

PHOTOCOPY  
PRESERVATION



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
ELIOT SPITZER

## FACSIMILE TRANSMISSION

March 20, 2000

TO: Bruce Reed -- (202) 456-5542

FROM: Eliot Spitzer

PAGES (including cover sheet): 3

REMARKS:

---

IF THERE IS A PROBLEM WITH THIS TRANSMISSION, PLEASE CONTACT

NAME David M. Nocenti OFFICE Attorney General's Office  
TELEPHONE NUMBER (212) 416-8095 FAX NUMBER (212) 416-8139

### CONFIDENTIAL

The information contained in this facsimile is privileged and confidential information intended only for the use of the individual or entity named above. If the reader of the message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this is strictly prohibited.

IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR,  
PLEASE IMMEDIATELY NOTIFY THE SENDER BY TELEPHONE. THANK YOU.



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
120 BROADWAY  
NEW YORK, NY 10271

ELIOT SPITZER  
Attorney General

(212) 416-8050

March 20, 2000

VIA TELEFAX

Hon. Andrew Cuomo  
Secretary  
Department of Housing and Urban Development  
451 Seventh Street, S.W.  
Washington, D.C. 20410

Dear Secretary Cuomo:

I understand that you are considering whether to cancel the meeting with the state and local governments that is currently scheduled for Wednesday. I believe that it is extremely important that this meeting take place, because we are at a crucial stage of our long-standing effort to reform the gun industry, and we should meet as soon as possible to agree upon a joint plan of action.

Last week's agreement with Smith & Wesson was a landmark achievement. The settlement was the culmination of a long and difficult process of litigation and negotiation that involved local, state and federal officials, and it shows that significant changes can be achieved when all levels of governments work together in a cooperative manner. It is essential that we take advantage of the momentum created by this historic agreement, by focusing our attention on encouraging other gun manufacturers to sign the code of conduct.

One way to achieve this goal is through direct contacts with the industry. Today's Wall Street Journal reports that several manufacturers will be reaching out to the White House to discuss the possibility of joining the settlement, and I encourage you and Bruce Reed to pursue these contacts aggressively. In addition, I believe that at our meeting on Wednesday we should form a negotiating team that includes representatives from federal, state and local governments to pursue this effort.

Another way to place pressure on the industry is through the procurement process. During my discussions with the White House last fall, I noted that governments have significant market power because they purchase a large number of firearms each year, and I suggested the formation

2

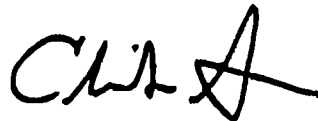
of a coalition of government entities that would agree to purchase guns only from manufacturers who have agreed to reform their design, marketing and distribution practices. My initiative was formally announced last week, and numerous municipalities have already joined this effort. In addition, President Clinton was very supportive of the idea when I discussed it with him on Friday.

I think it is critical that we move as quickly as possible to expand this coalition, because it will send a strong message to the rest of the industry that they must act responsibly, and at our meeting on Wednesday we should develop an action plan that involves all of the participants in this effort. For example, there is a meeting of the National Association of Attorneys General this week, and Attorney General Blumenthal and I intend to get other Attorneys General to join the coalition. Similarly, I am sure that all the local government representatives at Wednesday's meeting would be very helpful in organizing other government officials in their states. I believe that this coalition is the key to achieving significant reforms in the industry, because our market power will place substantial pressure on Glock, Taurus, Berretta and others to agree to sign the code of conduct.

As I noted above, we have reached a crucial stage in the fight against the firearm manufacturers. The combined knowledge, expertise and market power of the federal, state and local governments is an incredibly potent force, and thus it is essential that we meet together without delay and develop a cooperative plan for using these joint powers to bring real reform to the entire industry. As a result, I strongly urge that the meeting go forward on Wednesday, and I would like to speak with you personally before any decision to cancel the meeting is made.

Thank you for your consideration, and I look forward to hearing from you.

