

requested by a Market Maker to alter an order in his possession in any way, the Floor Broker shall immediately prepare an order ticket from outside the trading crowd and time-stamp it. Accordingly, Floor Brokers who receive intra-floor telephonic orders from Market Makers will be permitted to represent those orders immediately, with the ticket immediately to follow.<sup>6</sup>

The Exchange notes that pursuant to Options Floor Procedure Advice ("OFPA") F-5, hand signals may be used to increase or decrease the size of an order, to change the order's limit, to cancel an order or to activate a market order, as long as the cancellation or change to the order is "relayed to the Floor Broker in a time-stamped, written form immediately thereafter." Although OFPA F-5 is rarely used on the PCX, the Exchange is proposing, as a matter of consistency, to eliminate the following text from OFPA F-5: "Any changes to an order must be documented in writing outside of the crowd and the ticket time-stamped, before the revised order may be represented."

The Exchange believes that the rule change is necessary to assure that, as more and more option orders are transmitted and represented electronically on the PCX, manual orders represented by Floor Brokers are not placed at a competitive disadvantage. In that regard, the Exchange notes that pursuant to PCX Rule 6.88 (Exchange-sponsored Hand-Held Terminals for Floor Brokers)<sup>7</sup> and 6.89 (Proprietary Brokerage Order Routing Terminals),<sup>8</sup> PCX member firms currently may send orders electronically from off the Trading Floor directly to a Floor Broker's hand-held terminal located in the trading crowd on the Options Floor.

The Exchange believes that implementation of the proposed rule change will not diminish the ability of the Exchange to conduct adequate surveillance for rule violations. The Exchange believes that the continuing requirement for floor members to prepare a written, time-stamped order ticket, which will document the time of order entry, will satisfy the Exchange's audit trail requirements in that regard. Further, the execution time of the order will otherwise be documented by the contra party or parties to the trade<sup>9</sup> as

well as by the price Report Terminal Operator (a PCX employee).

## 2. Basis

The Exchange believes that this proposal is consistent with Section 6(b)<sup>10</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>11</sup> in that it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

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

PCX does not believe that the proposed rule change 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 with respect to the proposed rule change.

### 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 self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change 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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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 such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-99-17 and should be submitted by December 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jonathan G. Katz,**  
Secretary.

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## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of proposed priorities; request for public comment.

**SUMMARY:** As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the Commission has preliminarily identified certain priorities as the focus of its policy development work, including possible amendments to guidelines, policy statements and commentary, for the amendment cycle ending May 1, 2000. The Commission has only recently been reconstituted and, due to the constraints of an abbreviated amendment cycle, the Commission proposes to place on its agenda only those items the Commission hopes it may be able to conclude by its statutory deadline of May 1.

**DATES:** Public comment should be received on or before January 7, 2000.

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

<sup>6</sup> Under Proposed PCX Rule 6.2(h)(4), Floor Brokers are not permitted to communicate directly with persons located off the Trading Floor. See File No. SR-PCX-98-30.

<sup>7</sup> See Securities Exchange Act Release No. 39970 (May 7, 1998), 63 FR 26662 (May 13, 1998).

<sup>8</sup> See Securities Exchange Act Release No. 40577 (October 20, 1998), 63 FR 57721 (October 28, 1998).

<sup>9</sup> See PCX Rule 6.69 and OFPA G-12.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

**FOR FURTHER INFORMATION CONTACT:**

Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

**SUPPLEMENTARY INFORMATION:** Due to a constrained schedule for developing and promulgating amendments in the current amendment cycle, the Commission has determined it necessary to focus and limit its policy development work for the current amendment cycle to policy work it believes it may reasonably accomplish by May 1, 2000. Accordingly, the Commission has limited its current policy development priorities principally to the following areas: (i) Implementation of legislative directives and other high priority crime legislation enacted by the 105th Congress for which guideline amendments were not developed or finalized by the previous Commission; and (ii) Resolution of a limited number of high priority "circuit conflicts" in guideline interpretation, with the goal of enhancing the consistency with which the guidelines are applied. While the Commission intends to address these priority issues promptly, it recognizes that the tight time constraints and possible complexities of several of the issues may not permit completion of all work to the Commission's satisfaction by the statutory deadline of May 1. The Commission plans to address any unfinished policy development work from this agenda during the next amendment cycle unless Congress enacts legislation providing the Commission with emergency amendment authority, which would enable the Commission to submit guideline amendments after the May 1 statutory deadline.

