70% in 2000 or earlier vs. all industries' average 41%). The ratio of the companies that consider it unlikely that they themselves might commit an offense against the Antimonopoly Act, is low (32% vs. all industries' average 41%).

7 Relationship among Survey Items

○ When the relationship between the sense of crisis for offense against the Antimonopoly Act and the view on the effectiveness of compliance is seen, the companies that believe that no offense against the Antimonopoly Act occurs at their own companies, consider at a high rate that their own compliance is inadequate in form but sufficient in substantial function. On the other hand, the companies that have the sense of crisis for offense against the Antimonopoly Act, consider at a high rate that their compliance system is adequate in form and also functioning well in substance.

○ The companies that believe that the awareness by the top management is the most effective in perfectly permeating the compliance relating to the Antimonopoly Act, tend to have prepared the compliance manuals, set up a contact office/persons for consultation and reporting, such as appointed officers in charge of compliance, specialized department/section, and compliance committee, etc., and been conducting internal auditing. Among those, the ratio of the companies that have decided the specific measures to be taken in case a violation is found is high.

Analyzing the mutual relationship among the answers to respective question items, the following characteristics are noted;

（1）Sense of Crisis and Effectiveness of Compliance

○ Observing the relationship between the sense of crisis for offense against the Antimonopoly Act and the view on the effectiveness of compliance, the companies that believe that no offense against the Antimonopoly Act would occur at their own companies, consider at a high rate that their own compliance system is inadequate in form but sufficient in substantial function. On the other hand, the companies that have the sense of crisis for offense against the Antimonopoly Act, consider at a high rate that their own

compliance system is adequate in form and also functioning well in substance.

（2）The Most Effective Factor for Thorough Compliance

○ The companies that believe that the administrative guidance and severe revelation is the most effective in perfectly permeating the compliance relating to the Antimonopoly Act, consider at a high rate that no offence against the Antimonopoly Act would occur at their companies and their compliance system is inadequate in form but functioning well in substance.

○ The companies that believe that the industry-wide efforts are effective, consider more often that the current compliance system is sufficient in form but is not functioning so much. This means that some sort of forms can be installed as compliance system but it is difficult to secure the proper practice, and this is often noticed in the construction industry.

○ The companies that believe that the punishment like reprimanding an offender of the laws and ordinances is effective, more often consider that the current system is inadequate in form but adequate in actual function. With the companies having such recognition it is considered that the deterrent is functioning. And the companies that believe that the punishments such as reprimand, etc. is effective, more often fail to announce the fact of legal disposition voluntarily. And the companies that consider it important to prepare and improve compliance manuals, more often announce the fact of legal disposition voluntarily.

○ The companies that believe that the awareness by the top management is the most effective in perfectly permeating the compliance relating to the Antimonopoly Act, tend to have prepared the compliance manuals, set up a contact office/persons for consultation and reporting, such as appointed officers in charge of compliance, specialized department/section, and compliance committee, etc., and been conducting internal auditing. Among those, the ratio of the companies that have decided the specific measures to be taken in case a violation is found is high.

Meanwhile, the companies that have not created compliance manuals, more often consider it most effective to prepare/improve the manuals, at a comparatively high rate. And they believe at a high rate that their current compliance system is inadequate both in form and substance.

8 Accouncement of Legal Disposition for Violation Against the Antimonopoly Act (Survey on the financial reports, etc.)

○ Concerning each company that was subjected to legal disposition against a violation of the Antimonopoly Act in the past 10 years, the statements about such disposition in the financial and business reports were checked. Then, it was found that only 25% indicated such dispositions in their financial reports.

○ Surveying the business reports for the past 4 years, only 34% of those companies included the description on such legal dispositions in the said reports.

It can be deemed to be an indicator of a company’s sincerity in its effort to improve corporate

compliance whether it intends to announce legal disposition (administrative or criminal) that would be imposed on it because of a violation against the Antimonopoly Act, in case it is subjected to such disposition. Therefore, a survey was made on the financial and business reports of those companies that had received a legal disposition for a violation against the Antimonopoly Act in order to check whether they had reported such disposition to their shareholders.

（Note）A financial report means the report that a listed company is required to submitted to the Prime Minister from the viewpoint of making the provision of information to general investors or keeping securities transaction fair and just (Article 24.1 of the Securities and Exchange Law), and shall include the business name, the conditions of accounting, and other important business matters of the said company and the group of companies to which the said company belongs, for each operating year, and such information as is stipulated as necessary and proper for the public interest or protection of investors under the Cabinet Office ordinance. They are available for public inspection at a regional finance bureau or a securities exchange (Article 2 of the Securities and Exchange Law).

A business report means the report that a corporation is required to prepare and report to the general assembly of shareholders (Articles 281 and 283, the Commercial Code), and, if the paid-up capital of the said corporation is 500 million yen or more, shall be attached to the notice of an annual general assembly of shareholders and sent to the shareholders. Such report must include the main businesses, sales offices, factories, conditions of shares, conditions of employees and other information about the current conditions of the corporation that is subject to the accounting statements, as well as the business progress and results in the operating year (Article 103, Enforcement Regulations of the Commercial Code).

Focusing on the companies that were subjected to legal disposition against a violation of the Antimonopoly Act in the past 10 years, the descriptions of the said dispositions contained in their financial and business reports were checked. And it was found that 25% of the surveyed companies indicated the legal dispositions in their financial reports, although the situation of the voluntary announcements were largely variable year by year, and 34% included descriptions on such dispositions for a violation against the Antimonopoly Act in their business reports, even though they were for the past four years.

The financial report, which is a report to investors, shall contain descriptions mainly of financial information, and it is likely that the companies judged that even a legal disposition imposed for a violation against the Antimonopoly Act was not important financially.

In the business report the current general conditions of a company shall be described. Therefore, it is considered that the ratio of reference to the legal disposition is slightly higher in the business report.

