

margin. In this regard, the Commission notes that the proposal is similar to the Exchange provisions applicable to exempt Government National Mortgage Association ("GNMA") transactions, which provide that exempt accounts are not required to post margin or marks-to-market for their exempt GNMA transactions, although members must charge their capital for any mark-to-market deficits that are not collected.¹⁸ The Commission notes, in addition, that the proposal allows members to take a capital charge only in connection with exempt accounts trading options on securities that are exempted under Rule 3a12-7.

The Commission also believes that the NYSE has proposed adequate procedures to review periodically the margin levels for the OTC options included in this rule proposal. Specifically, the NYSE will conduct semi-annual reviews of price volatility over both the previous six months and the previous three years. The semi-annual reviews must indicate that the required margin covers a product's historical price volatility over a seven-day period with a 97.5% confidence level. For each option category, the price volatility reports must be prepared either by two NYSE member organizations or by one member organization using an independent pricing source acceptable to the Exchange. If a semi-annual review indicates that the margin level for an OTC option category is inadequate, the Exchange will increase the margin requirements for that category by filing a proposal pursuant to Section 19(b)(3)(A) under the Act for immediate effectiveness.

In order to lower the margin requirements, two consecutive six-month reviews must demonstrate that the proposed lower requirement meets the 97.5% confidence level and the Exchange must consider other relevant factors, including current market conditions, member organization views, and margin levels for similar OCC-issued options. In addition, a proposal to decrease the margin requirement for an option category must be filed pursuant to Section 19(b)(2) under the Act.

The Commission believes that these procedures should provide the Exchange with the flexibility to lower margin levels when price volatility and other relevant factors indicate that a lower margin level may be warranted and, at the same time, require the Exchange to increase margin promptly

when a semi-annual review indicates that the current margin fails to cover a product's historical price volatility with a 97.5% confidence level.

As noted above, the Commission has worked closely with NYSE member firms to establish adequate OTC option margin levels. The NYSE's proposal should enhance the competitiveness of U.S. securities firms by substantially reducing options margin levels while ensuring that OTC options margin levels are adequate to protect investors and avoid the risks associated with excessively low margin levels.

Finally, the Commission believes that it is reasonable for the NYSE to adopt a margin requirement for exchange-traded interest rate option contracts equal to premium plus 10% of the product of the current interest rate measure and the applicable multiplier, with minimum margin equal to 5% of the current interest rate measure and the applicable multiplier. The NYSE's proposed margin for interest rate options is identical to the margin level for interest rate options adopted previously by the CBOE¹⁹ and thus does not raise new regulatory concerns.

The Commission finds good cause for approving Amendment No. 1 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Amendment No. 1 increases the margin requirement for non-mortgage backed agency securities, thereby helping to ensure that the required margin covers seven-day price movements in non-mortgage backed U.S. government agency debt securities with a 97.5% confidence level. The Commission believes that Amendment No. 1 strengthens the Exchange's proposal by establishing adequate margin for non-mortgage backed agency securities and by clarifying the definition of marginable OTC corporate debt securities for purposes of the proposal. Therefore, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposal. 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 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 5, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that the amended proposed rule change (SR-NYSE-95-10) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010-01-M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendment to sentencing guidelines and commentary. Request for public comment.

SUMMARY: The Commission is considering promulgating an amendment to the sentencing guidelines and commentary. This notice sets forth the proposed amendment and a synopsis of the issues addressed by the amendment as well as an additional issue for comment. The Commission seeks comment on the proposed amendment, alternative proposed amendments, and any other aspect of the sentencing guidelines, policy statements, and commentary. The Commission may submit amendments to the Congress not later than May 1, 1996.

DATES: Written public comment on the amendment and issue for comment set forth in this notice should be received by the Commission not later than March 29, 1996, in order to be considered by the Commission in the promulgation of amendments and in the possible

¹⁸ See NYSE Interpretation Handbook, NYSE Rule 431(c)(2)(C)/033.

¹⁹ See CBOE Rule 23.13, "Margin Requirements."

²⁰ 15 U.S.C. 78s(b)(2) (1988).

²¹ 17 CFR 200.30-3(a)(12) (1994).

submission of those amendments to the Congress by May 1, 1996.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, N.E., Suite 2-500, Washington, D.C. 20002-8002, Attention: Public Information.

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

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). If guideline amendments are promulgated, those amendments are submitted to Congress not later than the first day of May pursuant to 28 U.S.C. 994(p).