Very truly yours,



ELIOT SPITZER  
Attorney General  
State of New York

cc: Bruce Lindsey  
Bruce Reed  
Lawrence Summers  
Stuart Eizenstat  
Neal Wolin  
Gun Litigation Negotiating Team

Record Type: Record

To: Bruce N. Reed/OPD/EOP@EOP, Eric P. Liu/OPD/EOP@EOP  
cc: Deanne E. Benos/OPD/EOP@EOP, Anna Richter/OPD/EOP@EOP, Cathy R. Mays/OPD/EOP@EOP  
Subject: Spitzer

This is his press release. Deanne said McCarthy's office is getting the executive order from Spitzer's people and we will fax it as soon as we get it.

**SPITZER FORMS COALITION TO  
INFLUENCE GUN INDUSTRY  
Says Governments Can Use Market Pressure To Impose New  
Safety Code**

Attorney General Eliot Spitzer today called on local, state and federal government officials to form a coalition that will, in effect, boycott gun manufacturers who fail to adhere to a new safety code.

Spitzer has secured commitments from the mayors of Buffalo, Rochester and Albany to join the coalition. The Westchester County Executive, the Suffolk County Sheriff and other local officials have also agreed to participate.

"Until now, there have been only two ways to try to ensure that the gun industry will produce safer guns and take more responsibility for its products once they leave the factory -- either through legislation or litigation," said Spitzer.

"Today, we are offering a third way, and that is for governments across the country to use financial leverage to encourage gun companies to do what is right. In this regard, the best way to get the gun companies' attention is by focusing on their bottom lines."

Government entities -- such as police forces and departments of correction and public safety -- purchase 25 percent of all guns sold by manufacturers.

**Under Spitzer's plan, members of the new coalition would agree to purchase firearms only from gun manufacturers who sign on to a new voluntary code of conduct. This code has three major principles:**

**Mandatory design changes to make guns safer, including trigger locks, changes to make guns inoperable by young children, magazine safety disconnects, and chamber load indicators;**

**Changes in distribution practices to ensure that manufacturers terminate relations with irresponsible dealers who sell too many guns**

**that are later used in crimes; and**

**An independent monitor, who would ensure that manufacturers adhere to the Code of Conduct, and report the results of its monitoring to the public.**

In announcing his plan, Spitzer signed an Executive Order, stating that the Department of Law will no longer purchase guns from any manufacturer that refuses to adopt the code of conduct.

Elected officials from across New York who have already agreed in concept to be part of the coalition include:

Westchester County Executive Andy Spano, who said: "I am very pleased to join the Attorney General in a mutual effort that will make every man, woman and child safer. I will now meet with Westchester's local officials to urge them to pool their financial leverage to make this plan effective throughout Westchester County."

Buffalo Mayor Anthony M. Masiello, said: "There's no question that gun violence is a serious problem, not just in urban areas, but all across America. I want to applaud Attorney General Spitzer for putting this coalition together and letting gun manufacturers know that we are committed to eliminating gun violence throughout the country."

Rochester Mayor Bill Johnson said: "I applaud the Attorney General for developing a concept that recognizes government's powerful role as one of the largest consumers of firearms. I look forward to, along with other local government leaders, exploring our options in requiring gun manufacturers who deal with municipalities to be responsible bidders."

Also agreeing to join the coalition is Albany Mayor Jerry Jennings, Suffolk County Sheriff Patrick Mahoney and the Mayor of East Aurora, N.Y., John Pagliaccio, who is the President of the New York Conference of Mayors.

Connecticut Attorney General Richard Blumenthal has also expressed his support: "Any step to improve gun safety in this way is highly significant. Law enforcement can set an important example through this kind of market leverage and code of conduct." Spitzer acknowledged the critical role that Blumenthal has played throughout the negotiations with the industry.

This week, Spitzer will be sending letters to President Clinton, the mayors of the nation's 100 largest cities, and the 50 governors and 50 attorneys general, asking them to join the coalition.