The typical example of such reference reads as “In the ○ period (from April 1, ○ (year) to March 31, ○ (year)), our company was given the judicial decision for a recommendation by the Fair Trade Commission of Japan because of a deed in violation of the Antimonopoly Act concerning …… and was ordered to pay a surcharge in ○, ○ (month, year). We accept this decision gravely and strive to make

further efforts to fully observe the Antimonopoly Act in the future." Thus, many refer to compliance.

Announcement of Legal Disposition for Violation against the Antimonopoly Act（FY1995～FY2004）

FY of Disposition	No. of companies subjected to legal Disposition	No. of Companies required to submit financial reports	Financial Report			Business Report			Described both in financial and business reports
			Not Mentioned	Described	Total	Not Mentioned	Described	Total	
2004	472	72	60 (83.3%)	12 (16.7%)	72	59 (81.9%)	13 (18.1%)	72	9 (12.5%)
2003	405	36	20 (55.6%)	16 (44.4%)	36	18 (50.0%)	18 (50.0%)	36	15 (41.7%)
2002	805	60	40 (66.7%)	20 (33.3%)	60	28 (46.7%)	32 (53.3%)	60	17 (28.3%)
2001	928	21	13 (61.9%)	8 (38.1%)	21	12 (57.1%)	9 (42.9%)	21	8 (38.1%)
2000	608	9	9 (100.0%)	0 (0.0%)	9	Unknown hereinafter			
1999	938	43	21 (48.8%)	22 (51.2%)	43	—	—	—	—
1998	585	40	30 (75.0%)	10 (25.0%)	40	—	—	—	—
1997	404	23	19 (82.6%)	4 (17.4%)	23	—	—	—	—
1998	305	12	8 (66.7%)	4 (33.3%)	12	—	—	—	—
1997	749	21	21 (100.0%)	0 (0.0%)	21	—	—	—	—

（Note）No. of companies represents the number of offenses made, as it includes a repeater as another for each time of repeated offense.

9 Summary

（1）Situation of Enhancement & Organizational System of Compliance

Most of the surveyed companies have compiled their compliance manuals. Given that they are all listed on the first section of the Tokyo Securities Exchange, however, it is desirable fundamentally that all the companies have their compliance manuals available. About half of them were developed recently in or after 2003. Compliance matters have been discussed for a while, but it was found that the efforts to address them were started lately. In that sense improvement of the actual level of corporate compliance can be deemed as a task for the future.

And 80% of those companies have appointed directors as responsible officer in charge of compliance, but only 20% appointed the president or vice president as such an officer, and the involvement by the top management was found not enough yet. In this respect it is considered important to report any legal offense to the president promptly, even if the president or vice president does not take charge of compliance directly.

（2）Efforts for Compliance relating to the Antimonopoly Act

Concerning the awareness of offense against the Antimonopoly Act, 41% of the sampled companies

recognize that they have no likelihood of violating the Antimonopoly Act. Seeing them by industry, the real estate and service industries have particularly low recognition of the likelihood of violating the Antimonopoly Act and it is because they seem to have an inadequate awareness of the problem.

Meanwhile, as regards compliance with the Antimonopoly Act, 44% of the surveyed companies do not conduct trainings and 56% do not perform in-house audit. Therefore, it could be considered that the possibility of violating the Antimonopoly Act is not recognized adequately among the companies.

The System for Protection of Public Interest Informant has taken effect since April. Backed by the System, 77% or a large majority of the companies have established Helpline, but it is not used at 81% of them. This might imply that the compliance system is put in place at many companies but only in form. Efforts to teach the usage of Helpline more widely or facilitate its use are considered as a future task. Under the Commercial Code as well as the Securities and Exchange Law, it is also required to enhance internal control. Directors and officers must first recognize what act is regarded as a violation under the Antimonopoly Act for the purpose of observing the said law. In this sense it is highly important to conduct trainings. It is also essential in compliance to accept audit by other department to detect a possible offense. Therefore, it is highly desired to build and improve the system for training and audit.

(3) Securing Effectiveness of Compliance Relating to the Antimonopoly Act

55% or more than half of the surveyed companies consider the awareness by the top management as important for the purpose of enforcing compliance fully. As such, it is seen that the awareness by the top management is recognized more highly than the other items. In this respect, taking into account that profit earnings tend to be regarded more important than observance of the economic rules and laws, since earnings acquisition is a major purpose of a commercial entity, it is deemed essential above all that the top management takes lead in advocating the importance of corporate compliance clearly and repeatedly within and outside a company. In this connection construction associations issued a notice requesting legal compliance in December 2005. The observance is the future task.

51%of the companies recognize that the compliance system relating to the Antimonopoly Act is inadequate in form, and this shows that the system seems to have not been structured well even in form. And, as the companies that believe that the system is insufficient in substance accounted for nearly 40%, this indicates that although importance of compliance has been much publicized, the compliance system does not seem sufficient from the viewpoint of each company.

As 37% of the companies did not determine response in advance for a possible violation against the Antimonopoly Act, these companies are required to do so and structuring a smooth reporting system is considered as a future.

(4) Review of Compliance Efforts after the Revision of the Antimonopoly Act

The companies that conducted in-house audit after the revision of the Antimonopoly Act accounted for only 7%. Seeing by industry, manufacturing and construction industries have higher ratios. This probably indicates those two industries have the strong awareness of issues concerning the revision of the Antimonopoly

Act. Meanwhile, only 23% think of using the surcharge leniency program. The Fair Trade Commission of Japan on its part is committed to publicize the program further and urge companies to utilize it. Such efforts could enhance compliance.