The proposed amendment as presented in this notice contains bracketed text to indicate alternative proposals; for example, a proposed enhancement of [3][4][5] levels means a proposed enhancement of either three, four, or five levels. The Commission invites comment and suggestions for appropriate policy choices where bracketed text is indicated.

Previously this year, the Commission published proposed amendments for consideration in this year's amendment cycle in order to implement congressional directives in the Sex Crimes Against Children Prevention Act of 1995. (See the notice dated February 23, 1996, 61 FR 7037-7039). The amendment presented in this notice is proposed in order to address 18 U.S.C. 2422(b), a new offense created by the Telecommunications Act of 1996. The amendment, which is proposed to be made to 2G1.2 (Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct), incorporates the amendments already proposed this year to implement section 4 of the Sex Crimes Against Children Prevention Act of 1995.

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

Sex Offenses Against Minors

Chapter Two, Part G (Offenses Involving Prostitution, Sexual Exploitation of Minors, and Obscenity)

1. Synopsis of Proposed Amendment

This is a two-part amendment. First, the amendment implements the directive contained in section 4 of the Sex Crimes Against Children Prevention Act of 1995, which directs the Commission to increase the base offense level for an offense under section 2423(a) of title 18, United States Code, by at least three levels. Second, the amendment addresses 18 U.S.C. 2422(b), a new offense created by section 508 of the Telecommunications Act of 1996. That offense makes it unlawful, through the use of any facility or means of interstate or foreign commerce, including the mail, or within the special maritime or territorial jurisdiction of the United States, to knowingly persuade, induce, entice, or coerce an individual under the age of 18 years to engage in prostitution or any sexual act for which a person may be criminally prosecuted. Currently, § 2G1.2 applies to transporting a person for the purpose of prostitution or prohibited sexual conduct and to persuading, inducing, enticing, and coercing a person to travel for either such purpose. By proposing to make § 2G1.2 applicable to the new offense under 18 U.S.C. 2422(b), this amendment would expand the scope of § 2G1.2 to include an offense that involves promoting prostitution or prohibited sexual conduct through a means other than transportation or travel.

Two options are shown. Each option addresses the issues described in the preceding paragraphs. In an effort to further the Commission's goal of simplifying the operation of the guidelines, Option 2 also consolidates §§ 2G1.1 (Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct) and 2G1.2 (Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct). As proposed under Option 2, the base offense level for offenses covered by § 2G1.2 is reduced from the current level of 16 to a proposed level of 14 in order to effectuate the consolidation of §§ 2G1.2 and 2G1.1 (which currently has a base offense level of 14). However, Option 2 does not reduce the overall offense level for offenses covered by § 2G1.2 because the specific offense characteristic related to the age of the

victim is proposed to be increased by two levels to compensate for the reduction in the base offense level. (That two-level increase is in addition to the three-level increase directed to be made by the Sex Crimes Against Children Prevention Act of 1995, as described above.) Additionally under Option 2, the specific offense characteristics and cross references that now apply only to § 2G1.2 are added to § 2G1.1.

(A) Proposed Amendment—Option 1:
Section 2G1.2 is amended to read as follows:

“§ 2G1.2. Promoting Prostitution

Involving a Minor or Prohibited Sexual Conduct Involving a Minor

“(a) Base Offense Level: [19][20][21]

“(b) Specific Offense Characteristics

“(1) If the offense involved the use of physical force, or coercion by threats or drugs or in any manner, increase by 4 levels.

“(2) If the offense involved a victim under the age of twelve years, increase by 4 levels.

“(3) If the offense involved a victim at least twelve years of age but under the age of sixteen years, increase by 2 levels.

“(4) If (A) the defendant was a parent, relative, or legal guardian of the victim involved in the offense, and the victim was less than eighteen years of age, or (B) the victim involved in the offense was less than eighteen years of age and was otherwise in the custody, care, or supervisory control of the defendant, increase by 2 levels.

“(c) Cross References

“(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a person less than eighteen years of age to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).

“(2) If the offense involved criminal sexual abuse, attempted criminal sexual abuse, or assault with intent to commit criminal sexual abuse, apply § 2A3.1 (Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse).