Spitzer thanked a number of people who have been leaders in developing common sense gun reform measures including U.S. Senator Charles Schumer, Congresswoman Carolyn McCarthy, Kristen Rand of the Violence Policy Center, Joshua Horwitz of the Coalition to Stop Gun Violence, Dennis Henigan of the Center to Prevent Handgun Violence, and Barbara Hohlt of New Yorkers Against Gun Violence. The Attorney General also recognized elected officials from across the country who have been part of the ongoing negotiations with the gun industry including

Connecticut Attorney General Richard Blumenthal, City Attorney Louise Renne of San Francisco, Los Angeles City Attorney James Hahn, and the following Mayors: Joseph Ganim of Bridgeport, Ct., Marc Morial of New Orleans, Richard Daley of Chicago, Willie Brown, Jr. of San Francisco, Bill Campbell of Atlanta, and Alexander Penelas of Miami-Dade County, and former Philadelphia Mayor Ed Rendell.

MAR-16-00 THU 06:23 PM REP C MCCARTHY

FAX NO. 915184897283

P. 02/06

PRESS OFFICE/ALB

Fax: 5184869788

Mar 16 '00

5:08

P.02

P.89

MAR-16-2000 10:41



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
120 Broadway  
New York, NY 10271

EUGEN SPITZER  
Assembly General

(212) 416-8050

March 16, 2000

Mayor Anthony Masiello  
City of Buffalo  
1308 City Hall  
65 Niagara Square  
Buffalo, New York 14202

Dear Mayor Masiello:

I write to request your participation in a nationwide coalition of state and local governments using the power of their purse strings to encourage gun manufacturers to operate responsibly. Law enforcement purchases constitute a substantial portion of the gun industry's business. Together, we are in a unique position to dictate the terms of that business, and to make it safer for our constituencies.

As you know, federal, state and city legislatures have wrestled with issues of gun control for decades. Frustrated with the results of legislative initiatives, many cities and states have sued or are threatening to sue gun manufacturers over their design and distribution practices. As part of the negotiations that have ensued from these actions, I and others have been encouraging gun manufacturers to adopt a form of the attached industry "Code of Conduct" whereby gun manufacturers would agree to adhere to certain design and distribution principles to enhance public safety — most notably safer gun designs and a more careful monitoring of their wholesalers and retailers.

Today, I am going one step further, by asking you to join a coalition of governments that will award firearm contracts only to those entities willing to abide by the principles enunciated in this Code. Working together, we can help bring fast and meaningful reform to an arena that to date has been characterized by gridlock. While I remain fully supportive of the legislation and litigation aimed at reforming the gun industry, I also know that this alternative to those methods — economic power — has historically proven very successful in modifying behavior.

Just as purchasers with market power in other sectors have influenced their suppliers, so too can we require our suppliers to act in a responsible manner. Just as purchasers of apparel have required that manufacturers conform to certain minimum labor standards, so too can we

MAR-16-00 THU 06:23 PM REP C MCCARTHY

FAX NO. 915164897283

P. 03/06

PRESS OFFICE/ALB

Fax:5184869788

Mar 16 '00

5:09

P.03

P.18

~~MAR-16-2000~~ 18:41

require gun manufacturers to design guns to our safety specifications. Just as manufacturers can require their own distributors to market products in a way that satisfies them, so too can we require that gun manufacturers alter and improve on their distribution systems to ensure that guns do not seep into the black market. Our economic power as the primary market for many manufacturers is perhaps the greatest, most easily accessed leverage we have to change the design and marketing of guns.

To join the coalition, or to ask any questions about our next steps, please contact either me directly, or Beth Golden or Peter Pope of my office at (212) 416-8050. They will gladly sign you up, answer any of your questions, or listen to your suggestions. We all look forward to hearing from you.

Please join me in this affirmative step to make our streets, homes and schools safer.