(5) Comparison with the U.S., and European Countries

While it has been pointed long time that the enforcement of the competition laws is strict in the western countries, even lately a large amounts of penalty fines were imposed upon Japanese companies in the U.S. in connection with the international cartel case on DRAM and the price collusion case for synthetic rubber. Besides, in Europe the high amount of financial sanctions were also imposed in connection with the cases of video games, vitamin cartel and graphite price cartel. In this research these cases are considered to be the background for the Japanese companies that are operating in the U.S. or Europe to gain such recognition that the competition law is much stricter in the U.S. and Europe than in Japan.

(6) Conclusion

Summing up the aforesaid results, 20% to 30% of the surveyed companies, which are all listed on the first section of TSE, have not prepared compliance manuals, nor established compliance committee or other systems. Taking into account such delay or negligence, the survey results indicate a situation where there remains a room for improvement on the accomplishment of basic matters and, in addition, corporate compliance shall be enhanced further in substance.

In order to improve such situation in the immediate future it is important that the top management shall ① restructure his/her awareness and behaviors and ② commit himself/herself to address the problems from both aspects of enhancement of employees' awareness and internal control.

With respect to the Antimonopoly Act, about half of the surveyed companies have the sense of crisis concerning the likelihood of violation. However, trainings and audits on the Antimonopoly Act are not conducted adequately and specific corporate measures need to be installed in order to improve the employees' awareness and internal control. Although the surcharge leniency program has been introduced in the recent revision of the Antimonopoly Act, the audit in line with such revision is not being conducted much, as seen in the very low ratio of those who have conducted such audit in the survey. The ratio of the companies planning to use the leniency program is as low as 1/4 at this moment, but awareness of this program is expected to rise as actual cases arise in the future.

IV. Examples of corporate measures and basic concepts

As to the current status of the corporate compliance system and basic concepts for the implementation, the JFTC conducted a hearing and exchange of opinions with compliance personnel of 4 large-scale companies (1 constructing company, 1 general trading company and 2 manufacturers) that started active implementation of the compliance system at a relatively early stage.

The results are summarized in the subsection 1 below, based on which we exchanged opinions also with experts and considered basic concepts that may be helpful for companies in implementing corporate compliance systems. They are summarized in the subsection 3 below.

1 Examples of each company

(1) Large-scale construction company (Employee: more than 5,000 Capital fund: 10～100 billion yen)

In 2004, the company appointed ethics officers. The Ethical Committee and the Corporate Ethics Service Section were also established, the latter providing a help line that offers consultations to executives and employees (principally with their name identified). A code of corporate ethics was created and publicized on the website in 1998. A program and a manual on the compliance with the Antimonopoly Act were established in 1991 and 1992, respectively. A corporate ethics service section and related departments take measures when violations are detected. The company is now faced with a task of securing the effectiveness of the internal control. The company believes that the top management's clear and thorough dissemination of policies and steady and careful conduct of employee trainings are the most important factors of the effective corporate compliance.

a. Internal organizations

Each executive was monitoring compliance practice of departments in charge until 2004, when the task was integrated and delegated to the newly appointed compliance officers. The Compliance Committee was also established to plan and conduct comprehensive corporate measures for the establishment of the thorough corporative ethics and compliance. In case violations are detected, the committee integrates information and examines countermeasures as well as prevention measures. Corporate ethics service section, on the other hand, provides a help line that offers compliance consultations and information for executives and employees, principally with their name identified. The help line has accepted a few consultations so far.

b. Code of practice and manuals

A corporate code of practice was created and was publicized on the website in 1998. The Antimonopoly Act compliance program was established in 1991 and has been revised several times so far. This includes provisions regarding implementation structures, behavioral norms for executives and employees, penalty for offenders, etc., in order to secure thorough compliance with the Antimonopoly Act. As an education tool for the compliance program, the Antimonopoly Act compliance manual was created in 1992, which is composed of two sections, "Behavior patterns and Q&A" and "Commentary on the Antimonopoly Act and its guidelines". In addition, another compliance manual was also created in 2004, as a basic material for

the training program, which is conducted once or more annually.

c. Countermeasures for violations

The corporate ethics service section mainly deals with violations, and each related department also conducts investigation. The company is now faced with a major task of securing the effectiveness of the internal control. It believes that the top management's clear and thorough dissemination of policies, steady and careful conduct of employee trainings and early detection of violations are the most important factors of the effective corporate compliance.

As to the leniency program, how the system will actually be operated is not yet clear, since it became effective just recently, but it seems quite potential to serve as a great incentive for achieving compliance.

(2) Large-scale manufacture (Employee: More than 10,000 Capital fund: 10～100 billion yen)

The top management has continually emphasized to employees the necessity of establishing thorough corporate ethics and compliance. A code of compliance was introduced in 1988. The compliance system should be incorporated into the work process, so that employees become fully aware of the compliance. Operating rules include a number of important rules regarding the Antimonopoly Act. Implementation of a full-scale compliance system started in 1997. Internal and external help lines were installed in 1997 and 2000, respectively. These help lines are operated by the Administration Department, which deals with issues regarding risk management and corporate ethics.

a. Internal organization

As to the compliance with the Antimonopoly Act, rather detailed requirements are included in the code of practice. In order to secure deeper understanding of employees, the company hands out a "case book" and provides collective trainings on the Antimonopoly Act, to all the employees. Items regarding the Antimonopoly Act have been checked in the annual audit for many years, as one of the important issues.

A code of compliance was first published in 1988. And in 1997, in response to the increasing criticisms against corporate scandals, a full-scale compliance system started to be implemented. The Compliance Committee was established and a Code of Compliance was revised significantly. All employees were given compliance education and required to submit the compliance declaration. However, such measures are liable to be too general, so it is necessary to incorporate relevant check points into work process, as part of the internal control system, so that employees become fully aware of the compliance. For this purpose, the company has arranged ready-made compliance training materials and been providing them to all the workers (approximately 16,000), from the top management to employees of subsidiary companies, and also review tests have been conducted on the website.

b. Compliance efforts

The top management has long required the employees to pursue corporate ethics and compliance as their due responsibility. As a result, high awareness of corporate ethics and compliance has been established

throughout the company and sufficient attention has been paid to risk management and legal matters.
Corporate compliance education should give a clear picture of actions to face with (not to escape from) laws to the workers, from the top management to sales people. For that purpose, the company created the Antimonopoly Act compliance manual in 1991, and is now considering its first revision in response to the recent amendment of the Act.

