

Rule 19b-4 thereunder.⁶ At any time within 60 days of the filing of the proposed rule change, as amended, 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.⁷

The Commission notes that under Rule 19b-4(f)(6)(iii),⁸ the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and designate that the proposed rule change become operative immediately to permit implementation of NYSE Rule 123(e) as scheduled on September 10, 2001, which the NYSE believes is consistent with investor protection and the public interest. In particular, the Exchange believes the proposed rule change will enable members to execute bona fide arbitrage orders and orders to offset transactions made in error quickly without having to enter the order into the FESC. The proposed rule will still require that these be entered into the FESC within 60 seconds after the execution of the respective order.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing requirement and designate the proposal immediately operative.⁹ Accelerating the operative date and waiving the pre-filing requirement will permit the Exchange to implement NSYE Rule 123 without undue delay. For this reason, the Commission finds good cause to designate that the proposal become operative immediately.

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 NW., Washington, DC 10549-0609.

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 NYSE. All submissions should refer to File No. SR-NYSE-2001-36 and should be submitted by October 10, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: (A) Notice of policy priorities for amendment cycle ending May 1, 2002; (B) Request for comment on the possible formation of an ad hoc advisory group on organizational guidelines; and (C) Request for comment on the possible formation of an ad hoc advisory group on issues related to the impact of the sentencing guidelines on Native Americans in Indian Country.

SUMMARY: (A) Policy Priorities.—In July 2001, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2002. See 66 FR 128 (July 3, 2001). After reviewing public comment received pursuant to this notice, the Commission has identified its policy priorities for the upcoming amendment cycle. The Commission hereby gives notice of these policy priorities.

(B) Issues Related to the Organizational Guidelines.—The Commission recently has received several letters from individuals and organizations suggesting that the Commission consider proposed changes to the guidelines in Chapter Eight (Sentencing of Organizations). (These

letters are available at the Commission for public review.) In response, the Commission hereby requests comment on the scope, potential membership, and possible formation of an ad hoc advisory group on the organizational sentencing guidelines to consider any viable methods to improve the operation of these guidelines.

(C) Issues Related to the Impact of Federal Sentencing Guidelines on Native Americans in Indian Country.—In June, 2001, the Commission held a hearing in Rapid City, South Dakota, for the purpose of receiving information from interested parties about the impact of the federal sentencing guidelines on Native Americans sentenced in Federal court for offenses traditionally prosecuted under state law. As a result of suggestions made at that hearing and subsequent written submissions, the Commission hereby requests comment on the scope, potential membership, and possible formation of an ad hoc advisory group to consider any viable methods to improve the operation of the federal sentencing guidelines in all areas that have significant Native American Indian populations.

DATE: Public comment should be received by the Commission not later than November 6, 2001.

ADDRESSES: Send comment to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2-500, South Lobby, Washington, DC 20002-8002. Attn: Public Affairs.

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

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States Government, is authorized by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal courts. Section 994 also directs the Commission periodically to review and revise promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. See 28 U.S.C. 994(o), (p).

(A) Policy Priorities for Amendment Cycle May 1, 2002.—As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has 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, 2002. While the Commission intends to address these

⁶ 17 CFR 240.19b-4(f)(6)(iii).

⁷ The Commission notes, however, this proposed rule change has been filed as a one-month pilot.

⁸ 17 CFR 240.19b-4(f)(6).

⁹ For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 17 CFR 200.20-3(a)(12).

priority issues, it recognizes that other factors, such as the enactment of legislation requiring Commission action, may affect the Commission's ability to complete work on all of the identified policy priorities by the statutory deadline of May 1, 2002. The Commission may address any unfinished policy work from this agenda during the amendment cycle ending May 1, 2003.

For the amendment cycle ending May 1, 2002, and possibly continuing into the amendment cycle ending May 1, 2003, the Commission has identified the following priorities: (1) A 15 Year Study (in anticipation of the 15 year anniversary of the federal sentencing guidelines) composed of a number of projects geared toward analyzing the guidelines in light of the goals of sentencing reform described in the Sentencing Reform Act and the statutory purposes of sentencing set forth in 18 U.S.C. 3553(a)(2); (2) in conjunction with the 15 Year Study, an assessment of, and possible guideline amendment proposals for, the following guideline areas: (i) Chapter Two, Part D (Offenses Involving Drugs); and (ii) Chapter Four (Criminal History); (3) implementation of any crime legislation enacted during the first session of the 107th Congress warranting a Commission response; (4) miscellaneous and discreet issues such as offenses involving damage to cultural heritage resources; and (5) the resolution of any conflicts among the circuits related to the operation of the guidelines in the areas identified above.