Sincerely,



ELIOT SPITZER  
Attorney General

MAR-16-00 THU 06:23 PM REP C MCCARTHY

FAX NO. 915164897283

P. 04/06

PRESS OFFICE/ALB

Fax: 518 436 9788

Mar 16 '00 5:09

P.04

P.05

MAR-16-2000 18:48

**ADMINISTRATIVE MEMORANDUM NO. 80.12  
DISTRIBUTION: STATEWIDE - GENERAL**

**STATE OF NEW YORK  
DEPARTMENT OF LAW**

March 16, 2000

**TO: ALL EMPLOYEES OF THE  
DEPARTMENT OF LAW**

**FROM: ELIOT SPITZER  
ATTORNEY GENERAL**

**RE: RESPONSIBLE PURCHASES OF HANDGUNS  
EXECUTIVE ORDER NUMBER 12**

**WHEREAS**, firearms are used to kill over 30,000 individuals in the United States every year, including over 1200 individuals in New York State alone; and

**WHEREAS**, firearms also cause hundreds of thousands of non-fatal injuries every year, including many injuries to children; and

**WHEREAS**, handguns comprise the vast majority of firearms used in crime, including over 50% of all murders in the country; and

**WHEREAS**, there is a thriving underground market for illegal handguns, largely driven by demand from drug gangs and other criminals; and

**WHEREAS**, over 30,000 illegal firearms were seized in New York State from 1994 to 1998, and handguns constitute over 75% of the firearms confiscated by law enforcement; and

**WHEREAS**, handgun violence causes millions of dollars in economic costs, as well as incalculable emotional damage that is devastating to families and communities throughout the country; and

**WHEREAS**, many handguns are designed in a manner that makes them attractive to criminals; and

**WHEREAS**, the manner in which many handguns are marketed, sold and distributed by manufacturers facilitates the diversion of handguns into the illegal market; and

MAR-16-00 THU 06:24 PM REP C MCCARTHY

FAX NO. 915164897283

P. 05/06

PRESS OFFICE/ALB

Fax: 5184869788

Mar 16 '00

5:09

P. 05

P. 07

MAR-16-2000 18:40

Executive Order Number 12

Administrative Memorandum No. 80.12

Page 2

**WHEREAS**, numerous safety features could be incorporated into the design and sale of handguns, which would greatly reduce the number of murders and accidental handgun deaths every year; and

**WHEREAS**, many current design, marketing, sale and distribution practices of the handgun industry contribute to the illegal use of handguns; and

**WHEREAS**, selling handguns without appropriate safety measures and without adequate distribution controls is not responsible conduct; and

**WHEREAS**, the State of New York has a strong interest in using its police powers to reduce criminal activity in the state, including crimes and violence involving the use of handguns; and

**WHEREAS**, government contracts should only be awarded to responsible bidders and contracting entities; and

**WHEREAS**, government agencies should not expend taxpayer funds in a manner that benefits those who place the public at risk; and

**WHEREAS**, the New York State Department of Law is a law enforcement agency that seeks to reduce crime and violence in New York State; and

**WHEREAS**, the Department of Law employs over 150 investigators who are licensed, trained and authorized to carry firearms as part of their official duties; and

**WHEREAS**, the Department of Law purchases handguns for use by its investigators in carrying out their official duties;

**NOW**, therefore, it is hereby:

**ORDERED**, that in all future acquisitions of handguns, the Department of Law shall seek to purchase only handguns that meet acceptable performance standards and are produced by manufacturers who have committed to adhere to an approved Code of Conduct. The Code of Conduct shall include but not be limited to the following requirements:

1. Manufacturers shall design handguns to minimize their attractiveness to criminals and their use in crime. Manufacturers shall not design guns to make them appealing to criminals, and shall not promote firearm features attractive to juveniles or criminals.

MAR-16-00 THU 06:24 PM REP C MCCARTHY

FAX NO. 915164897283

PRESS OFFICE/ALB

Fax: 5184869788

Mar 16 '00 5:09

P.06

MAR-16-2000 10:40

P.09

Executive Order Number 12

Administrative Memorandum No. 80.12

Page 3

2. Manufacturers shall design firearms to be as safe as reasonably possible for their law-abiding owners and innocent third parties, including children. Manufacturers shall employ new safety-enhancing features as they become technologically and functionally feasible.