Operating rules (standards for principles and exceptions of the business operation) include a number of important requirements regarding the Antimonopoly Act. Corporative policies are briefly stated there, so that sales people can easily understand (e.g. “Such activities are prohibited.”, “Consult with ○○ prior to the conduct.”, etc.) .

It is also set out in the Antimonopoly Act compliance manual that if competitors or relevant parties refer to illegal arrangements, employees should explain corporate basic policies and leave the meeting, and quickly report the case to their supervisors.

c. Information acquisition/Practical effectiveness

The employees regularly raise questions with the company, which has been a traditional practice for the company, but to better deal with increased temporary workers and employees from partner companies, internal and external help lines were installed in 1997 and 2000, respectively. These help lines are operated by the Administration Department, which deals with matters on risk management and corporate ethics.

The comprehensive compliance system is now being implemented in fourteen bases in eleven countries in Asia and Oceania including China. The top management and legal officers of each organization are asked to conduct a study on common laws of about 80, in order to establish internal control systems and monitoring and assurance procedures.

(3) Major manufacturer (Employee: More than 10,000 Capital fund: More than 100 billion yen)

As one of the recovery measures from the adverse impact of corporate scandals (except for violations against the Antimonopoly Act), the company conducted the enhancement of a corporate governance and the implementation of a compliance system in 2002. The administrative managing director assumed the position of a Chief Compliance Officer (CCO) and the Compliance Committee was established to serve as an advisory body. Compliance counseling room and a help line also back up the regime, with the Legal Department providing specific elimination measures for CCO as to the violation activities. The company places great importance on the Antimonopoly Act education, providing training programs based on the past violation cases in the industry and original texts from the Act. Thus, the trainings are focusing on familiar cases, since a mere list of prohibitions is not so effective.

a. Compliance

As one of the recovery measures from the adverse impact of corporate scandals, the company conducted the enhancement of a corporate governance and the implementation of a compliance system.
In December 2002, the board of directors agreed on the implementation of a compliance system, defining it as a

method not only for securing compliance with laws, but also realizing its corporate objectives.
It was reassured that the establishment of a compliance system would lead to the realization of a corporate objectives–to best contribute to the society, by maintaining and assuring the best quality of its products. This attitude of the company should gain trust from the public, as well as giving pride to its own employees.

b. Internal organizations

The top management are supported by the chief compliance officer (CCO) (which is assumed by the Administrative Managing Director) and other compliance officers. Actual compliance activities are mainly promoted by the Administrative Department, which operates under the officer of the General and Human Affairs. The Compliance and Social Contribution Promotion Unit was established in the Administrative Department, which provides side-by-side assistance along with the Legal Department. And the Compliance Committee directly reports to the CCO.

c. Effectiveness

Compliance Counseling Room and a help line (with the participation of outside lawyers) were also established. In case violations are found, the Legal Department is required to offer specific elimination measures to CCO.

With a number of antimonopoly violations detected in the industry, the company decided to review the education on the Antimonopoly Act, based on the recent antimonopoly violation cases. Considering a mere list of prohibitions is not so effective, trainings are conducted based on a case book dealing with the past specific cases in the industry and original texts from the Act.
Apart from the compliance trainings conducted by the compliance unit, trainings on the Antimonopoly Act are provided at sales dealers nationwide from Hokkaido to Okinawa.
As stated above, the company focuses on relevant cases in implementing a corporate compliance. It believes that such serious efforts will lead to the revitalization of the business activities.

(4) General trading company (Employee: 1,000～10,000 Capital fund: More than 100 billion yen)

In 2000, the company set out a Code of Practice for executives and employees, based on examples of foreign companies and publicized it on the website. A guidebook on the code was compiled and has been revised every year, which is handed out to all the executives and employees. Apart from the code, cartel prevention standards were set out in response to the case prosecuted abroad. They include how-to information such as “do not attend any gathering that might be suspected to be a cartel.”, “when leaving such gatherings, request that the record of such a fact be included in the minutes.”, etc. Those who violate these rules will receive disciplinary punishment set out in the employment rules.
Trainings on the Antimonopoly Act include compulsory program for all the new employees, orientations for loan employees, new expatriates and new branch managers. In response to the introduction of the leniency program in the amended Antimonopoly Act in 2005, the company overhauled the management and operation activities (including investing subsidiaries), in addition to the normal general notification.

a. Internal organizations

In 2000, the company set out a Code of Practice for executives and employees based on examples of foreign companies and publicized it on the website. All the executives and employees are provided with; A guidebook on the code, which is regularly edited and handed out at each time of revision of the Code of Practice, Employee Portable Information (a portable book in which the Code of Practice is stated) and Q&As (information for the better understanding).

Cartel prevention standards were set out in 1994, in response to the case prosecuted abroad (monetary penalty). They include how-to information such as “do not attend any gathering that might be suspected to be a cartel.”, “when leaving such gatherings, request that the record of such a fact be included in the minutes.”, etc.

These compliance-related rules are posted on the intranet, which provides full-time access for employees. Employees who violate these employment rules are subject to disciplinary action.

As to manuals, the Business Unit Manager Guideline includes items regarding compliance with related industry laws, prohibition of cartel and bid riggings, prevention of delayed payment for subcontracts. These are items to be checked in the internal audits (the Internal Audits Manual). North America and Europe are subject to different laws, so each version of the Antimonopoly Act Manual has been created.

