

result when principal acting as agent orders are sent to and executed at away market centers, the Exchange presently rebates to the Market Maker the transaction fee of \$0.26. The Exchange believes that this rebate is warranted due to the fact a Market Maker acting in this capacity is doing so on behalf of public customer orders and receives no beneficial gain from the transaction. The rebate of the Exchange transaction fee of \$0.26 covers the fees assessed by the Exchange on these trades; it does not cover additional costs a Market Maker incurs in connection with executing the trade. In addition to the Exchange transaction fee, a Market Maker must pay a transaction fee at the away exchange and clearing costs associated with the trade.

To help offset the additional costs associated with principal acting as agent orders that are sent to and executed at away market centers, the Exchange proposes to credit Exchange Market Makers \$0.26 per contract on these transactions. This credit will be in addition to the \$0.26 rebate the Exchange rebates market Makers for these trades. The new \$0.26 credit is designed to offset additional costs associated with sending orders away and might not cover all costs associated with these types of trades. In the event that the total amount the Exchange credits a Market Maker for sending orders away is in excess of the total actual expenses incurred in sending the orders away, the Exchange would be entitled to a reimbursement of the excess credits.<sup>8</sup> Market Maker expenses associated with sending orders away to other market centers will be based on the total aggregate expenses incurred during a calendar month.

In a previous filing (SR-PCX-2006-15),<sup>9</sup> the PCX eliminated the On Line Comparison fee associated with Market Maker transactions. A reference to that comparison fee was left inadvertently in the footnote attached to the Market Maker transaction fee. The Exchange now proposes to remove this reference to reconcile the footnote with the previously effective filing. Removing the reference to the comparison fee at this time will make no substantive change to the Schedule.

<sup>8</sup> The Commission notes that the transaction fees charged by away market centers for principal acting as agent orders executed on away markets are pursuant to pilot programs scheduled to expire on July 31, 2006.

<sup>9</sup> That proposed rule change was filed with the Commission on February 23, 2006 and became effective upon filing. See Securities Exchange Act Release No. 53485 (March 14, 2006).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>10</sup> in general, and section 6(b)(4) of the Act<sup>11</sup> in particular, in that it provides for the equitable allocation of dues, fees and other charges among its OTP Firms, OTP Holders and other persons using its facilities for trading option contracts.

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

The Exchange believes that the proposed rule change will not 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act,<sup>12</sup> and paragraph (f)(2) of Rule 19b-4 thereunder<sup>13</sup> because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>14</sup>

## 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](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2006-19 on the subject line.

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

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> See *supra* note 7.

## 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-PCX-2006-19. 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 such filing also will be available for inspection and copying at 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-PCX-2006-19 and should be submitted on or before April 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris,  
Secretary.

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## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of temporary, emergency amendment to sentencing guidelines, policy statements, and commentary.

**SUMMARY:** Pursuant to the Anabolic Steroid Control Act of 2004, Pub. L. 108-358 (the "ASC Act") and the United States Parole Commission

<sup>15</sup> 17 CFR 200.30-3(a)(12).

Extension and Sentencing Commission Authority Act of 2005, Pub. L. 109-76, the Commission hereby gives notice of a temporary, emergency amendment to the sentencing guidelines, policy statements, and commentary. This notice sets forth the temporary, emergency amendment and the reason for the amendment.

**DATES:** The Commission has specified an effective date of March 27, 2006, for the emergency amendment set forth in this notice.

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

**SUPPLEMENTARY INFORMATION:** The United States Parole Commission Extension and Sentencing Commission Authority Act of 2005 requires the Commission, under emergency amendment authority, to implement section 3 of the ASC Act no later than 180 days after the date of enactment of the United States Parole Commission Extension and Sentencing Commission Authority Act of 2005. Accordingly, the Commission is required to promulgate a temporary, emergency amendment by March 27, 2006.

The temporary, emergency amendment set forth in this notice also may be accessed through the Commission's Web site at <http://www.ussc.gov>.

**Authority:** 28 U.S.C. 994(a), (o), (p), (x); section 105 of Pub. L. 109-9; and Pub. L. 109-76.

**Ricardo H. Hinojosa,**  
Chair.

1. *Amendment:* Section 2D1.1 is amended by redesignating subsections (b)(6) and (b)(7) as subsections (b)(8) and (b)(9), respectively; and by inserting the following after subsection (b)(5):

“(6) If the offense involved the distribution of an anabolic steroid and a masking agent, increase by 2 levels.

(7) If the defendant distributed an anabolic steroid to an athlete, increase by 2 levels.”.

