

transaction under the rule. The proposed definition of "obvious error" would apply during both normal and unusual market conditions, thus further streamlining the Floor Officials' review process.

Definition of Theoretical Price

Currently, Phlx Rule 1092(b) defines "Theoretical Price" as the last bid or offer, just prior to the transaction, on the exchange that has the most total volume in that option over the most recent 60 calendar days; or if there are no quotes for comparison purposes, as determined by two Floor Officials and designated personnel in the Exchange's Market Surveillance Department. The proposed rule change would define "Theoretical Price" as, respecting series traded on at least one other options exchange, the mid-point of the National Best Bid and Offer ("NBBO") just prior to the transaction.

The Phlx notes that currently, all options exchanges, including the Phlx, have rules permitting specialists and market makers to disseminate electronic quotations with a bid/ask differential of up to \$5.00, regardless of the price of the bid.⁵ For the most part, the Phlx believes that such quotations do not reflect the NBBO. Under the current Exchange rule, the Theoretical Price, defined as the last bid or offer just prior to the transaction on the market with the highest volume, could differ from the NBBO by a significant amount if the bid/ask differential on such market in the series is \$5.00 wide. In order to account for this potential discrepancy between the Theoretical Price as established by rule and the actual NBBO, the proposal would re-define the term "Theoretical Price" to mean the mid-point of the NBBO just prior to the transaction. This should provide Exchange Floor Officials with a more accurate measure of the price on which to base their determination that a transaction resulted from an obvious error, based on the actual NBBO instead of a quotation with a bid/ask differential of \$5.00.

For consistency, the Exchange proposes to delete Commentary .02 to Phlx Rule 1092, which references the Theoretical Price as currently defined, from the Rule.

2. Statutory Basis

The Exchange believes that this proposal is consistent with Section 6(b) of the Act⁶, in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷

in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest, by establishing objective definitions of Theoretical Price and "obvious error" that address issues raised by the increasingly electronic options marketplace.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received by the Exchange on this proposal, as amended.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

- (A) By order approve the proposed rule change, as amended, or
- (B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2005-73 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2005-73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2005-73 and should be submitted on or before June 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jill M. Peterson,

Assistant Secretary.

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UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of request for comment.

SUMMARY: The Commission requests public comment pertaining to an amendment submitted to the Congress on May 1, 2006, that creates a policy statement governing a reduction in term of imprisonment as a result of a motion by the Director of the Bureau of Prisons (published elsewhere in this issue of the **Federal Register**).

DATES: Written public comment regarding the issue for comment set

⁵ See, e.g., Exchange Rule 1014(c)(i)(A)(2).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 17 CFR 200.30-3(a)(12).

forth in this notice should be received by the Commission not later than July 14, 2006.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, 202-502-4590. The amendment to which this issue for comment pertains may be accessed through the Commission's Web site at <http://www.ussc.gov> (see Amendment 1 of the document entitled "Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary (May 1, 2006)").

SUPPLEMENTARY INFORMATION: On May 1, 2006, the Commission submitted to the Congress an amendment to the Federal sentencing guidelines that created a new policy statement at § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons). This policy statement is a first step toward fulfilling the congressional directive at 28 U.S.C. 994(t). In the 2006-2007 amendment cycle, the Commission will consider developing further criteria and a list of specific examples of extraordinary and compelling reasons for sentence reduction pursuant to such statute. The Commission requests comment and specific suggestions for appropriate criteria and examples, as well as guidance regarding the extent of any such reduction and modifications to a term of supervised release.

Authority: 28 U.S.C. 994(a), (o), and (p); USSC Rule of Practice and Procedure 4.4.

Ricardo H. Hinojosa,
Chair.

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UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission to Congress of amendments to the sentencing guidelines effective November 1, 2006.

SUMMARY: Pursuant to its authority under 28 U.S.C. 994(p), the Commission has promulgated amendments to the sentencing guidelines, policy statements, commentary, and statutory index. This notice sets forth the amendments and the reason for each amendment.

DATES: The Commission has specified an effective date of November 1, 2006,

for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, 202-502-4590. The amendments set forth in this notice also may be accessed through the Commission's Web site at <http://www.ussc.gov>.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for Federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

Notice of proposed amendments was published in the **Federal Register** on January 27, 2006 (see 71 FR 4782). The Commission held a public hearing on the proposed amendments in Washington, DC, on March 15, 2006. On May 1, 2006, the Commission submitted these amendments to Congress and specified an effective date of November 1, 2006.

Authority: 28 U.S.C. 994(a), (o), and (p); USSC Rule of Practice and Procedure 4.1.

Ricardo H. Hinojosa,
Chair.

1. *Amendment:* Chapter One, Part B is amended by adding at the end the following:

"§ 1B1.13. Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons (Policy Statement)

Upon motion of the Director of the Bureau of Prisons under 18 U.S.C. 3582(c)(1)(A), the court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. 3553(a), to the extent that they are applicable, the court determines that—

(1)(A) Extraordinary and compelling reasons warrant the reduction; or

(B) The defendant (i) is at least 70 years old; and (ii) has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. 3559(c) for the offense or offenses for which the defendant is imprisoned;

(2) The defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. 3142(g); and

(3) The reduction is consistent with this policy statement.

Commentary

Application Notes:

1. Application of Subsection (1)(A).—

(A) Extraordinary and Compelling Reasons.—A determination made by the Director of the Bureau of Prisons that a particular case warrants a reduction for extraordinary and compelling reasons shall be considered as such for purposes of subdivision (1)(A).

(B) Rehabilitation of the Defendant.—Pursuant to 28 U.S.C. 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of subdivision (1)(A).

2. Application of Subdivision (3).—Any reduction made pursuant to a motion by the Director of the Bureau of Prisons for the reasons set forth in subdivisions (1) and (2) is consistent with this policy statement.

Background: This policy statement is an initial step toward implementing 28 U.S.C. 994(t). The Commission intends to develop further criteria to be applied and a list of specific examples of extraordinary and compelling reasons for sentence reduction pursuant to such statute."

Reason for Amendment: This amendment creates a new policy statement at § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons) as a first step toward implementing the directive in 28 U.S.C. 994(t) that the Commission "in promulgating general policy statements regarding the sentence modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples." The policy statement restates the statutory bases for a reduction in sentence under 18 U.S.C. 3582(c)(1)(A). In addition, the policy statement provides that in all cases there must be a determination made by the court that the defendant is not a danger to the safety of any other person or to the community. The amendment also provides background commentary that states the Commission's intent to