All the executives and employees have been required to submit the compliance declaration since 2003, and the submission system via intranet launched this year for the sake of busy employees including sales people and expatriates.

b. Effectiveness

Periodical training programs on the Antimonopoly Act have been conducted since 1994, which are compulsory for all the new employees. Achievement test is conducted in the program and those failed are required to take the same program and test again in the following year. Orientations are also held for loan employees, new expatriates and new branch managers. Irregular programs include on-demand seminars for sales groups and oversea compliance seminars. Especially in North America, seminars on the Antimonopoly Act have been frequently held.

Local legal departments ask employees to be cautious, since quite a few trading companies are involved in cartels due to the nature of its business. Recently on-demand seminars are held not only for internal employees but also for employees of investment subsidiaries.

Legal amendments are generally notified in order to assure thorough knowledge of employees. As to the amendment of the Antimonopoly Act in 2005, considering the impact of the newly introduced leniency program, company-wide management/operation overhaul was conducted (including investment subsidiaries) in November, in addition to the normal general notification. As a result, some problems were found.

c. Countermeasures for violations

In order to control the risk of antimonopoly violations, the Internal Audit Department conducts internal

audits, and the Legal Department, divided into four teams, provides consultations on problems regarding contracts and legal issues, for each department. The Legal Department also takes part in investment and loan plans (that involve over certain amount of money) and company merger plans. An opinion box and help line are also installed, basically accepting anonymous consultations.

2 Summary of corporate hearings

In addition to the four companies above, hearings of opinions were conducted with other eight companies including a manufacturer, trading company, information and telecommunications company, all of which are known to have taken active compliance measures. Themes of the hearing included;

1 Violation record against the Antimonopoly Act,
2 Organizational compliance system,
3 Compliance manual,
4 Compliance trainings,
5 Compliance counseling section,
6 Countermeasures for violations,
7 Evaluation of compliance measures, and
8 Methods for securing effectiveness

Most of the companies have implemented a compliance system involving the top management and established various forms of compliance committees (with or without participation of external members), in response to the cease and desisit order by the JFTC and for other reasons.

Many of the manuals deal with general issues including the Antimonopoly Act. In many cases, details including specific prohibitions are set out separately.

In order to secure the practical effectiveness of the compliance, companies are providing trainings on the Antimonopoly Act mainly for the Sales Department, with the thorough information on the amendments. In addition, the compliance counseling service is provided, and in case of actual violations, the Compliance Committee, which is mainly established by the Legal Department, takes measures.

To secure the practical effectiveness, some companies' employment rules even refer to the criminal accusation, while others set out strict disciplinary punishment or compensation for loss against employees who caused damage to the company as a result of illegal activities.

3 Basic concepts based on examples of corporate measures

As a result of the investigation on companies' actual compliance measures and hearings conducted toward company staff and experts, we have concluded that basic concepts summarized below may be effective when companies try to improve their compliance.

(Involvement of the top management)

(1) To ensure the effective corporate compliance, involvement of the top management is an essential factor. The top management should disseminate the importance of the corporate compliance clearly

and repeatedly both within and outside the company.

Opinions raised on these issues include;

(1) When the top management communicates the message to employees, it is important to clearly emphasize the priority of the compliance over profits, strictly prohibiting illegal activities to make profits.

(2) At the end of last year, with the revision of the Antimonopoly Act coming up soon, the top of the construction association declared the further pursuit for thorough compliance, and the message was accepted with stronger impact than ever. Such attitude of the top executive is important.

Specific examples raised include;

(1) The top management is fully aware of the social risk brought by illegal activities, due to the past strict penalty imposed in Europe and other regions, and this led to the enhancement of the compliance system.

(2) Since the top management is a compliance-conscious person, the Legal Department has been given a power to ensure thorough compliance by each department.

(Establishment of the effective monitoring system)

(2) An effective monitoring system must be developed, in order to grasp actual state of each section in the company, ensuring that there are no illegal activities going on.

Opinions raised on this issue include;

(1) In response to the amended Antimonopoly Act, more emphasis must be put on monitoring in order to prevent illegal activities such as bid riggings. For this purpose, the establishment of the effective internal control system, as well as the conduct of stricter monitoring is necessary.

(2) Not only systematic but also substantive monitoring is necessary. Therefore, the Monitoring Department should make daily efforts to collect information from the sales and other departments.

(3) When violations are found through the monitoring, elimination measures should be provided by the Monitoring Department, not by the department in question.

(4) The monitoring itself, especially when conducted randomly, works as a deterrent.

The example was also raised of the company that conducted the company-wide audit in response to the amendment of the Antimonopoly Act.

(Improvement of corporate ethics)

(3) It is necessary to improve employees' ethics/compliance awareness so that laws are voluntarily complied with, since monitoring alone cannot avoid illegal activities completely.

Opinions raised include;

(1) It is also necessary to foster awareness of employees, since strict monitoring or enhanced internal controls alone cannot fully achieve a corporate compliance. For this purpose, enhancement of training programs is

important.

(2) As to the training programs, it is important to communicate the organizational culture to all the employees including those of affiliated companies, in order to improve corporate ethics and avoid involvement in violation cases.

Specific examples raised include;

(1) The board of directors defined the compliance system as a method not only for securing compliance with laws, but also realizing its corporate objectives. (2)The U.S. Federal Sentencing Guideline also emphasizes the importance of the corporate culture and ethics.

(Effective internal control system)

(4) To secure practical effectiveness of a corporate compliance, it is important to develop an effective internal control system.

Opinions raised include;

(1) To secure effective internal controls, clear operation procedures should be established and violation activities inside the company should be self-reported. For this purpose, an effective help line or other systems are necessary, to enable violations to be detected and quickly reported to the top management.

(2) Operation procedures should be clearly known to employees, so it is necessary to create an easy-to-follow manual and provide effective trainings based on familiar cases.

