

The increase in the basis points used for CMOs that exhibit negative effective duration does not affect the margins of the CMOs currently on deposit at PTC because the CMO tranches that would decline in value assuming a one hundred basis point decline in the yield of the underlying Treasury security are interest only ("IO") tranches or tranches which have IO like characteristics. These securities are not currently priced by PTC's pricing vendors and accordingly are assigned a value of zero on PTC's system.⁸ However, PTC anticipates that as additional issues become depository eligible at PTC and PTC's pricing vendors are able to provide prices for such issues, some of these issues may include tranches which are sensitive to a one hundred basis point decline.

PTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁹ and the rules and regulations thereunder because it facilitates the prompt and accurate clearance and settlement of securities transactions and provides for the safeguarding of securities and funds in PTC's custody or control or for which PTC is responsible.

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

PTC does not believe that the proposed rule change imposes any burden on competition.

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

PTC has discussed the proposed margin methodology with its Risk Management Committee, which is comprised of participant representatives. PTC has neither solicited nor received written comments from participants or other interested parties on this proposed rule change.

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

Section 17A(b)(3)(F) of the Act¹⁰ requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the

proposed margin and pricing methodology utilized by PTC for CMOs is consistent with this obligation.

The Commission previously approved PTC's current margin and pricing methodology for CMOs on a temporary basis in order to allow PTC further time to evaluate the methodology and to take steps to address any concerns which existed with respect to the methodology. During the temporary approval period, PTC has provided information to the Commission describing the steps taken by PTC to improve the margin and pricing methodology including finalizing arrangements with a second pricing vendor for daily pricing and stress test analysis. Because PTC believes it has made all the changes that its research and analysis conducted during the temporary approval period revealed needed to be made, PTC has decided to request permanent approval of the margin and pricing methodology.

PTC's margin and pricing methodology helps ensure that in establishing CMO margins, PTC takes into account the unique characteristics of each CMO tranche. Furthermore, PTC's reliance on two pricing sources should provide PTC with timely and accurate price information. The resulting margins established for CMOs that are eligible for deposit or that may become eligible for deposit at PTC should afford PTC sufficient protection in the event it becomes necessary for PTC to borrow against or liquidate these assets to satisfy a participant's debit balance that is not satisfied at the end of the day. In addition, increasing the basis points used in calculating margins for CMOs that exhibit negative effective duration from fifty basis points to one hundred basis points should result in more conservative margins for these securities and thereby should help to limit PTC's risk resulting from fluctuations in the market values of these securities.

PTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds such good cause for so approving the proposed rule change because accelerated approval will allow PTC to continue employing its margin and pricing methodology without disruption of service prior to the expiration of the current temporary approval on April 30, 1996. Furthermore, the Commission did not receive any comment letters during the comment period before it granted temporary approval or during the temporary approval period and does not expect to receive any during the present

comment period. The staff of the Board of Governors of the Federal Reserve System ("Board of Governors") has concurred with the Commission's granting of accelerated approval.¹¹

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 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to file number SR-PTC-96-02 and should be submitted by May 27, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-PTC-96-02) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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UNITED STATES SENTENCING COMMISSION

Amendments to the Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission to Congress of amendments to the sentencing guidelines.

SUMMARY: Pursuant to its authority under section 994(p) of title 28, United States Code, the United States

⁸Since temporary approval for the current CMO margin and pricing methodology was granted, PTC has completed the system enhancements necessary to use and compare data from two pricing vendors. CMO prices are established by defaulting to the lower of the two in the event of any discrepancy.

⁹ 15 U.S.C. 78q-1(b)(3)(F) (1988).

¹⁰ 15 U.S.C. 78q-1(b)(3)(F) (1988).

¹¹ Telephone conversation between John Rudolph, Board of Governors, and Ari Burstein, Division of Market Regulation, Commission (April 15, 1996).

¹² 17 CFR. 200.30-3(a)(12) (1995).

Sentencing Commission, on May 1, 1996, submitted to the Congress amendments to the sentencing guidelines, policy statements, and official commentary together with reasons for the amendments. Pursuant to 28 U.S.C. 994(p), the Commission has specified an effective date of November 1, 1996, for these amendments.