“(3) If neither subsection (c)(1) nor (c)(2) is applicable, and the offense did not involve promoting

- prostitution, apply § 2A3.2 (Criminal Sexual Abuse of a Minor or Attempt to Commit Such Acts) or § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact), as appropriate.
- “(d) Special Instructions
- “(1) If the offense involved more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the promoting of prostitution or prohibited sexual conduct in respect to each victim had been contained in a separate count of conviction.
- “(2) For the purposes of this guideline—
- “(A) ‘Coercion’ includes any form of behavior that negates the voluntariness of the behavior of the victim.
- “(B) ‘Promoting prostitution or prohibited sexual conduct’ means
- (i) transporting a person for the purpose of prostitution or prohibited sexual conduct, or
- (ii) persuading, inducing, enticing, or coercing a person to travel for the purpose of, or to engage in, prostitution or prohibited sexual conduct.
- “(C) ‘Sexually explicit conduct’ has the meaning set forth in 18 U.S.C. § 2256.
- “(D) ‘Victim’ means a person transported, persuaded, induced, enticed, or coerced to engage in prostitution or prohibited sexual conduct, whether or not the person consented to the prostitution or prohibited sexual conduct.
- “Commentary
- “Statutory Provisions: 8 U.S.C. § 1328; 18 U.S.C. §§ 2421, 2422, 2423(a).
- “Application Notes:
- “1. For the purposes of Chapter Three, Part D (Multiple Counts), each person transported, persuaded, induced, enticed, or coerced to engage in prostitution or prohibited sexual conduct is to be treated as a separate victim. Consequently, multiple counts involving more than one victim are not to be grouped together under § 3D1.2 (Groups of Closely-Related Counts). Special instruction (d)(1) directs that if the relevant conduct of an offense of conviction includes the promoting of prostitution or prohibited sexual conduct in respect to more than one person, whether specifically cited in the count of conviction or not, each such person shall be treated as if contained in a separate count of conviction.
- “2. The enhancement for physical force, or coercion, anticipates no bodily injury. If bodily injury results, an upward departure may be warranted. See Chapter Five, Part K (Departures).
- “3. Coercion, as defined in this guideline, would apply, for example, where the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol.
- “4. Subsection (b)(4) is intended to have broad application and includes offenses involving a victim less than eighteen years of age entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this adjustment, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.
- “5. If the adjustment in subsection (b)(4) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).
- “6. The cross reference in subsection (c)(1) is to be construed broadly to include all instances where the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a person less than eighteen years of age to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.”
- (B) Proposed Amendment—Option 2 (Consolidation of §§ 2G1.1 and 2G1.2): Subpart One of Part G of Chapter Two is amended by striking §§ 2G1.1 and 2G1.2 and inserting the following:
- “§ 2G1.1. Promoting Prostitution or Prohibited Sexual Conduct
- “(a) Base Offense Level: 14
- “(b) Specific Offense Characteristics
- “(1) If the offense involved the use of physical force, or coercion by threats or drugs or in any manner, increase by 4 levels.
- “(2) If the offense involved a victim who has (A) not attained the age of twelve years, increase by [9][10][11] levels; (B) attained the age of twelve years but not attained the age of sixteen years, increase by [7][8][9] levels; or (C) attained the age of sixteen years but not attained the age of eighteen years, increase by [5][6][7] levels.
- “(3) If subsection (b)(2) applies, and (A) the defendant was a parent, relative, or legal guardian of the victim, or (B) the victim was otherwise in the custody, care, or supervisory control of the defendant, increase by 2 levels.
- “(c) Cross References
- “(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a person less than eighteen years of age to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).
- “(2) If the offense involved criminal sexual abuse, attempted criminal sexual abuse, or assault with intent to commit criminal sexual abuse, apply § 2A3.1 (Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse).
- “(3) If the offense did not involve promoting prostitution, and neither subsection (c)(1) nor (c)(2) is applicable, use the offense guideline applicable to the underlying prohibited sexual conduct. If no offense guideline is applicable to the prohibited sexual conduct, apply § 2X5.1 (Other Offenses).
- “(d) Special Instructions
- “(1) If the offense involved more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the promoting of prostitution or prohibited sexual conduct in respect to each victim had been contained in a separate count of conviction.
- “(2) For the purposes of this guideline—
- “(A) ‘Coercion’ includes any form of conduct that negates the voluntariness of the behavior of the victim.
- “(B) ‘Promoting prostitution or prohibited sexual conduct’ means
- (i) transporting a person for the purpose of prostitution or prohibited sexual conduct, or
- (ii) persuading, inducing, enticing, or coercing a person to travel for the purpose of, or to engage in, prostitution or prohibited sexual conduct.
- “(C) ‘Sexually explicit conduct’ has the meaning set forth in 18 U.S.C. 2256.
- “(D) ‘Victim’ means a person transported, persuaded, induced, enticed, or coerced to engage in prostitution or prohibited sexual conduct, whether or not the person consented to the prostitution or prohibited sexual conduct.
- “Commentary

"Statutory Provisions: 8 U.S.C. 1328; 18 U.S.C. 2421, 2422, 2423(a).