3. Manufacturers shall adopt measures to reasonably prevent the diversion of their product from the legal stream of commerce, intentionally or otherwise, for later sale or transfer to those not legally entitled to purchase or possess guns. These measures will include: (a) creating an internal compliance mechanism; (b) restricting sales to only authorized wholesalers and retailers; (c) establishing a training program for authorized dealers; (d) evaluating authorized dealers on an ongoing basis; and (e) discontinuing authorized dealers that sell disproportionate numbers of guns later used in crime or otherwise act irresponsibly.

4. Manufacturers shall retain an independent external monitor to test and audit compliance with the Code of Conduct.

5. Manufacturers shall cooperate fully with law enforcement and regulators to eliminate illegal firearms sale and possession.

Dated: March 16, 2000

  
ELIOT SPITZER  
Attorney General

MAR-16-00 THU 06:08 PM REP C MCCARTHY

FAX NO. 915164897283

P. 02/09

PRESS OFFICE/ALB

Fax:5184869788

Mar 16 '00 5:05

P.02

P.11

MAR-16-2000 18:41

## Proposed Code of Conduct

The undersigned manufacturers of handguns ("manufacturers") commit herein to adhere to this Code of Conduct (the "Code") for the design and distribution of handguns, internal corporate compliance, and external verification and enforcement.

The goal of this Code is to reduce accidental and intentional misuse of handguns, decrease crime, violence, accidents, and deaths. It sets: (1) minimum mandatory requirements for safety features in new handguns; (2) policies for discontinuing handgun models and features that prove disproportionately attractive to criminals; and (3) rules for terminating irresponsible retailers who sell too many handguns later used in crime.

### I. Design

#### A. *Attractiveness of certain guns and/or features to criminals.*

Manufacturers shall design handguns so as to minimize their attractiveness to criminals and their use in crime. Manufacturers shall not design guns to make them appealing to criminals, and shall not promote firearm features attractive to juveniles or criminals.

#### Manufacturers shall:

1. Discontinue gun models or gun features that are or become disproportionately attractive to criminals or used disproportionately in crime.
2. Include a second hidden serial number on all handguns.

#### Manufacturers shall not:

3. Manufacture or distribute guns that if manufactured elsewhere would be illegal to import into the United States. This includes "Saturday Night Specials" and all guns banned for import under 18 U.S.C. § 925 and the regulations promulgated thereunder.
4. Produce weapons with features that (either individually or when combined) unreasonably facilitate criminal uses, even if a substantial lawful demand for such features exists. Features unduly attractive to criminals, include, but are not limited to:

Office of the Attorney General

1

State of New York

MAR-16-00 THU 06:08 PM REP C MCCARTHY

FAX NO. 915164897283

P. 03/09

PRESS OFFICE/ALB

Fax: 5164869788

Mar 16 '00

5:05

P. 03

p. 12

MAR-16-2000 18:41

- a. Fingerprint resistant guns.
- b. Guns easily convertible to illegal firearms.
- c. Guns with easily obliterated serial numbers.
- d. Pistols that accept magazines with a greater than 10-round capacity or that can be easily modified to do so.

#### B. Safety.

Manufacturers shall design firearms to be as safe as reasonably possible for their law-abiding owners and innocent third parties, including children. Manufacturers shall employ new safety-enhancing features as they become technologically and functionally feasible.

#### Manufacturers shall:

1. Include an effective external locking device on every gun sold.
2. Include on every gun sold an internal locking device by which the gun can be operated only with a mechanism unique to that gun, including but not limited to a key or combination.
3. Include a magazine safety disconnect on every pistol.
4. Include, on every pistol, a device that effectively alerts users that a round is in the chamber.
5. Include directions with the sale of every firearm that describe safe and proper storage methods of firearms and warnings explaining the dangers of firearms within the home.
6. Agree, at manufacturers' cost, to retrofit existing guns with improved safety devices as they become available and feasible.
7. Spend at least one percent of gross handgun sales each year to develop or produce "authorized user" or "personalized handgun" technology, otherwise known as "smart gun" technology.

#### Manufacturers shall not:

8. Design, manufacture, or sell firearms that can be readily operated by a child aged six or younger.
9. Design, manufacture, or sell firearms that fail to meet standards promulgated by the New York State Police and currently set forth in 9 NYCRR §§ 482.5-482.6.

