

“(14) If the offense involved—

(A) A violation of securities law and, at the time of the offense, the defendant was (i) an officer or a director of a publicly traded company; (ii) a registered broker or dealer, or a person associated with a broker or dealer; or (iii) an investment adviser, or a person associated with an investment adviser; or

(B) A violation of commodities law and, at the time of the offense, the defendant was (i) an officer or a director of a futures commission merchant or an introducing broker; (ii) a commodities trading advisor; or (iii) a commodity pool operator, increase by 4 levels.”.

The Commentary to § 2B1.1 captioned “Application Notes” is amended by redesignating Notes 2 through 9 as Notes 3 through 10, respectively; by redesignating Notes 11 through 16 as Notes 13 through 18, respectively; by inserting after Note 1 the following:

“2. Application of Subsection (a)(1).—

(A) ‘Referenced to This Guideline’.—For purposes of subsection (a)(1), an offense is ‘referenced to this guideline’ if (i) this guideline is the applicable Chapter Two guideline determined under the provisions of § 1B1.2 (Applicable Guidelines) for the offense of conviction; or (ii) in the case of a conviction for conspiracy, solicitation, or attempt to which § 2X1.1 (Attempt, Solicitation, or Conspiracy) applies, this guideline is the appropriate guideline for the offense the defendant was convicted of conspiring, soliciting, or attempting to commit.

(B) Definition of ‘Statutory Maximum Term of Imprisonment’.—For purposes of this guideline, ‘statutory maximum term of imprisonment’ means the maximum term of imprisonment authorized for the offense of conviction, including any increase in that maximum term under a statutory enhancement provision.

(C) Base Offense Level Determination for Cases Involving Multiple Counts.—In a case involving multiple counts sentenced under this guideline, the applicable base offense level is determined by the count of conviction that provides the highest statutory maximum term of imprisonment.”; and by striking “10. Application of Subsection (b)(12)(B).—” and inserting “11. Application of Subsection (b)(12)(B).—”.

The Commentary to § 2B1.1 captioned “Application Notes” is amended in Note 4, as redesignated by this amendment, in subdivision (B)(ii)(IV) by striking “or more”.

The Commentary to § 2B1.1 captioned “Application Notes” is amended in

Note 13, as redesignated by this amendment, by striking “(b)(13)” each place it appears and inserting “(b)(14)”;

by striking subdivision (A) and inserting the following:

“(A) Definitions.—For purposes of this subsection:

‘Commodities law’ means (i) the Commodities Exchange Act (7 U.S.C. 1 *et seq.*); and (ii) includes the rules, regulations, and orders issued by the Commodities Futures Trading Commission.

‘Commodity pool operator’ has the meaning given that term in section 1a(4) of the Commodities Exchange Act (7 U.S.C. 1a(4)).

‘Commodity trading advisor’ has the meaning given that term in section 1a(5) of the Commodities Exchange Act (7 U.S.C. 1a(5)).

‘Futures commission merchant’ has the meaning given that term in section 1a(20) of the Commodities Exchange Act (7 U.S.C. 1a(20)).

‘Introducing broker’ has the meaning given that term in section 1a(23) of the Commodities Exchange Act (7 U.S.C. 1a(23)).

‘Investment adviser’ has the meaning given that term in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)).

‘Person associated with a broker or dealer’ has the meaning given that term in section 3(a)(48) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)).

‘Person associated with an investment adviser’ has the meaning given that term in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)).

‘Registered broker or dealer’ has the meaning given that term in section 3(a)(48) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(48)).

‘Securities law’ (i) means 18 U.S.C. 1348, 1350, and the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)); and (ii) includes the rules, regulations, and orders issued by the Securities and Exchange Commission pursuant to the provisions of law referred to in such section.”; and in subdivision (B) by inserting “or commodities law” after “securities law” each place it appears.

The Commentary to § 2B1.1 captioned “Background” is amended in the first paragraph by striking the last sentence.

The Commentary to § 2C1.1 captioned “Application Notes” is amended in Note 2 by striking “Note 2” and inserting “Note 3”.

The Commentary to § 2C1.7 captioned “Application Notes” is amended in

Note 3 by striking “Note 2” and inserting “Note 3”.

The Commentary to § 2J1.1 captioned “Application Notes” is amended in Note 1 by inserting “In General.—” before “Because”.

The Commentary to § 2J1.1 captioned “Application Notes” is amended in Note 2 by inserting “Willful Failure to Pay Court-Ordered Child Support.—” before “For offenses”.

The Commentary to § 2J1.1 captioned “Application Notes” is amended by adding at the end the following:

“3. Violation of Judicial Order Enjoining Fraudulent Behavior.—In a case involving a violation of a judicial order enjoining fraudulent behavior, the most analogous guideline is § 2B1.1. In such a case, § 2B1.1(b)(7)(C) (pertaining to a violation of a prior, specific judicial order) ordinarily would apply.”.

The Commentary to § 2J1.2 captioned “Application Notes” is amended in Note 1 by inserting before the paragraph that begins “Substantial interference” the following:

“Definitions.—For purposes of this guideline:

‘Records, documents, or tangible objects’ includes (A) records, documents, or tangible objects that are stored on, or that are, magnetic, optical, digital, other electronic, or other storage mediums or devices; and (B) wire or electronic communications.”.

The Commentary to § 2J1.2 captioned “Application Notes” is amended in Note 4 by inserting “Upward Departure Considerations.—” before “If a weapon”; by striking “a departure” and inserting “an upward departure”; and by inserting at the end the following:

“In a case involving an act of extreme violence (for example, retaliating against a government witness by throwing acid in the witness’s face), an upward departure would be warranted.”.

Section 2J1.3(a) is amended by striking “12” and inserting “14”.

Appendix A, effective January 25, 2003 (*see* USSC Guidelines Manual Supplement to the 2002 Supplement to Appendix C, Amendments 647 and 648; *see also* this document, Amendment 5), is repromulgated without change.

Reason for Amendment: With this amendment the Commission continues its work to deter and punish economic and white collar crimes, building on its Economic Crime Package of 2001 and subsequent formation in early 2002 of an Ad Hoc Advisory Group on the Organizational Guidelines for sentencing corporations and other organizations. This 2003 amendment also implements directives in sections 805, 905, and 1104 of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204 (the