(3) Some companies collect compliance declarations from individuals, in order to avoid future violations or allegations that violations are committed for the interests of the company. Others believe that strict prevention measures alone cannot fully achieve effective internal controls and consider measures such as internal leniency program, which exempt self-reporters of violations from disciplinary penalties.

Examples of specific measures raised include;

(1) Corporate policies are stated clearly and briefly so that sales people can easily understand. A code of practice for executives and employees is created and posted on the website, as well as handed out to all the related people.

(2) A company provides internal control trainings based on familiar materials, such as a case book dealing with the past violations cases in the industry, finding a mere list of prohibitions not so effective.

(Response for illegal activities)

(5) Response policy should be established in advance in case illegal activities are found, so that information is swiftly communicated to the top management and appropriate judgments made.

Opinions raised on this issue include;

In case the audit finds out violation activities, which have been conducted for decades, a company must

make extremely difficult judgment, including the possibility of applying for the leniency program. So considerations should be made in advance as to the corporate response policy for illegal activities.

Specific examples raised include;

Some companies require submission of compliance declarations, and set out in their employment rules the possibility of criminal prosecutions and damage payment claims against executives and employees. Other companies set out in employment rules that cases will be reported to and judged by the Compliance Committee.

The JFTC, as the Antimonopoly Act enforcement authority, received opinions as follows;

(1) Examples of Europe and the U.S. have shown that the strict enforcement by competition authorities have much contributed to the enhancement of compliance. The JFTC, too, is expected to play an important role in improving corporate compliance.

(2) The way the JFTC enforces the Act should be easily understood by companies. Especially as to the newly enforced leniency program, the JFTC is expected to provide enough information so that companies can grasp its operation status.

V. Antitrust laws and corporate compliance systems in Europe and the U.S.

In Europe and the U.S., punishments for antitrust violations are much stricter than in Japan. The leniency programs have been introduced since early phases and much contributed to corporate compliance with competition laws. Stated below is an overview of antitrust laws and corporate compliance systems in Europe and the U.S.

1 Level of fines and punishments in Europe and the U.S.

(1) U.S. Antitrust law

U.S. Antitrust law is consisted of a series of acts including Sherman Act (1890) and Federal Trade Commission Act (1914). Cartel and bid riggings are regulated and punished under Section 1 of the Sharman Act. Criminal punishment set out in Section 1 of the Sharman Act imposes a fine of up to $100 million on a juridical person and a fine of up to $1 million and/or an imprisonment of up to 10 years on a natural person. Addition to that, under the Sentencing Reform Act of 1984, a new maximum fine of "twice the gross gain or twice the gross loss" was permitted, bypassing the maximum amount regulated under the Sharman Act.

In the U.S., corporate compliance systems started to be implemented after 1959, when heavy electrical machinery companies were prosecuted for antitrust violations (29 eminent companies including General Electric Company and their 44 executives received legal punishment). In the court, it was claimed that the full compliance system implemented in the company should be evaluated in the sentencing. Although it wasn't much evaluated in the trial, companies widely became aware of the importance of corporate compliance, recognizing that antitrust violations might lead to serious consequences.

To date, as a result of antitrust cases prosecuted by the Department of Justice, seven companies have been fined more than $100 million. Most of the enormous fines were imposed under the Sentencing Reform Act. And individuals have also received strict penalties. The implementation of an effective compliance system has become a significant issue for companies.

（Companies that have been fined more than $100 million）

Company name	Amount of a fine	Case name	Month/Year
F. Hoffman-La Roche	$500 million (about ￥60 billion)	Vitamin Cartel	May/1999
Samsung	$300 million (about ￥36 billion)	DRAM Cartel	October/2005
BASF	$225 million (about ￥27billion)	Vitamin Cartel	May/1999
Hynix Semiconductor	$185 million (about ￥22.2 billion)	DRAM Cartel	September/2004
Infineon Technologies	$160 million (about ￥19.2 billion)	DRAM Cartel	September/2004
SGL Carbon AG	$135 million (about ￥16.2 billion)	graphite electrode Cartel	May/1999
Mitsubishi Corp.	$134 million (about ￥16.1 billion)	graphite electrode Cartel	May/2001
UCAR International	$110 million (about ￥13.2 billion)	graphite electrode Cartel	April/1998
Archer Daniels Midland	$100 million	lysine and citric acid	October/1996

	(about ￥12 billion)	cartel	

(2) EU competition law

The main provisions of EU Competition law are contained in Articles 81 (a regulation for anticompetitive agreements and concerted practices) and 82 (a regulation for abuse of a dominant position in trade) of the Treaty establishing the European Economic Community. The European Commission has the power to order undertakings to cease a violation act, and pay a fine of up to 10% of the previous year's gross sales. Within the range, the Commission has the right in its sole discretion to decide the amount of the fine. The Commission created and promulgated guidelines on decisions over fines in 1998.

In Europe, the effective corporate compliance is more required than ever, with the level of antitrust fines soaring, such as a total of €855 million imposed on Vitamin Cartel in 2001.

（Companies that were fined more than €100 million for cartel）

Company name	Amount of the fine	Case name	Decision Date by the Commission
Hoffman La Roche AG	€462 million (about ￥64.7 billion)	vitamin cartel	November 21, 2001
Société Lafarge SA	€249.6 million (about ￥34.9 billion)	plasterboard cartel	November 27, 2002
BASF AG （note）	€236.84 million(about ￥33.2 billion)	vitamin cartel	November 21, 2001
Arjo Wiggins Appleton Plc	€184.27 million (about ￥25.8 billion)	carbonless paper cartel	December 20, 2001
Solvay	€167.06 million (about ￥23.4 billion)	bleach cartel	May 3, 2006
BPB PLC	€138.6 million (about ￥19.4 billion)	plasterboard cartel	November 27, 2002

（note）The European Court of First Instance passed the judgment to reduce fines imposed by the Commission.