Office of the Attorney General

2

State of New York

MAR-16-00 THU 06:09 PM REP C MCCARTHY

FAX NO. 915164897283

P. 04/09

PRESS OFFICE/ALB Fax: 5184869788

Mar 16 '00 5:05 P.04

P.13

MAR-16-2000 18:42

### C. *Law enforcement exemption.*

Handguns sold to law enforcement or the military shall be exempt from all design standards set forth elsewhere in this Code. For all handguns sold to law enforcement or the military that would not comport with the Code if sold to the general public, manufacturers shall include a written advisory from the Oversight Panel (as defined in VI(A), below) containing, in sum and substance, the following warnings:

1. That the firearm being sold to law enforcement or the military does not comport with the requirements of this Code of Conduct for sale to civilians, and stating the provision or provisions of this Code of Conduct that would be violated by such a civilian sale.
2. That, pursuant to this Code of Conduct, the Oversight Panel requests that the purchasing agency ultimately dispose of the weapon in a manner that prevents its later migration into the civilian population.

## II. Sales and Distribution

Manufacturers shall adopt measures to reasonably prevent their products' diversion from the legal stream of commerce, intentionally or otherwise, for later sale or transfer to those not legally entitled to purchase or possess guns.

### A. *Internal Compliance Officer.*

Manufacturers will designate an executive-level manager as a Compliance Officer. Each manufacturer shall provide its Compliance Officer with sufficient staff and other resources to discharge the officer's responsibilities, including but not limited to:

1. Ensuring the manufacturer's compliance with local, state, and federal law and with the terms of this Code.
2. Reporting both to the manufacturer's CEO and its Board of Directors.
3. Being the liaison between the manufacturer and the monitor (see III, below) and federal, state and local law enforcement agencies and regulators.

### B. *Authorized Wholesalers and Retailers.*

Manufacturers' products will be sold only by authorized dealers. No manufacturer shall certify a wholesaler or retailer as an authorized dealer without first establishing, at a minimum, that the wholesaler or retailer:

MAR-16-00 THU 06:09 PM REP C MCCARTHY

FAX NO. 915164897283

P. 05/09

PRESS OFFICE/ALB

Fax: 5184869788

Mar 16 '00 5:06 P.05

MAR-16-2000 10:42

1. Possesses all licenses required by federal, state, and local law.
2. Complies with local, state, and federal laws and regulations, and with this Code, and files an annual certification verifying such compliance with the manufacturer.
3. Has sufficient internal compliance procedures to ensure adherence to governing laws and this Code, including annual training and written testing of employees as provided in section II(C), below, before they are permitted to sell or handle firearms.
4. Has a program to eliminate sales to straw purchasers and to otherwise thwart illegal gun trafficking. Such a program must include, at a minimum, employee training and a policy prohibiting a retailer from selling to an individual more than one handgun in a 30-day period, or another equally effective plan to retard gun trafficking.
5. Carries liability insurance coverage of no less than \$1 million for each incident of damage, injury, or death.
6. Securely displays, stores, and ships firearms.
7. Excludes from its premises persons under 18 years of age not accompanied by a parent or guardian.
8. Sells guns only at the location listed on its FFL license, and does not sell guns at gun shows.
9. Agrees in writing to all applicable provisions of this Code, including, without limitation, provisions regarding audits, training, revocation of status as an authorized dealer, and jurisdiction.

*C. Training for wholesalers and retailers.*

Manufacturers shall annually train all authorized dealers on how to recognize attempts to illegally purchase firearms, how to recognize that firearms may be being diverted (intentionally or otherwise) for later sale or transfer to those not legally entitled to purchase, and how to respond to those attempts. Training shall also address how to teach ultimate consumers rules of firearm safety including safe storage of firearms. Personnel at authorized dealers shall not sell or handle firearms without receiving the training and passing a written test, which must be approved by the monitor described in section III, below.

*D. Ongoing evaluation of authorized dealers.*

Manufacturers shall continually evaluate their authorized dealers to ensure dealer compliance with the Code.