ADDRESSES: Comments should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2-500, South Lobby, Washington, DC 20002-8002, Attn: Public Information.

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

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent agency in the judicial branch of the U.S. 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 periodically to 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). Absent action of Congress to the contrary, the amendments become effective on the date specified by the Commission (i.e., November 1, 1996) by operation of law.

Notice of the amendments submitted to the Congress on April 30, 1996, was published in the Federal Register of February 23, 1996 (61 FR 7037) and March 15, 1996 (61 FR 10835). A public hearing on the proposed amendments was held in Washington, DC, on March 11, 1996. After review of the hearing testimony and additional public comment, the Commission promulgated the amendments set forth below, each having been approved by at least four voting Commissioners.

In connection with its ongoing process of guideline review, the Commission welcomes comment on any aspect of the sentencing guidelines, policy statements, and official commentary.

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

Amendments to the Sentencing Guidelines

Pursuant to section 994(p) of title 28, United States Code, the United States Sentencing Commission hereby submits to the Congress the following amendments to the sentencing guidelines and the reasons therefor. As authorized by such section, the

Commission specifies an effective date of November 1, 1996, for these amendments.

Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary

1. Amendment: Section 2G2.1(a) is amended by striking "25" and inserting "27".

Section 2G2.1(b)(1) is amended to read as follows:

"(1) If the offense involved a victim who had (A) not attained the age of twelve years, increase by 4 levels; or (B) attained the age of twelve years but not attained the age of sixteen years, increase by 2 levels."

Section 2G2.1(b) is amended by adding at the end the following:

"(3) If a computer was used to solicit participation by or with a minor in sexually explicit conduct for the purpose of producing sexually explicit material, increase by 2 levels."

The Commentary to § 2G2.1 captioned "Statutory Provisions" is amended by striking "§ 2251 (a), (b), (c)(1)(B)" and inserting "§§ 2251 (a), (b), (c)(1)(B), 2258 (a), (b)".

Section 2G2.2(a) is amended by striking "15" and inserting "17".

Section 2G2.2(b) is amended by adding at the end the following:

"(5) If a computer was used for the transmission of the material or a notice or advertisement of the material, increase by 2 levels."

The Commentary to § 2G2.2 captioned "Statutory Provisions" is amended by inserting "2258 (a), (b)" after "2252(a)(1)-(3)".

The Commentary to § 2G2.2 captioned "Application Notes" is amended by striking Notes 4 and 5; and by amending Notes 1 and 2 to read as follows:

"1. For purposes of this guideline—
" 'Distribution' includes any act related to distribution for pecuniary gain, including production, transportation, and possession with intent to distribute.

" 'Pattern of activity involving the sexual abuse or exploitation of a minor' means any combination of two or more separate instances of the sexual abuse or sexual exploitation of a minor by the defendant, whether or not the abuse or exploitation (A) occurred during the course of the offense, (B) involved the same or different victims, or (C) resulted in a conviction for such conduct.

" 'Sexual abuse or exploitation' means conduct constituting criminal sexual abuse of a minor, sexual exploitation of a minor, abusive sexual contact of a minor, any similar offense under state law, or an attempt or conspiracy to commit any of the above offenses.

'Sexual abuse or exploitation' does not include trafficking in material relating to the sexual abuse or exploitation of a minor.

" 'Sexually explicit conduct' has the meaning set forth in 18 U.S.C. § 2256.

"2. If the defendant engaged in the sexual abuse or exploitation of a minor at any time (whether or not such abuse or exploitation occurred during the course of the offense or resulted in a conviction for such conduct) and subsection (b)(4) does not apply, an upward departure may be warranted. In addition, and upward departure may be warranted if the defendant received an enhancement under subsection (b)(4) but that enhancement does not adequately reflect the seriousness of the sexual abuse or exploitation involved.

"Prior convictions taken into account under subsection (b)(4) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History)."

Section 2G2.4(a) is amended by striking "13" and inserting "15".

Section 2G2.4(b) is amended by adding at the end the following:

"(3) If the defendant's possession of the material resulted from the defendant's use of a computer, increase by 2 levels."

