

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in item IV below. The Board has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The OS/ARD subsystem, which was activated on April 20, 1992, is a central electronic facility through which information collected and stored pursuant to MSRB rule G-36 is made available electronically and in paper form to market participants and information vendors.² Since 1992, the annual subscription fee for daily tapes of images of current year documents from the OS/ARD system has been \$12,000.³ The Board proposes to increase the annual subscription fee to \$14,000 because of the rise in the cost of operation of the system since the subscription fee was first instituted.

The fees for backlog document collections are substantially less than fees for an annual subscription because an annual subscription requires the Board to send a computer tape to the subscriber each business day, but a backlog collection requires fewer tapes.⁴ The Board is establishing a price of \$9,000 (plus delivery or postage charges) for the 1995 backlog collection.

The daily tape subscription service currently has eight subscribers. The \$14,000 yearly subscription fee for the daily tape of images will not cover the

complete costs of operation of the OS/ARD system. In its prior filings with the Commission, the Board stated that it intends to use its general revenues to help fund collecting, indexing and storing the OS/ARD subsystem's documents. However, the Board states its intention that the costs of producing and disseminating magnetic tapes (and paper copies) would be completely covered by user fees.⁵ The Board is increasing the annual subscription fee and establishing the 1995 backlog fee to defray its costs of disseminating the collection tapes. This is consistent with the Commission's policy that self-regulatory organizations' fees be based on expenses incurred in providing information to the public. The Board believes that employing cost-based prices is in the public interest since it will ensure that a complete collection of vital information will be available, at fair and reasonable prices, for the life of the municipal securities.

2. Statutory Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which requires, in pertinent part, that the Board's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSIL system is designed to increase the integrity and efficiency of the municipal securities market by, among other things, helping to ensure that the price charged for an issue in the secondary market reflects all available official information about that issue. The Board believes that the annual subscription fee and the 1995 backlog fee are fair and reasonable in light of the costs associated with disseminating the information, and that the services provided by the MSIL system are available on reasonable and nondiscriminatory terms to any interested person.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or

appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act, because the proposal is "establishing or changing a due, fee or other charge." At any time within sixty days of filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-96-4 and should be submitted by July 23, 1996. For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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² Rule G-36 requires underwriters to provide copies of final official statements and advance refunding documents within certain specified time frames for most new issues issued since January 1, 1990.

³ This fee was filed with the Commission. See Securities Exchange Act Release No. 30306 (Jan. 30, 1992) 57 FR 4657.

⁴ Currently, several business day's worth of documents are on each tape in an annual collection. The backlog fee plus delivery costs for 1994 is \$7,000; 1993 is \$9,000; 1992 is \$7,000; 1991 is \$8,000; 1990 is \$6,000. These fees were filed with the Commission. See Securities Exchange Act Release Nos. 35848 (June 14, 1995) 60 FR 32817 (1994 fee); 32482 (June 16, 1993) 58 FR 34115 (1992 and 1990 fees); 34602 (Aug. 25, 1994) 59 FR 45319 (1993 and 1991 fees). The fees for the backlog collections vary based on the number of documents received and processed in any given year.

⁵ See Securities Exchange Act Release No. 28197 (July 12, 1990) 55 FR 29436.

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission

ACTION: Notice of priority areas for Commission research and amendment consideration. Request for public comment.

SUMMARY: As part of its continuing statutory responsibility to analyze sentencing issues, including the operation of the federal sentencing guidelines, the Commission preliminarily has identified certain priorities as the principal focus of its work in the coming year and, in some cases, beyond. Following the practice of past years, the Commission invites comment on identified priorities (including the scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to an identified priority). The Commission also invites comment on any other aspect of guideline application that it should address during the coming year.

DATES: Public comment should be received not later than August 30, 1996, to be considered by the Commission in shaping its work during the next year.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, NE, Suite 2-500, Washington, DC 20002-8002, Attention: Public Information—Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273-4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent agency in the judicial branch of the United States Government, is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to periodically review and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994(o), (p).

As in previous years, the Commission uses this announcement to solicit formal and informal comment regarding certain areas upon which the Commission expects to concentrate its attention during the coming year. This notice provides interested persons with an opportunity to inform the Commission

of legal, operational, or policy concerns within the identified areas relating to the guidelines and to suggest specific solutions and alternative approaches.

