

and, in general, to protect investors and the public interest.

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

The Exchange 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 Exchange consents, the Commission will:

- (a) By order approve the 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-99-14 and should be submitted by March 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-2881 Filed 2-8-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42377; File No. SR-Phlx-99-24]

Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Establishment of a Fee to Members for Receiving On-Line Options Information

February 2, 2000.

On June 29, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to adopt a fee for the transmission to members of option trade information on a real-time trade basis. Notice of the proposed rule change was published on August 12, 1999, in the **Federal Register**, to solicit comments from interested persons.³ On December 28, 1999, the Exchange withdrew the proposed rule change.⁴

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-2966 Filed 2-8-00; 8:45 am]

BILLING CODE 8010-01-M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of finalized policy development agenda.

¹¹ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 41711 (August 5, 1999), 64 FR 44073.

⁴ See Letter from John Dayton, Counsel, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, SEC, dated December 23, 1999.

⁵ 17 CFR 200.30-3(a)(12).

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 proposed, in December 1999, certain priorities as the focus of its policy development work, including amendments to guidelines, policy statements, and commentary, for the amendment cycle ending May 1, 2000. The Commission was reconstituted in November 1999, in the middle of that amendment cycle. Due to the resulting constraints of an abbreviated amendment cycle, the Commission has proposed as its priorities for the amendment cycle ending May 1, 2000 only those items the Commission might be able to conclude by its statutory deadline of May 1.

The Commission published a notice of these proposed priorities in the **Federal Register** on December 8, 1999. See 64 FR 68,715, Dec. 8, 1999. After reviewing public comment received pursuant to this notice, the Commission has decided to limit 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.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

SUPPLEMENTARY INFORMATION: Priorities."The specific policy development issues that comprise the Commission's finalized agenda 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 this 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 will 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 has also identified as a priority the resolution of a number of conflicts among the circuit courts on sentencing guideline issues. See *Braxton v. United States*, 500 U.S. 344 (1991). The Commission, 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, has identified the following circuit conflict issues as priorities for this amendment cycle:

(A) Whether for purposes of downward departure from the guideline range a "single act of aberrant behavior" (Chapter 1, Part A, § 4(d)) includes multiple acts occurring over a period of time. Compare *United States v. Grandmaison*, 77 F.3d 555 (1st Cir. 1996) (Sentencing Commission intended the word "single" to refer to the crime committed; therefore, "single acts of aberrant behavior" include multiple acts leading up to the commission of the crime; the district court should review the totality of circumstances); with *United States v. Marcello*, 13 F.3d 752 (3d Cir. 1994) (single act of aberrant behavior requires a spontaneous, thoughtless, single act involving lack of planning).

(B) Whether the enhanced penalties in § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals) apply only when the defendant is

convicted of an offense referenced to that guideline or, alternatively, whenever the defendant's relevant conduct included drug sales in a protected location or involving a protected individual. Compare *United States v. Chandler*, 125 F.3d 892, 897-98 (5th Cir. 1997) ("First, utilizing the Statutory Index located in Appendix A, the court determines the offense guideline section 'most applicable to the offense of conviction.'") Once the appropriate guideline is identified, a court can take relevant conduct into account only as it relates to factors set forth in that guideline); with *United States v. Clay*, 117 F.3d 317 (6th Cir.), cert. denied, 118 S. Ct. 395 (1997) (applying § 2D1.2 to defendant convicted only of possession with intent to distribute under 21 U.S.C. 841 (but not convicted of any statute referenced to § 2D1.2) based on underlying facts indicating defendant involved a juvenile in drug sales).

(C) Whether the fraud guideline enhancement for "violation of any judicial or administrative order, injunction, decree, or process" (§ 2F1.1(b)(4)(B)) applies to falsely completing bankruptcy schedules and forms. Compare *United States v. Saacks*, 131 F.3d 540 (5th Cir. 1997) (bankruptcy fraud implicates the violation of a judicial or administrative order or process within the meaning of § 2F1.1(b)(3)(B)); with *United States v. Shaddock*, 112 F.3d 523 (1st Cir. 1997) (falsely filling out bankruptcy forms does not violate judicial process since the debtor is not accorded a position of trust).

(D) Whether sentencing courts may consider post-conviction rehabilitation while in prison or on probation as a basis for downward departure at resentencing following an appeal. Compare *United States v. Rhodes*, 145 F.3d 1375, 1379 (D.C. Cir. 1998) (post-conviction rehabilitation is not a prohibited factor and, therefore, sentencing courts may consider it as a possible ground for downward departure at resentencing); with *United States v. Sims*, 174 F.3d 911 (8th Cir. 1999) (district court lacks authority at resentencing following an appeal to depart on ground of post-conviction rehabilitation which occurred after the original sentencing; refuses to extend holding regarding departures for post-offense rehabilitation to conduct that occurs in prison; departure based on post-conviction conduct infringes on statutory authority of the Bureau of Prisons to grant good-time credits.).