Reason for Amendment

This amendment implements the congressional directives in section 2 of the Sex Crimes Against Children Prevention Act of 1995, Pub. L. 104-71, 109 Stat. 774, by providing a two-level enhancement for offenses involving the sexual exploitation of minors under sections 2251 and 2252 of title 18, United States Code. The two-level enhancement is provided in the base offense levels under §§ 2G2.1, 2G2.2, and 2G2.4.

This amendment also implements the directive in section 3 of such Act by providing a two-level enhancement for offenses under sections 2251(c)(1)(A) and 2252 of title 18, United States Code, if a computer was used to transmit certain notices or advertisements of material involving minors engaged in sexually explicit conduct or to transport or ship that material. The enhancement in § 2G2.2(b)(5) applies to the transmission of the material or of the notice or advertisement of the material. The enhancement in § 2G2.4(b)(3) applies only if the defendant's possession of the material resulted from the defendant's use of a computer. In addition to these congressionally directed enhancements, the amendment adds a two-level enhancement under § 2G2.1(b)(3) if a computer was used to solicit participation in sexually explicit

conduct by or with a minor for the purpose of producing sexually explicit material, in violation of 18 U.S.C. § 2251(c)(1)(B).

This amendment also addresses several issues in respect to Application Notes 4 and 5 of the Commentary to § 2G2.2. First, the amendment revises the definition of "pattern of activity involving the sexual abuse or exploitation of a minor" to clarify that "sexual abuse or exploitation," for purposes of § 2G2.2(b)(4), requires that the defendant personally had participated in such conduct. The amendment defines "sexual abuse or exploitation" to mean conduct constituting criminal sexual abuse, sexual exploitation, or abusive sexual contact and to exclude trafficking in child pornography. These revisions are consistent with *United States v. Chapman*, 60 F.3d 894 (1st Cir. 1995) and *United States v. Ketcham*, No. 95-5002, 1996 WL 141628 (3d Cir. Mar. 29, 1996), both of which held that the defendant's transportation or distribution of child pornography is not sexual exploitation within the meaning of the "pattern of activity" enhancement in § 2G2.2(b)(4). Second, the amendment clarifies that the "pattern of activity" may include acts of sexual abuse or exploitation that were not committed during the course of the offense or that did not result in a conviction. This revision responds in part to the holding in *Chapman*, 60 F.3d at 901, that the "pattern of activity" enhancement is inapplicable to past sexual abuse or exploitation unrelated to the offense of conviction. The amended language provides that conduct involving the defendant's sexual abuse or exploitation of a minor may be considered even if that conduct did not occur as part of the offense of conviction. Accordingly, the conduct considered for purposes of the "pattern of activity" enhancement is broader than the scope of relevant conduct typically considered under § 1B1.3 (Relevant Conduct). Third, the amendment revises the departure provision of Application Note 5 to specify that an upward departure may be warranted if the defendant (1) did not engage in a "pattern of activity" but nevertheless abused a minor at any time, or (2) engaged in a "pattern of activity" but the enhancement does not adequately reflect the seriousness of the sexual abuse or exploitation. Fourth, the amendment clarifies that prior convictions counted as part of the "pattern of activity" also may be counted as part of the defendant's criminal history under Chapter Four, if

those convictions meet the criteria set forth in the relevant guidelines of that chapter.

The amendment also makes the "Statutory Provisions" of the Commentary to §§ 2G2.1 and 2G2.2 more comprehensive by adding 18 U.S.C. § 2258 (a) and (b) to the list of provisions covered by those guidelines.

2. Amendment: Chapter 2, Part G, Subpart 1 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 had (A) not attained the age of twelve years, increase by 9 levels; (B) attained the age of twelve years but not attained the age of sixteen years, increase by 7 levels; or (C) attained the age of sixteen years but not attained the age of eighteen years, increase by 5 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 Instruction

"(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.

"Commentary

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

"Application Notes:

"1. For purposes of this guideline—

" 'Coercion' includes any form of conduct that negates the voluntariness of the behavior of the victim. Coercion 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 if the drug or alcohol was voluntarily taken.