Following are the anticipated priority areas for amendment study, research, or other planned actions identified by the Commission. In some cases, a general time frame for the initiative is indicated. These time frames are subject to change as the Commission deems necessary.

The Commission welcomes comments on these priorities as well as any other aspect of guideline application or implementation of the Sentencing Reform Act.

Authority: 28 U.S.C. 994(a), (o), (p).
Richard P. Conaboy,
Chairman.

I. Implementation of New Laws Affecting Criminal Penalties

The Commission will continue to give priority to developing guideline amendments that implement legislation enacted by Congress. In this regard, Congress has recently enacted, or is expected to pass in this Session, a number of bills that may necessitate changes in the sentencing guidelines. Some of the more significant legislative initiatives are:

- The Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132 (April 24, 1996). This Act contains several directives to amend the guidelines in specific ways, including a provision (section 730) granting the Commission emergency authority to amend the enhancement in USSG § 3A1.4 (International Terrorism) so that it applies broadly to any "Federal Crime of terrorism" as defined in 18 U.S.C. 2332b(g). The Act also contains numerous other provisions (e.g., increases in statutory maximum penalties, new offenses) that the Commission must analyze in order to ascertain whether guideline amendments are needed and, if so, what changes are appropriate.
- The Telecommunications Act of 1996, 104-104 (February 8, 1996). This Act contains several provisions on obscene, harassing, or wrongful use of telecommunications facilities that may necessitate guideline amendments. The Commission recently promulgated an amendment to USSG § 2G1.2 to implement a new offense created by section 508 of the Act (involving the solicitation of a minor to engage in prohibited sexual conduct). See 61 FR 20308-09 (May 6, 1996).
- The Sex Crimes Against Children Prevention Act of 1995, 104-71 (December 23, 1995). The Commission recently promulgated amendments to

USSG §§ 2G2.1, 2G2.2, and 2G1.1 to implement directives of that Act. See 61 FR 20306-09, *supra*. The Commission is now considering additional conforming amendments to the child pornography guidelines in Chapter Two, Part G and possible amendments to the sexual abuse guidelines in Chapter Two, Part A, Subpart 3.

• Immigration Bill, Other Legislation. Congress is finalizing an Immigration Bill and is considering other bills affecting criminal penalties. Enactment of any such legislation may necessitate additional guideline amendments in the coming year.

II. Guideline Simplification and Modification

In 1995, the Commission announced that it was initiating a multi-year project to comprehensively assess and simplify provisions of the Guidelines Manual. See 60 F.R. 49316-17 (Sept. 22, 1995). After considering a number of staff papers and input from interested individuals and groups, the Commission anticipates focusing its attention and possible amendment consideration on the following specific issues:

• Relevant Conduct. Priority issues for the 1996-97 amendment cycle include: (1) Clarifying/streamlining the relevant conduct guideline assuming no substantive policy changes; and (2) developing options to limit the use of acquitted conduct at sentencing. Issues of lower priority that may be further explored during future amendment cycles include: (1) Substantively changing the relevant conduct guideline to limit the extent to which unconvicted conduct can affect the sentence; and (2) increasing the burden of proof at sentencing to a "clear and convincing" standard.

• Level of Detail/Guideline Complexity. Priority issues for the 1996-97 amendment cycle include: (1) Simplification of guideline/specific offense characteristics through consolidation or elimination; (2) clarification of the definition of loss; (3) examination of problematic cross references; and (4) revision of Acceptance of Responsibility adjustment.

• Departures/Offender Characteristics. Priority issues for the 1996-97 amendment cycle include: (1) Developing options for revising/clarifying the language describing the "heartland concept" in Chapter One and departure policy statements in Chapter Five in light of the recent U.S. Supreme Court decision in *Koon v. U.S.*, No. 94-1664, 1996 WL 315800 (U.S. June 17, 1996); and (2) focusing on family and

community ties, age, and combination of factors.

- **Criminal History.** Priority issues for the 1996–97 amendment cycle include: (1) Re-ordering and streamlining Chapter Four; and (2) revising assignment of criminal history points to better target serious, repeat offenders.