1. Manufacturers shall require authorized dealers to maintain sales

MAR-16-00 THU 06:09 PM REP C MCCARTHY

FAX NO. 915164897283

P. 06/09

PRESS OFFICE/ALB Fax: 5184869788

Mar 16 '00 5:06 P.06

MAR-16-2000 10:42

information, including the serial numbers of handguns sold, dates of sale, and identity of purchasers. Manufacturers will require authorized dealers to make this information available for review by the manufacturer, its designee, and/or the monitor (as defined in III below).

2. Manufacturers shall require authorized dealers to maintain records of traces initiated by the Bureau of Alcohol, Tobacco, and Firearms ("ATF"), and to report those traces, by serial number, date of trace, date of sale, and identity of purchaser, to the manufacturer, its designee, and/or the monitor (as defined in III below).

3. Manufacturers must determine, on an ongoing basis, which authorized dealers have sold disproportionate numbers of guns later used in crime. Manufacturers will require authorized wholesalers to determine, on an ongoing basis, which authorized retailers have sold disproportionate numbers of guns later used in crime. These ongoing analyses will, at all times, be fully available to the monitor (as defined in III below).

#### **E. Enforcement.**

Manufacturers, in consultation with the monitor (as defined in III, below), shall retrain, suspend or, as necessary, discontinue authorized dealers that violate this Code, sell disproportionate numbers of handguns that are later used in crime, or otherwise act irresponsibly. Manufacturers shall contractually provide for these remedies. Manufacturers and authorized wholesalers will, at a minimum, rely on traces initiated by ATF to calculate the numbers of guns later used in crime.

### **III. External verification**

The manufacturers shall retain an independent external monitor ("the monitor"), under the terms and conditions set forth below:

A. **Duties of the monitor.** The monitor shall audit and otherwise test or investigate compliance with the Code and the standards and practices established pursuant to it. The manufacturers shall make all best efforts to assist the monitor in performing its duties, and shall contractually require all authorized dealers to assist the monitor.

B. **Powers of the monitor.** The monitor shall have full access to the books and records of the manufacturers and authorized dealers that, in the sole judgment of the monitor, are necessary to perform the requisite tests and audits. The monitor shall have the right to conduct interviews and to perform or commission necessary tests or other examinations, including undercover tests. The monitor shall have the power to require the manufacturers to suspend or terminate authorized dealers. The monitor shall have the power to determine whether or not a manufacturer is in compliance with the Code.

C. **Reporting.** The monitor may report directly to manufacturers' Boards of

MAR-16-00 THU 08:10 PM REP C MCCARTHY

FAX NO. 915164897283

P. 07/09

PRESS OFFICE/ALB

Fax: 5164869788

Mar 16 '00

5:06

P. 07

P. 16

MAR-16-2000 10:43

**Directors.** The monitor may consult with or provide information obtained from any source to any law enforcement body or regulator that it deems appropriate, without prior notice or disclosure of the communication to the manufacturers. The monitor shall promptly report to the Oversight Panel any violations of the Code.

**D. Public reports.** From time to time, but at least annually, the monitor shall issue a public report evaluating the compliance with the Code. Before publicly issuing any such report, the monitor shall provide each manufacturer with copies those portions of the report that pertain to that manufacturer. The manufacturer will have 15 (fifteen) calendar days to object to the public release of trade secrets or other information contained within the report. If the manufacturer and the monitor are unable to agree on the extent of material to be made public, the dispute shall be submitted to the Oversight Panel (as defined in VI(A), below), who shall make the final determination in the sound exercise of its discretion.

**E. Term.** The term of the monitor shall be 10 (ten) years. A manufacturer may apply to the Oversight Panel for relief from some or all oversight by the monitor. Each manufacturer may make such application once during the first five years of the term, and once during the second five years of the term. The Oversight Panel's decision as to such relief is unreviewable.

**F. Funding.** The cost of the monitor shall be borne jointly by the manufacturers, governmental entities, and such other sources of funding as might be identified. All such monies shall be paid into a fund, and the monitor shall be paid periodically from that fund upon invoice review and approval by the Oversight Panel.