The specific policy development issues that the Commission hopes to address in this cycle are as follows—

**I. Legislative Directives**

The Commission has identified the implementation of the following directives as a priority for this amendment cycle:

(A) The No Electronic Theft (NET) Act of 1997—Congress directed the Commission, under emergency amendment authority, to ensure that (1) the guideline penalties for intellectual property offenses are sufficiently stringent to deter those crimes; and (2) the guidelines pertaining to intellectual property offenses provide for consideration of the retail value and quantity of infringed items.

(B) The Telemarketing Fraud Prevention Act of 1998—Congress directed the Commission, under emergency authority, to provide (1) Substantially increased penalties for

persons convicted of telemarketing offenses; (2) An additional sentencing enhancement if the offense involved sophisticated means, including but not limited to sophisticated concealment efforts; and (3) An additional sentencing enhancement for cases in which a large number of vulnerable victims are affected by a fraudulent scheme or schemes. The Commission promulgated emergency amendments in September 1998 in response to this directive, but they must be re-promulgated in the coming amendment cycle to be made permanent.

(C) The Wireless Telephone Protection Act of 1998—Congress directed the Commission to review and, if appropriate, amend the guidelines to provide an appropriate penalty for offenses involving the fraudulent cloning of wireless telephones.

(D) The Identity Theft and Assumption Deterrence Act of 1998—Congress directed the Commission to review and, if appropriate, amend the guidelines to provide an appropriate penalty for each offense under 18 U.S.C. 1028 (fraud in connection with identification documents).

(E) The Protection of Children from Sexual Predators Act of 1998—Congress directed the Commission to (1) Provide a sentencing enhancement for offenses relating to the transportation of individuals for illegal sexual activity; (2) Provide a sentencing enhancement if the defendant used a computer in connection with a sexual offense against a minor; (3) Provide a sentencing enhancement if the defendant knowingly misrepresented the defendant's identity in connection with a sexual offense against a minor; (4) Increase the penalties in any case in which the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor; and (5) Amend the guidelines to clarify that the term "distribution of pornography" in the guidelines relating to distribution of child pornography applies to distribution for monetary remuneration or for a non-pecuniary interest.

**II. Other High Priority Crime Legislation**

The Commission would like to consider amendments to the sentencing guidelines to implement the following additional high priority crime legislation:

(A) The Methamphetamine Trafficking Control Act of 1998—This Act does not contain a directive, but it increased the penalties for manufacturing, importing, or trafficking in methamphetamine by reducing by one-half the quantity of

methamphetamine required to trigger the various mandatory minimum sentences in the drug statutes.

(B) Firearms Legislation—In Public Law 105-386, Congress amended 18 U.S.C. 924(c) to (1) Create a tiered system of sentencing enhancement ranges, each with a mandatory minimum and presumed life maximum, in cases in which a firearm is involved in a crime of violence or drug trafficking offense (the pertinent minimum sentence being dependent on whether the firearm was possessed, brandished, or discharged); (2) Change the mandatory minimum for second or subsequent convictions under § 924(c) from 20 to 25 years; and (3) broadly define the term "brandish."

In Public Law 105-277 (section 121 of the General Provisions), Congress amended 18 U.S.C. 922 to prohibit an alien who is lawfully present in the United States under a non-immigrant visa from possessing or otherwise being involved in a firearms offense.

**III. Circuit Conflicts**

As it has in the past, the Commission proposes to resolve a number of conflicts among the circuit courts on sentencing guideline issues. See *Braxton v. United States*, 500 U.S. 344 (1991). The Commission has begun working with the Criminal Law Committee of the Judicial Conference, the United States Department of Justice, and other interested participants in the federal criminal justice system to identify and resolve high priority circuit conflict issues.

The Commission also expects to review any additional crime legislation enacted during the first session of the 106th Congress for matters requiring prompt Commission response. Finally, the Commission expects to consider several minor technical or conforming amendments necessary for proper operation of the sentencing guideline system.

The Commission invites public comment on these proposed priorities.

**Authority:** 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

**Diana E. Murphy,**  
Chair.

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