ADDITIONAL TELEMARKETING FRAUD OPTION

<u>Synopsis of Proposed Amendment</u>: The proposed amendment provides a new enhancement for fraud offenses that are committed through mass-marketing. Instead of providing an enhancement specifically for telemarketing fraud, this proposed amendment provides a general enhancement for any fraudulent activity that relies on mass-marketing to perpetrate the offense, whether the offense involves telemarketing fraud, Internet fraud, or other type of fraudulent scheme. While the new enhancement will ensure that similar offenses are punished similarly, the proposed amendment also addresses congressional concern with telemarketing fraud.

Specifically, the proposal is to provide a two-level enhancement "if the offense was committed through mass-marketing." There also is a bracketed option to create a floor offense level of level [14]. With respect to the floor, the Commission may wish to consider what the interaction would be between a floor for "mass-marketing" and the sophisticated concealment floor of level 12, which the Commission adopted at the April 7, 1998 meeting. As presented, the proposed floor of 14 in mass-marketed fraud cases would essentially nullify the impact of the sophisticated concealment floor in cases in which both SOCs apply (although the defendant still would receive a two-level increase for the sophisticated concealment).

Also, the proposed application note provides a definition of "mass-marketing" that is modeled after the statutory definition of telemarketing (18 U.S.C. § 2325), under the assumption that telemarketing is just one form of mass-marketing. However, the proposed definition specifically includes "solicitation by telephone, mail, the Internet, or other means" so that the guideline covers more than just telemarketing (<u>i.e.</u>, mass-marketing by telephone). The proposal also references a fraudulent telemarketing scheme as an example of conduct to which the enhancement would apply.

§2F1.1Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit
Instruments Other than Counterfeit Bearer Obligations of the United
States

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(b) Specific Offense Characteristics

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(7) If the offense was committed through mass-marketing, increase by[2] levels. [If the resulting offense level is less than level [14], increase to level [14].]

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Commentary

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Application Notes:

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19. "Mass-marketing," as used in subsection (b)(7), means a plan, program, promotion, or campaign that is conducted through solicitation by telephone, mail, the Internet, or other means to induce numerous persons to (A) purchase goods or services; (B) participate in a contest or sweepstakes; or (C) invest for financial profit. The enhancement would apply, for example, if the defendant conducted or participated in a telemarketing campaign that solicited numerous elderly individuals to purchase fraudulent life insurance policies.