(B) Issues Related to the Organizational Guidelines.—The sentencing guidelines for organizations found in Chapter Eight (Sentencing of Organizations) were promulgated on November 1, 1991. Approximately 250 to 300 cases per year currently are being sentenced under the organizational guidelines. More important than the number of cases sentenced, the organizational guidelines have had a tremendous impact on the implementation of compliance and business ethics programs over the past ten years. The organizational guidelines prompted a serious reconsideration within the American business community of methods and rationale for improved corporate governance. The Commissioners have been active in speaking at various compliance and ethics seminars and writing articles about the organizational guidelines over the years and are aware of the importance of the organizational guidelines to good corporate citizenship.

Recently, the Commission has received several letters from individuals

and organizations suggesting that the Commission examine the organizational guidelines with a view toward changes that might be made to improve their overall operation. (These letters are available at the Commission for public review.) Changes that have been suggested include, for example: (1) Broadening compliance requirements to include ethics and integrity based systems, (2) developing criteria in § 8A1.2 (Application Instructions—Organizations) that would create a “safe harbor” for reporting without fear of retribution, and (3) fostering a dialogue with interested parties for the purpose of reviewing the organizational guidelines and making further suggestions for change.

In response to the suggestion to foster a dialogue on the organizational guidelines, the Commission is considering forming an ad hoc advisory group of interested persons such as industry representatives, scholars, and experts in compliance and business ethics, which might lead to development of proposals on the organizational guidelines for Commission consideration. See USSC Rule of Practice and Procedure 5.4. The Commission requests comment on (1) the scope, duration, and membership of any such advisory group; (2) the merit of the suggestions from outside parties as described in the preceding paragraph; and (3) any other issues related to the improvement of Chapter Eight.

(C) Issues Related to the Impact of the Federal Sentencing Guidelines on Native Americans in Indian Country.—On June 19, 2001, the Sentencing Commission held a public hearing in Rapid City, South Dakota, in response to the March 2000 Report of the South Dakota Advisory Committee to the United States Commission on Civil Rights, which recommended that an assessment of the impact of the United States sentencing guidelines on Native Americans in South Dakota be undertaken. The Committee, in its report, expressed concern about the impact of the federal sentencing guidelines on Native Americans in Indian Country who are prosecuted in federal court for crimes that otherwise would be brought under state law. The Committee's concerns and recommendations were based on the widespread perception in South Dakota that Native Americans, by virtue of being subject to federal prosecution and sentencing, rather than state prosecution and sentencing, receive harsher sentences under the federal guidelines than they would under a similar state sentence. The purpose of the hearing was to provide the Commission with an

opportunity to hear from various witnesses who have first-hand experience with the process of criminal investigation, prosecution, and sentencing in South Dakota and the federal sentencing guidelines. Representative testimony was received from local judges, prosecution and defense officials, victims groups, as well as Native American tribal leaders. The Commission is aware that Native Americans in other regions similarly impacted by the federal sentencing guidelines may want to express views on these issues.

As a result of suggestions made at that hearing and subsequent written submissions, the Commission is considering forming an hoc advisory group on issues related to the impact of the federal sentencing guidelines on Native Americans in Indian Country. The Commission requests comment on the merits of forming such a group, including comment on the scope, duration, and membership of any such advisory group that may be formed.

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

Diana E. Murphy,

Chair.

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SMALL BUSINESS ADMINISTRATION

[License No.02/27-0604]

KBL Healthcare, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that KBL Healthcare, L.P., 645 Madison Avenue New York, NY 10022, a Federal Licensee under the Small Business Investment Act of 1958, as amended (“the Act”), in connection the financing of a small concern, has sought an exemption under section 312 of the Act and Section 107.730, Financials which Constitute Conflicts of Interest of the Small Business Administration (“SBA”) rules and regulations (13 CFR 107.730 (2000)). KBL Healthcare, L.P. proposes to provide equity security financing to Lumenos, Inc., 1725 Duke Street, Suite 400 Alexandria, VA 22314. The financing is contemplated for technology development, sales and marketing, working capital and general corporate purposes.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because KBL Healthcare Inc., KBL Healthcare Ventures, L.P.,