

individual professional and non-professional subscribers.

This program would only be available to broker-dealers registered under the Act, and would cover all TotalView usage fees with respect to both internal usage and re-distribution to customers with whom the firm has a brokerage relationship.⁴ Non-broker-dealer vendors and application service providers would not be eligible for the enterprise license, as such firms typically pass through the cost of market data user fees to their customers. This would enable firms to incorporate TotalView data into the software applications they make available to their institutional and retail customers, without providing them the opportunity to re-distribute TotalView data in competition with pure vendors.

The enterprise license would cover fees for TotalView data received directly from Nasdaq as well as data received from third-party vendors (e.g., Bloomberg, Reuters, etc.). Upon signing up for the program, the relevant firm would be entitled to inform any third-party market data vendor they utilize (through a Nasdaq-provided form) that, going forward, any TotalView data usage by the broker-dealer may be reported to Nasdaq on a non-billable basis. Such a structure attempts to address a long-standing concern that broker-dealers are over-billed for market data consumed by one person through multiple market-data display devices. At the same time, the proposed billing structure would continue to provide Nasdaq with accurate reporting information for purposes of usage monitoring and auditing.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,⁵ in general, and with Section 15A(b)(5) of the Act,⁶ in particular, in that the incorporation of an enterprise license for user fees under the TotalView entitlement provides for the equitable allocation of reasonable charges among the persons distributing and purchasing this information. Nasdaq believes that the proposed pricing structure would provide meaningful cost controls to brokers, who typically absorb user fees, seeking to broadly distribute TotalView data to their customers, while preventing them from using such a license to gain an

unfair competitive advantage over pure application vendors, who typically pass such costs through. Nasdaq further believes that this rule change would encourage the broader redistribution of the Nasdaq Market Center depth of book order information, thus improving transparency and thereby benefit the investing public.

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

Nasdaq does not believe that the proposed rule change, as amended, would result in 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

Written comments were neither solicited nor received.

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 self-regulatory organization consents, the Commission will:

- A. By order approve such proposed rule change, as amended, or
- B. Institute proceedings to determine whether the proposed rule change, as amended, 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. 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. Please include File Number SR-NASD-2005-051 on the subject line.

Paper Comments

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-051. 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 the filing also will be available for inspection and copying at the principal office of the NASD. 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-NASD-2005-051 and should be submitted on or before July 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Jill M. Peterson,

Assistant Secretary.

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UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed priorities. Request for public comment.

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 is seeking comment on possible priority policy issues for the amendment cycle ending May 1, 2006. **DATES:** Public comment should be received on or before August 15, 2005.

⁴ Distributors who utilize the enterprise license would still be liable for the applicable distributor fees.

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(5).

⁷ 17 CFR 200.30-3(a)(12).

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

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

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) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

While the Commission provides this notice to identify tentative priorities, it recognizes that other factors, most notably changes that may be required as a result of *United States v. Booker*, 543 U.S. ____ (2005); 125 S.Ct. 738 (2005), as well as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all policy issues by the statutory deadline of May 1, 2006.

For the amendment cycle ending May 1, 2006, and possibly continuing into the amendment cycle ending May 1, 2007, the Commission has identified the following tentative priorities:

(1) Implementation of crime legislation enacted during the 108th Congress and the first session of the 109th Congress warranting a Commission response, including (A) the Family Entertainment and Copyright Act of 2005, Public Law 109-9; (B) the Intellectual Property Protection and Courts Amendment Act of 2004, Public Law 108-482; (C) the Anabolic Steroids Act, Public Law 108-358; (D) the Intelligence Reform and Terrorism Reform Act of 2004, Public Law 108-458; and (E) other legislation, authorizing statutory penalties and creating new offenses, that requires incorporation into the guidelines;

(2) Continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on appropriate responses to *United States v. Booker*, including any appropriate guideline changes;

(3) Continuation of its policy work regarding immigration offenses, specifically, offenses under §§ 2L1.1 (Smuggling, Transporting, or Harboring

an Unlawful Alien) and 2L1.2 (Unlawfully Entering or Remaining in the United States), and Chapter Two, Part L, Subpart 2 (Naturalization and Passports), which also may involve the formation of an ad hoc advisory group on immigration offenses;

(4) Continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on cocaine sentencing policy, including the update of Commission research, in view of the Commission's 2002 report to Congress, *Cocaine and Federal Sentencing Policy*;

(5) Review, and possible amendment, of commentary in Chapter Eight (Organizations) regarding waiver of the attorney-client privilege and work product protections;

(6) Resolution of a number of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. § 991(b)(1)(B) and *Braxton v. United States*, 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the federal courts; and

(7) Review and amendment of pertinent guideline provisions to address structural issues regarding the Sentencing Table in Chapter Five, Part A, particularly "cliff-like" effects occurring between levels 42 and 43, and a possible adjustment to the offense level computation in cases in which the offense level exceeds level 43.

The Commission hereby gives notice that it is seeking comment on these tentative priorities and on any other issues that interested persons believe the Commission should address during the amendment cycle ending May 1, 2006, including short- and long-term research issues. To the extent practicable, comments submitted on such issues should include the following: (1) A statement of the issue, including scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to a proposed priority; (2) citations to applicable sentencing guidelines, statutes, case law, and constitutional provisions; and (3) a direct and concise statement of why the Commission should make the issue a priority.

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

Ricardo H. Hinojosa,
Chair.

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Effective Date

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of effective date for goods of Mexico for certain modifications of the NAFTA Rules of Origin.

SUMMARY: In Proclamation 7870 of February 9, 2005, the President modified the rules of origin under the North American Free Trade Agreement (the "NAFTA") incorporated in the Harmonized Tariff Schedule of the United States (the "HTS"). The modifications were made effective with respect to goods of Canada that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2005. The proclamation stated that the modifications with respect to goods of Mexico would be effective on or after a date to be announced in the **Federal Register** by the USTR. The purpose of this notice is to announce that the effective date for the modifications for goods of Mexico is June 15, 2005. The changes were printed in the **Federal Register** of February 14, 2005, Volume 70, Number 29, pages 7611-7630.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Kent Shigetomi, USTR, (202) 395-3412, or kent_shigetomi@ustr.eop.gov.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 6641 of December 15, 1993 implemented the North American Free Trade Agreement (the "NAFTA") with respect to the United States and, pursuant to the North American Free Trade Agreement Implementation Act (the "NAFTA Implementation Act"), incorporated in the Harmonized Tariff Schedule of the United States (the "HTS") the tariff modifications and rules of origin necessary or appropriate to carry out the NAFTA. Section 202 of the NAFTA Implementation Act provides rules for determining whether goods imported into the United States originate in the territory of a NAFTA party and thus are eligible for the tariff and other treatment contemplated under the NAFTA. Section 202(q) of the NAFTA Implementation Act (19 U.S.C. 3332(q)) authorizes the President to proclaim, as a part of the HTS, the rules of origin set out in the NAFTA and to proclaim modifications to such previously proclaimed rules of origin, subject to the consultation and layover requirements of section 103(a) of the NAFTA Implementation Act (19 U.S.C. 3313(a)).