2 The leniency program and corporate compliance systems

(1) The U.S. leniency program

In the U.S., the leniency program was first introduced in 1978. The program is applied to companies that voluntarily report illegal activities to the Antitrust Division of the Department of Justice. Immunity from criminal prosecution is granted to a company that meets statutory conditions, such as being the first one to come forward to the division with respect to the illegal activities being reported. Early versions of leniency programs attracted very few applications, since they were unclear and unpredictable, with decisions mostly left to the discretion of the Department of Justice. The current program, which was revised in 1993, automatically grants leniency to any application that meets the required conditions. Since then, a number of applicants have significantly increased.

In addition to the leniency program, Amnesty Plus and Penalty Plus contribute much to corporate compliance systems in the U.S.

(Note) Amnesty Plus is a practice or a policy that is applied to a company under investigation for a cartel

conduct (which is not granted amnesty), when it becomes the first to self-report to the Department of Justice the existence of a second cartel on products and services unrelated to the first cartel. Such a company may not be prosecuted criminally in connection with the second cartel. Plus, the company will have its sentence significantly reduced in connection with the first cartel under investigation.

Opposite to Amnesty Plus, Penalty Plus is a practice or a policy that is applied to a company under investigation for a cartel conduct, which elects not to disclose knowledge of a second cartel on products and services unrelated to the first cartel. When the second cartel is later detected and prosecuted, the Department of Justice will urge the sentencing court to consider the company's failure to report the conduct voluntarily as an aggravating sentencing factor, and request that the court impose a term and conditions of probation for the company under §8D.1.1 of the Sentencing Guideline and a fine at or above the upper end of the Guidelines range.

Thanks to the introduction of Amnesty Plus and Penalty plus, authorities say that clues to cartel cases are more effectively secured. In the speech presented at the American Bar Association in March 2001, Mr. Hammond, Deputy Assistant Attorney General of the Department of Justice, introduced the case, which was successfully solved with the help of the program. The program was applied in the course of an investigation into cartel in smaller markets of three vitamins including choline, and as the investigation proceeded, cartel in the massive vitamin A, C, and E markets were discovered and eventually cartel in 12 different vitamin markets were detected. Thus, these systems serve as a great incentive for companies to detect its own violations and are significantly promoting corporate compliance systems.

(2) Leniency programs in Europe

Under the European leniency program, immunity from or reduction in fines is applied (under certain conditions) to companies that voluntarily report to the authority its own antitrust violations. The European Commission publicized a "Notice on Immunity from Fines and Reduction of Fines in Cartel Cases" in 1996, introducing a leniency program that grants immunity from or reduction in fines imposed on parties for horizontal cooperation agreements prohibited under Article 81 of the EC Treaty (revised in 2002).

3 Enforcement of corporate reform act (Sarbanes-Oxley Act) in the U.S.

The Sarbanes-Oxley Act was enacted in July 2002 in the wake of a series of corporate fraudulent financial reporting scandals, including those of Enron and WorldCom. The Act aims at enhancing corporate internal controls in order to secure accurate and reliable financial reporting. Under the Act, the CEOs and CFOs of the companies registered with the Securities and Exchange Commission are required to submit statements, under oath, to admit the adequacy of annual reports disclosure. They are also required to make internal control reports, which include assessment of internal controls regarding financial reporting, and have them audited by qualified persons such as certified accountants. The internal control report must include a statement of management's responsibility for establishing and maintaining adequate internal control and management's assessment of the effectiveness of the company's internal control. And the final rules must contain; (1)a statement of management's responsibility for establishing and maintaining adequate internal control structure and procedure, (2)a statement identifying the framework used by management to conduct the

evaluation of the effectiveness of the company's internal control; (3)assessment of the effectiveness of the company's internal control; and (4)management's assessment of the audited company's internal control.

As stated above, the implementation of the effective internal control was officially regulated under the Sarbanes-Oxley Act. As to the framework for the implementation of the internal control system, the one provided in a final report by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO report) is generally used as a standard in the U.S., as well as internationally.

This report sets out three key concepts ((1)effectiveness and efficiency of operations, (2)reliability of financial reporting and (3)compliance with applicable laws and regulations) and five basic components ((1)control environment-the tone of an organization (2)risk assessment-assessment of risks from external and internal sources (3)control activities-activities that help ensure management directives are carried out. (4)information and communication - Identification, supplementation and communication of the adequate information, and (5)monitoring-assessment of the quality of the system's performance. Compliance with laws is one of the objectives of internal control. Therefore, production of adequate internal control reports may also contribute to the compliance with laws, not only to the reliability of financial reporting.

(Note) COSO is organized in 1985 by 5 associations and institutes; the American Institute of Certified Public Accountants (AICPA), the American Accounting Association (AAA), the Financial Executives Institute (FEI), the Institute of Internal Auditors (IIA) and the Institute of Management Accountants (IMA). It was originally called the National Commission on Fraudulent Financial Reporting (Chairman, J.C. Treadway, Jr.)

The Sarbanes-Oxley Act is mainly applied to financial reporting, and there are other more widely-applied regulations including Antitrust Laws, which set out criminal penalties for (1)unfavorable treatment of whistle-blowers, and (2) falsification of documents.

(1) Any person in a company is prohibited from treating another person unfavorably for providing information relating to illegal activities conducted by another employee. In case of a breach, the person shall be liable for the damage. (Section 806 of the Sarbanes-Oxley Act)
Section 1106 was also added, that stipulates a fine or imprisonment of not more than 10 years on a person who makes reprisal against a whistleblower.