- **Sentencing Table.** Issues of lower immediate priority for discussion during future amendment cycles include: (1) Options to streamline sentencing table to reduce significantly the number of offense levels; (2) options to revise the current sentencing table's "zone" structure; and (3) additional or expanded sentencing options.

- **Appellate Litigation and Other Statutory Issues.** Priority issues for the 1996–97 amendment cycle include: (1) Consideration of the impact of the recent U.S. Supreme Court decision in *Koon v. United States*, *supra*, on appellate review of guideline sentences and on the need to revise the introduction to the Guidelines Manual and Departure Section (§ 5K2.0) to address the deference appellate courts should afford district courts on guideline determinations; and (2) consideration of widening the bands in monetary and drug tables to decrease litigation.

- **Drug Sentencing/Role in the Offense.** Priority issues for 1996–97 amendment cycle include: (1) Revising the Role in the Offense guideline to better reflect actual experience, case law development, and to provide sufficient flexibility when sentencing drug offenders.

- **Introduction to Guidelines Manual.** Priority issues for 1996–97 amendment cycle include: (1) Updating the introduction to reflect the evolution of the guideline sentencing process.

III. Circuit Conflicts, Miscellaneous Amendments

As part of the 1996–97 amendment cycle, the Commission expects to consider and propose for comment amendments that address some of the more important application issues involving conflicting court interpretations of guideline language.

IV. Cocaine Offenses

Under Public Law No. 104–38 (Oct. 30, 1995), the Commission is directed to submit recommendations to Congress regarding changes in the penalty statutes and sentencing guidelines for cocaine offenses (including crack). See 61 FR 80 (January 2, 1996). The Commission has been gathering and analyzing data and other relevant information, including public comment, in preparation for formulating the

required recommendations. It expects to continue this process during the coming months and again invites comment regarding implementation of this congressional directive. Comment should focus on (1) the quantity ratio that should be substituted for the current 100-to-1 ratio in the relevant penalty statutes and sentencing guidelines (see USSG § 2D1.1(c)), and (2) appropriate enhancements in § 2D1.1 for violence and other harms associated with crack and powder cocaine.

V. Revisions to Money Laundering Guidelines

As directed by Public Law 104–38, *supra*, the Commission will respond to an expected Department of Justice report on money laundering charging and plea practices and will continue its study of the money laundering guidelines (U.S.S.G. §§ 2S1.1–2S1.2).

VI. Guideline Assessment, Research Initiatives

Under the direction of an outside consultant, Commission staff have initiated a number of research projects designed to assess the success of the guidelines. See 60 FR 49316–17 (Sept. 22, 1995). These efforts will continue in the coming year, focusing primarily on the use of an intensive study sample (ISS) of cases to better evaluate operation of the Relevant Conduct and Criminal History guidelines.

V. Administrative Initiatives

As indicated in its 1995 work priorities notice, see 60 FR 49316, 17 (Sept. 22, 1995), the Commission is engaged in an ongoing effort to maximize the efficiency of its limited staff resources. Additionally, the Commission expects to soon publish for comment a set of Rules of Practice and Procedure describing its internal operating practices and the manner in which interested persons can participate in the Commission's work.

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SOCIAL SECURITY ADMINISTRATION

Social Security Ruling (SSR) 96–6p. Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling SSR 96–6p. This Ruling clarifies Social Security Administration policy regarding the consideration of findings of fact by State agency medical and psychological consultants and other program physicians and psychologists by adjudicators at the administrative law judge and Appeals Council levels. Also, the Ruling restores to the Rulings and clarifies policy interpretations regarding administrative law judge and Appeals Council responsibility for obtaining opinions of physicians or psychologists designated by the Commissioner of Social Security regarding equivalence to listings in the Listing of Impairments (appendix 1, subpart P of 20 CFR part 404) formerly in SSR 83–19, "Titles II and XVI: Finding Disability on the Basis of Medical Considerations Alone—The Listing of Impairments and Medical Equivalency." SSR 83–19 was rescinded without replacement by SSR 91–7c (C.E. 1990–1991, p. 92) as a result of the Supreme Court's decision in *Sullivan v. Zebley*, 493 U.S. 521 (1990), which invalidated the use of a medical "listings only" approach to evaluating disability claims of individuals under 18 years of age under the supplemental security income program. That decision has no bearing on the aspects of SSR 83–19 that we are restoring in this Ruling.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law