"Application Notes:

"1. The enhancement for physical force, or coercion, anticipates no bodily injury. If bodily injury results, an upward departure may be warranted. See Chapter Five, Part K (Departures).

"2. Coercion, as defined in this guideline, would apply, for example, where the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol. In the case of an adult victim, rather than a victim less than eighteen years of age, this characteristic generally will not apply where the alcohol or drug was voluntarily taken.

"3. For the purposes of § 3B1.1 (Aggravating Role), a victim, as defined in this guideline, is considered a participant only if that victim assisted in the promoting of prostitution or prohibited sexual conduct in respect to others.

"4. For the purposes of Chapter Three, Part D (Multiple Counts), each person transported, persuaded, induced, enticed, or coerced to engage in prostitution or prohibited sexual conduct is to be treated as a separate victim. Consequently, multiple counts involving more than one victim are not to be grouped together under § 3D1.2 (Groups of Closely Related Counts). Special instruction (c)(1) directs that if the relevant conduct of an offense of conviction includes the promoting of prostitution or prohibited sexual conduct in respect to more than one person, whether specifically cited in the count of conviction or not, each such person shall be treated as if contained in a separate count of conviction.

"5. Subsection (b)(3) is intended to have broad application and includes offenses involving a victim less than eighteen years of age entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this adjustment, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.

"6. If the adjustment in subsection (b)(3) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

"7. The cross reference in subsection (c)(1) is to be construed broadly to include all instances where the offense involved employing, using, persuading, inducing, enticing, coercing,

transporting, permitting, or offering or seeking by notice or advertisement, a person less than eighteen years of age to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

"8. The cross reference at subsection (c)(3) addresses the unusual case in which the offense did not involve promoting prostitution and neither subsection (c)(1) nor (c)(2) is applicable. In such case, the guideline for the underlying prohibited sexual conduct is to be used, e.g., § 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt to Commit Such Acts) or § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact). If there is no offense guideline for the underlying prohibited sexual conduct, § 2X5.1 (Other Offenses) is to be used."

[FR Doc. 96-6271 Filed 3-14-96; 8:45 am]

BILLING CODE 2210-40-P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995. Since the last list was published in the Federal Register on March 1, 1996, the information collections listed below have been proposed or will require extension of the current OMB approvals. (Call the SSA Reports Clearance Officer on (410) 965-4142 for a copy of the form(s) or package(s), or write to her at the address listed below the information collections.)

1. Annual Earnings Operations Direct Mail Followup—0960-0369. The information collected on forms SSA-L9778, SSA-L9779, SSA-L9780 and SSA-L9781 will be used to determine if the recipients have underestimated their earnings for the current year. This will allow benefits to be withheld if necessary, and will thereby avoid many overpayments. The affected public is beneficiaries who are likely to underestimate their earnings.

Number of Respondents: 400,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 66,667 hours.

2. Medical Report on Adult or Child With Allegation of Human

Immunodeficiency Virus (HIV) Infection—0960-0503. The information on forms SSA-4814 and SSA-4815 is used by the Social Security Administration to determine if an individual claiming to have HIV infection meets the requirements for presumptive disability benefits.

	SSA-4814	SSA-4815
Number of Respondents:	25,000	7,500.
Frequency of Response:	1	1.
Average Burden Per Response:	10 minutes	10 minutes.
Estimated Annual Burden:	4,167 hours	1,250 hours.

Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd., 1-A-21 Operations Bldg., Baltimore, MD 21235

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collection listed below, which was published in the Federal Register on December 29, 1995, has been submitted to OMB.

Coverage of Employees of State and Local Governments, F-20-404M. The information collected in accordance with this regulation is obtained from State governments (or interstate instrumentalities) desiring to obtain Social Security coverage for their employees. The respondents are State governments.

Number of Respondents: 52.

Frequency of Response: 6.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 312 hours.

Written comments and recommendations regarding this information collections should be sent within 30 days of the date of this publication. Comments may be directed to OMB and SSA at the following addresses:

(OMB)
Office of Management and Budget,
OIRA
Attn: Laura Oliven