(2) This provision relates to proper preservation of documents. A person who does not fulfill an obligation of preserving documents related to the audit or investigation, or who alters or destroys any record with the intent to impede any official procedure shall be sentenced a fine or imprisonment of not more than 20 years. (Section 802 and 1102)

Also in Japan, a corporate legal system has become similar to that of the U.S. For example, a bill on the amendment of Securities and Exchange Law has been submitted to the Diet, with a view to officially requiring production of inter control reports, and the whistleblower protection system was established and enforced. Under such situation, Japanese companies are faced with the urgent task of implementing compliance system.

4 Assessment of corporate compliance in the U.S. Federal Sentencing Guidelines

The U.S. has promulgated sentencing guidelines for crimes in general. According to the guideline, the fine range is determined by multiplying the base fine (for antitrust violations, 20% of the pecuniary gain from the offense) by the multipliers derived from the culpability score. If the company had in place an effective compliance and ethics program that meets the seven requirements set out in the guideline (e.g., establishment of standards and procedures, monitoring by the board of directors), the fact shall be considered as a mitigating factor in determining the culpability score.

The Sentencing Guidelines, which originally became effective in 1991, were revised in 2004 in response to the occurrence of major corporate crimes and scandals. The seven standards required for an effective corporate compliance program were also revised, including focuses on ethics and organizational culture and internal control.

Extracted below are the seven standards, which may be also helpful to Japanese companies in developing an effective compliance program.

Actually, the standards have seldom been applied to actual cases and a fine has never been reduced due to an effective compliance program implemented in a company prosecuted. Nevertheless, they are credited to have provided incentives for companies to develop an effective compliance program.

(Establishment of standards and procedures)

① The organization shall establish standards (and a code of conducts) and procedures (for internal controls that are reasonably capable of reducing the likelihood of criminal conducts) to prevent and detect a criminal conduct.

(Monitoring by the board of directors)

② ・The board of directors shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight with respect to the implementation and effectiveness of the compliance and ethics program.

・High-level personnel of the organization shall be assigned overall responsibility for the compliance and ethics program. Such individual(s) shall ensure that the organization has an effective compliance and ethics program, as described in the sentencing guideline.

・Specific individual(s) within the organization shall be delegated day-to-day operational authority (responsibility) for the compliance and ethics program. Individual(s) with operational responsibility shall report periodically to high-level personnel and, as appropriate, to the governing authority, or an appropriate subgroup of the governing authority, on the effectiveness of the compliance and ethics program. To carry out such operational responsibility, such individual(s) shall be given adequate resources, appropriate authority, and direct access to the governing authority or an appropriate subgroup of the governing authority.

(Elimination of inadequate individuals)

③ The organization shall use reasonable efforts not to include within the substantial authority personnel of the organization any individual whom the organization knew, or should have known through the exercise of due diligence, has engaged in illegal activities or other conduct inconsistent with an effective compliance and ethics program.

(Effective training programs)

④ The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to the members of the governing authority, high-level personnel, substantial authority personnel, the organization ' s employees, and, as appropriate, the organization's agents, by conducting effective training programs and otherwise disseminating information appropriate to such individuals ' respective roles and responsibilities.

（Monitoring and auditing）

⑤ The organization shall take reasonable steps−

・to ensure that the organization's compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct;

・to evaluate periodically the effectiveness of the organization's compliance and ethics program

・to have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization's employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.

（Provision of appropriate incentives）

⑥ The organization's compliance and ethics program shall be promoted and enforced consistently throughout the organization through appropriate incentives to perform in accordance with the compliance and ethics program and appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct.

(Appropriate response and preventive measures toward detected criminal conducts)

⑦ After criminal conduct has been detected, the organization shall take reasonable steps to respond appropriately to the criminal conduct and to prevent further similar criminal conduct, including making any necessary modifications to the organization's compliance and ethics program.

VI. Toward improved corporate compliance

Corporate compliance with the Antimonopoly Act can best achieved by serious efforts of a company to improve its corporate compliance.

First, development of a compliance system (e.g., production of a manual, establishment of a compliance committee, etc.) is necessary. This should not be so difficult, since a number of companies have already implemented and publicized such regimes.

However, the implementation of such a regime may not necessarily secure a substantial and effective compliance within a company. It is shown by the fact that a number of companies repeat antimonopoly violations even though they have implemented compliance systems within the company. A questionnaire result also revealed companies' awareness of the ineffectiveness of their compliance systems.

The important thing in securing an effective compliance system is, to make comprehensive compliance efforts at a company level, not at an individual level, and the most indispensable is the serious involvement of the top management.

To secure the effectiveness of a corporate compliance, companies must consider issues regarding organizational culture. To promote an effective compliance within a company, it is necessary not only to emphasize the necessity to comply with laws, but also to foster awareness of compliance within a company. If there exists any industry practice that impedes fair competitions, each company in the industry should agree to get rid of such practice. In such cases, clear and repeated declaration of management's determination, toward the inside and outside the company, to change such practice at the expense of its profits seems extremely important.

As has been the case in Europe and the U.S., strict enforcement of laws contributes to the enhancement of internal control systems, with costly fines serving as a great incentive for management to make serious compliance efforts. In Japan, too, revisions to the Securities and Exchange Law and especially the Antimonopoly Act are expected to provide incentives for companies to take serious compliance measures. And in order to promote companies' such efforts, JFTC must assure that the Antimonopoly Act is strictly enforced.

To improve a corporate compliance, a company should voluntarily develop an internal system that allows criminal conducts to be detected and self-reported to the authority. The new leniency program introduced in the Antimonopoly Act is expected to provide incentives for companies to develop such systems. Leniency programs are generally included in foreign antitrust laws and are credited to have much contributed not only to the detection of illegal activities including cartels, but also to the improvement of corporate compliance.

The JFTC will further assist companies to improve their corporate compliance systems, by making appropriate efforts to grasp actual state of corporate compliance, and strictly enforcing the amended Antitrust Act.