(E) Whether a court can base an upward departure on conduct that was dismissed or uncharged as part of a plea

agreement in the case. Compare *United States v. Figaro*, 935 F.2d 4 (1st Cir. 1991) (allowing upward departure based on uncharged conduct) with *United States v. Ruffin*, 997 F.2d 343 (7th Cir. 1993) (error to depart based on counts dismissed as part of plea agreement).

IV. Technical and Conforming Amendments

The Commission expects to consider several minor technical or conforming amendments necessary for maintaining the technical accuracy Guidelines Manual.

Miscellaneous

Reports, proposed amendments, and other information pertaining to the final policy development priorities described in this notice may be accessed through the Commission's website at www.ussc.gov.

The Commission received and considered public comment concerning other issues that the Commission should include in its priorities for this amendment cycle. The Commission may address these issues in the future.

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

Diana E. Murphy,
Chair.

[FR Doc. 00-2984 Filed 2-8-00; 8:45 am]

BILLING CODE 2211-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3236]

Commonwealth of Pennsylvania

Cumberland County and the contiguous counties of Adams, Dauphin, Franklin, Perry, and York in the Commonwealth of Pennsylvania constitute a disaster area as a result of damages caused by a fire that occurred on December 18, 1999 in the Borough of Carlisle. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 24, 2000, and for economic injury until the close of business on October 24, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere: 7.500%

Homeowners without credit available elsewhere: 3.750%

Businesses with credit available elsewhere: 8.000%

Businesses and non-profit organizations without credit available elsewhere: 4.000%

Others (including non-profit organizations) with credit available elsewhere: 6.750%

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere: 4.000%

The numbers assigned to this disaster are 323605 for physical damage and 9G6200 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 24, 2000.

Aida Alvarez,
Administrator.

[FR Doc. 00-2949 Filed 2-8-00; 8:45 am]

BILLING CODE 8025-01-U

OFFICE OF SPECIAL COUNSEL

Privacy Act of 1974; System of Records

AGENCY: Office of Special Counsel.

ACTION: Notice of revised description of Privacy Act system of records.

SUMMARY: The Office of Special Counsel (OSC) published a notice in the *Federal Register* on November 19, 1999, relating to the system of records maintained in connection with the agency's program responsibilities. The notice announced administrative changes to prior system notices, as well as a proposed revision of the system notice for the system of records, by amendment of the description of two existing routine uses, and the addition of a new routine use. This notice revises the description of the system of records as published in November to correct a technical error in the numbering of certain routine uses shown in that notice.

DATES: The revision made by this notice will be effective February 9, 2000.

FOR FURTHER INFORMATION, CONTACT:

Erin M. McDonnell, Associate Special Counsel for Planning and Advice, U.S. Office of Special Counsel, at (202) 653-8971, or the address shown below.

ADDRESSES: U.S. Office of Special Counsel, 1730 M Street, NW, Washington, DC 20036-4505.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 552a(e)(4) and (11), the OSC published a notice appearing at 64 FR 63359 (November 19, 1999), relating to the system of records known as OSC/GOVT-1, OSC Complaint, Litigation

and Political Activity Files. This system of records is maintained in connection with the agency's program responsibilities.

The notice announced administrative changes to prior system notices, to update information about individuals covered by the system, records in the system, authority for maintenance of the system, the system manager, retrievability of records, access controls, and records source categories; to update legal citations; and to make technical corrections. The notice also announced a proposed revision of the system notice for OSC/GOVT-1, by amendment of the description of two existing routine uses, and the addition of a new routine use.

The November 19th notice also advised that the revised and new routine uses would become effective 30 days after publication, unless comments received in writing by the OSC before then warranted further changes. Since the OSC received no comments on the proposed revised and new routine uses, they became effective on December 20, 1999.

Pursuant to 5 U.S.C. 552a(e)(4), this notice is to correct a technical error in the numbering of certain routine uses described in the November 19th notice. Specifically, the routine use identified as "h" inadvertently combined the text of two separate routine uses, which should have been denominated as routine uses "h" and "i."

The description published at 64 FR 63359 (November 19, 1999) of the system of records known as OSC/GOVT-1 is hereby incorporated by reference, and is revised as incorporated to reflect the correct numbering and text of routine uses "h" and "i," as follows:

"h. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit;

i. To disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation, as set forth in OMB Circular No. A-19;"

Dated: February 2, 2000.

Elaine Kaplan,
Special Counsel.

[FR Doc. 00-2876 Filed 2-8-00; 8:45 am]

BILLING CODE 7405-01-P