**G. Retention of monitor.** The manufacturers shall each retain the monitor designated by the Oversight Panel under terms and conditions approved by the Oversight Panel. The Oversight Panel shall designate the monitor before the manufacturers subscribe to this Code of Conduct.

**H. Removal of monitor.** The monitor may be discharged during its term only by the Oversight Panel for good cause shown. Manufacturers may contest or object to any such removal only on the grounds that good cause has not been shown.

**I. Filling the unexpired term of the monitor.** In the event the monitorship becomes vacant during the term set forth in III(E), the position shall be filled as follows:

1. In first 30 days of the vacancy, the Oversight Panel and a majority of the undersigned manufacturers may agree on a new monitor. Upon such agreement, the new monitor will be retained as set forth in III(G) above.

2. If the 30 days pass without such agreement, the Oversight Panel will nominate a candidate, and the manufacturers (either together or separately) will nominate a candidate or candidates. On the 31st day after the vacancy all such nominations shall be forwarded to the Court supervising this agreement, which shall designate the new monitor from

MAR-16-00 THU 06:10 PM

REP C MCCARTHY

FAX NO. 915164897283

P. 08/09

PRESS OFFICE/ALB

Fax: 5184869788

Mar 16 '00

5:07

P.08

P.17

MAR-16-2000 10:43

among those nominated. Upon such designation, the manufacturers shall retain the new monitor within 10 (ten) days under the terms set forth in III(G) above.

#### IV. Cooperation with law enforcement

The manufacturers reaffirm their commitment to cooperating fully with law enforcement and regulators to eliminate illegal firearms sale and possession.

A. Disclosure of documents upon request. Manufacturers shall assist and cooperate with law enforcement by providing law enforcement and regulators, upon request, full access to the marketing, market research, development and production data and documents, and other documents that law enforcement or regulators request.

B. Retention of bullets and casings. Manufacturers shall fire each weapon before it is sold and shall retain at least three fired casings and three fired bullets, identifying each casing/bullet pair with the weapon's serial number. Each manufacturer will begin retaining the casings within six months of the effective date of this agreement. Each manufacturer will begin retaining the bullets within 18 months of the effective date of this agreement. The Manufacturers will, on a regular and ongoing basis and without charge, provide the casings and bullets with the corresponding serial numbers to such law enforcement agency or agencies designated by the Oversight Panel (as defined in VI(A) below).

#### V. Enforcement

This agreement shall be entered as an order in a court of appropriate jurisdiction and shall be enforceable and enforced as such.

#### VI. Miscellaneous Matters

A. The "Oversight Panel" shall be constituted of representatives of local, state, and federal signatories to this agreement.

B. Except as otherwise stated, the terms "manufacturer" or "manufacturers" as used in this Agreement, shall include all affiliated firms.

C. This Agreement shall be binding upon the successors and assigns of a manufacturer and upon any company or concern with which it may merge or enter into a joint venture or by which it may be acquired.

D. This Agreement constitutes the full agreement between the parties, and its terms may not be changed orally. Each provision of this Agreement is a material provision.

MAR-16-00 THU 06:10 PM REP C MCCARTHY

FAX NO. 915164897283

P. 09/09

PRESS OFFICE/ALB Fax: 5184869788

Mar 16 '00 5:07 P.09

MAR-16-2000 10:43

P.18

E. Each of the undersigned signatories covenants and represents that it is authorized to enter into this Agreement with full force and effect on behalf of the party represented.

F. Telephones or other written notification or reports required by or prepared pursuant to this Agreement shall be made, mailed, or delivered as set forth below:

- 1) To the Oversight Panel
- 2) To Manufacturers:

G. All duties and responsibilities of the Manufacturers shall be required within six months of execution of the Code unless another time is otherwise specified.

H. In the event that any equitable, injunctive or other conduct-related relief granted to any state or municipal government exceeds the terms in the Code, the Oversight Panel shall, upon application to the Court, be entitled to such further relief.