Section 2D1.1(c) is amended in the “\*Notes to Drug Quantity Table” in subdivision (F) by striking “(except anabolic steroids)”; and by adding at the end the following:

“For an anabolic steroid that is not in a pill, capsule, tablet, or liquid form (e.g., patch, topical cream, aerosol), the court shall determine the base offense level using a reasonable estimate of the quantity of anabolic steroid involved in the offense. In making a reasonable estimate, the court shall consider that each 25 mg of an anabolic steroid is one ‘unit’.”.

Section 2D1.1(c) is amended in the “\*Notes to the Drug Quantity Table” by striking subdivision (G); and by

redesignating subdivisions (H) through (J) as subdivisions (G) through (I), respectively.

The Commentary to § 2D1.1 captioned “Application Notes” is amended in the first paragraph of Note 8 by inserting “Interaction with § 3B1.3.—” before “A defendant who”; by striking “enhancement” and inserting “adjustment”; and by adding at the end the following:

“Additionally, an enhancement under § 3B1.3 ordinarily would apply in a case in which the defendant used his or her position as a coach to influence an athlete to use an anabolic steroid.”.

The Commentary to § 2D1.1 captioned “Application Notes” is amended in Notes 19 and 20 by striking “(b)(6)” each place it appears and inserting “(b)(8)”; and in Note 21 by striking “(b)(7)” each place it appears and inserting “(b)(9)”.

The Commentary to § 2D1.1 captioned “Application Notes” is amended by adding at the end the following:

“24. Application of Subsection (b)(6).—For purposes of subsection (b)(6), ‘masking agent’ means a substance that, when taken before, after, or in conjunction with an anabolic steroid, prevents the detection of the anabolic steroid in an individual’s body.

25. Application of Subsection (b)(7).—For purposes of subsection (b)(7), ‘athlete’ means an individual who participates in an athletic activity conducted by (i) an intercollegiate athletic association or interscholastic athletic association; (ii) a professional athletic association; or (iii) an amateur athletic organization.”.

The Commentary to § 2D1.1 captioned “Background” is amended in the ninth paragraph by striking “(b)(6)(A)” and inserting “(b)(8)(A)”; and in the last paragraph by striking “(b)(6)(B) and (C)” and inserting “(b)(8)(B) and (C)”.

*Reason for Amendment:* This amendment implements the directive in the United States Parole Commission Extension and Sentencing Commission Authority Act of 2005, Pub. L. 109-76, which required the Commission, under emergency amendment authority, to implement section 3 of the Anabolic Steroid Control Act of 2004, Pub. L. 108-358 (the “ASC Act”). The ASC Act directed the Commission to “review the Federal sentencing guidelines with respect to offenses involving anabolic steroids” and “consider amending the \* \* \* guidelines to provide for increased penalties with respect to offenses involving anabolic steroids in a manner that reflects the seriousness of such offenses and the need to deter anabolic steroid trafficking and use \* \* \*.”

The amendment implements the directives by increasing the penalties for

offenses involving anabolic steroids. It does so by changing the manner in which anabolic steroids are treated under § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy).

The amendment eliminates the sentencing distinction between anabolic steroids and other Schedule III substances when the steroid is in a pill, capsule, tablet, or liquid form. For anabolic steroids in other forms (e.g., patch, topical cream, aerosol), the amendment instructs the court that it shall make a reasonable estimate of the quantity of anabolic steroid involved in the offense, and in making such estimate, the court shall consider that each 25 mg of anabolic steroid is one “unit”.

In addition, the amendment addresses two harms often associated with anabolic steroid offenses by providing new enhancements in § 2D1.1(b)(6) and (b)(7). Subsection (b)(6) provides a two-level enhancement if the offense involved the distribution of an anabolic steroid and a masking agent. Subsection (b)(7) provides a two-level enhancement if the defendant distributed an anabolic steroid to an athlete. Both enhancements address congressional concern with distribution of anabolic steroids to athletes, particularly the impact that steroids distribution and steroids use has on the integrity of sport, either because of the unfair advantage gained by the use of steroids or because of the concealment of such use.

The amendment also amends Application Note 8 of § 2D1.1 to provide that an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) ordinarily would apply in the case of a defendant who used his or her position as a coach to influence an athlete to use an anabolic steroid.

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## DEPARTMENT OF STATE

[Public Notice 5355]

### 30-Day Notice of Proposed Information Collection: DS 1843 and 1622, Medical History and Examination for Foreign Service, OMB 1405-0068

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of