

## CORPORATE CRIMINAL RESPONSIBILITY

**(The defendant) (One of the defendants) in this case is a corporation.**

**A corporation is not a live person, of course, and therefore it can act only through its agents. To prove that a corporation is guilty of a criminal offense that was committed by one of its agents, the Commonwealth must prove three things beyond a reasonable doubt:**

***First:* That a specific person is guilty of this offense — that is, he or she committed all of the elements of this offense, as I (have defined them to you) (will define them to you in a moment);**

***Second:* That such person, when he or she committed this offense, was engaged in some particular corporate business or project; and**

***Third:* That the accused corporation had given that person authority and responsibility to act for it, and on its behalf, in handling that particular corporate business or project.**

**It is *not* necessary that the person who committed the crime was a director, or an officer, or even an employee of the corporation. It is *not* necessary that those in control of the corporation directly requested or authorized the crime or approved of it afterwards. Those factors can be**

**relevant to your decision, but they are not necessary for the corporation to be found guilty of this charge.**

**The corporation is guilty if it put the person who committed the crime in a position where he (she) had enough power and authority to act for the corporation in the corporate project he (she) was involved in when he (she) committed this offense.**

**Some of the factors you may consider on that issue are: how much authority and control that person exercised over corporate matters; how much control others in the corporation exercised over that person in corporate matters; whether and how corporate funds were used in the crime; and, finally, whether there was a repeated pattern of criminal conduct that might indicate corporate toleration or approval after the fact of that person's criminal acts.**

*Commonwealth v. Angelo Todesca Corp.*, 446 Mass. 128, 133-134, 136, 842 N. E. 2d 930, 937 (2006) (approving three elements as outlined in model instruction); *Worcester Ins. Co. v. Fells Acres Day School, Inc.*, 408 Mass. 393, 408-409, 558 N.E.2d 958, 969 (1990); *Commonwealth v. L.A.L. Corp.*, 400 Mass. 737, 511 N.E.2d 599 (1987) (close corporation); *Commonwealth v. Beneficial Fin. Co.*, 360 Mass. 188, 254-281, 275 N.E.2d 33, 71-86 (1971), cert. denied sub nom. *Farrell v. Massachusetts*, 407 U.S. 910, and sub nom. *Beneficial Fin. Co. v. Massachusetts*, 407 U.S. 914 (1972) (publicly-held corporation). G.L. c. 4, § 7, Twenty-third (in construing statutes, "[p]erson' or 'whoever' shall include corporations, societies, associations and partnerships").