" 'Promoting prostitution or prohibited sexual conduct' means (A) transporting a person for the purpose of prostitution or prohibited sexual conduct, or (B) persuading, inducing, enticing, or coercing a person to engage in, or travel for the purpose of engaging in, prostitution or prohibited sexual conduct.

" 'Sexually explicit conduct' has the meaning set forth in 18 U.S.C. § 2256.

" 'Victim' means a person transported, persuaded, induced, enticed, or coerced to engage in, or travel for the purpose of engaging in, prostitution or prohibited sexual conduct, whether or not the person consented to the prostitution or prohibited sexual conduct.

"(2). The enactment 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. 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 another victim.

"4. For the purposes of Chapter Three, Part D (Multiple Counts), each person transported, persuaded, induced, enticed, or coerced to engage in, or travel 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). In addition, subsection (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

victim, whether specifically cited in the count of conviction or not, each such victim 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 of 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 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."

Chapter 1, Part A, Subpart 4(b) is amended in the fourth paragraph by striking the third sentence.

Section 3D1.2(d) is amended in the third paragraph by striking "2G1.2,".

Appendix A is amended—

in the line referenced to 8 U.S.C. § 1328, by striking "2G1.2";

in the line referenced to 18 U.S.C. § 2421, by striking "2G1.2";

in the line referenced to 18 U.S.C. § 2422, by striking "2G1.2"; and

in the line referenced to 18 U.S.C. § 2423(a), by striking "2G1.2" and inserting "2G1.1".

Reason for Amendment

This is a three-part amendment. First, this amendment implements the congressional directive in section 4 of the Sex Crimes Against Children Prevention Act of 1995, Pub. L. No. 104-71, 109 Stat. 774, by providing a three-level enhancement for offenses involving the transportation of minors with intent to engage in prostitution or other prohibited sexual conduct under 18 U.S.C. § 2423(a). The three-level enhancement is provided in the specific offense characteristic in subsection (b)(2) related to the age of the victim.

Second, this amendment addresses 18 U.S.C. § 2422(b), a new offense created by section 508 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56. That offense makes it unlawful, in interstate or foreign commerce, including through 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 other prohibited sexual conduct. The amendment brings this new offense within the scope of the consolidated, expanded guideline. As revised, the guideline is broadly applicable to offenses that involve "promoting prostitution or prohibited sexual conduct." That term is defined to encompass conduct covered by the new Telecommunications Act offense as well as conduct previously covered by the guideline; *i.e.*, transporting a person, or inducing a person to travel, for the purpose of prostitution or other prohibited sexual conduct.

Third, this amendment 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) in furtherance of the Commission's goal to simplify the operation of the guidelines. Because the consolidated guideline covers both offenses involving adult victims and those involving minors, a two-level increase is provided in the specific offense characteristic related to the age of the victim to increase the offense level when a minor is involved. The two-level increase is in addition to the three-level enhancement directed to be made by the Sex Crimes Against Children Prevention Act of 1995. In addition, the consolidated guideline defines the term "victim" and incorporates the cross references of § 2G1.2 into the consolidate guideline. The amendment also clarifies that the "Statutory Provisions" in the Commentary of the consolidated

guideline cover offenses under 18 U.S.C. § 2423(a) (but not § 2423b), which is referenced in Appendix A to §§ 2A3.1, 2A3.2, and 2A3.3).

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SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted by July 5, 1996.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW., Suite 5000, Washington, D.C. 20416. Phone Number: 202-205-6629.

SUPPLEMENTARY INFORMATION:

Title: "Evaluation of the Small Business Administration's 7(a) and 504 Loan Programs"

Type of Request: New Information Collection

Description of Respondents: Owners of businesses that received a 7(a) or 504 loan during fiscal year 1990

Annual Responses: 1,000

Annual Burden: 1,450

Comments: Send all comments regarding this information collection to Allan Mandel, Chief, Policy Branch, Office of Borrower and Lender Servicing, Small Business Administration, 409 3rd Street, SW., Suite 8300 Washington, D.C. 20416. Phone Number: 202-205-6488. Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality. Copies of this collection can also be obtained from Allan Mandel.

Jacqueline White,

Chief, Administrative Information Branch.

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