SECURITIES & COMMODITIES REGULATION
AN ANALYSIS OF CURRENT LAWS AND REGULATIONS AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol.39 No.17 October 4, 2006

SARBANES-OXLEY: BROADER STATUTES, BIGGER PENALTIES

Federal Prosecutors Have Been Given Greater Power and Leverage in the Prosecution of Criminal Violations of the Securities Laws by the Sarbanes-Oxley Act and the Revision of Sentencing Guidelines. The Act Also Gives the SEC Significant New Remedies Against Officers and Directors in Civil Proceedings.

By Thomas A. Hanusik*

The Sarbanes-Oxley Act of 2002[1] (the Act) supplies important new tools to federal prosecutors who enforce the nation's securities laws, while simultaneously expanding the ability of the Securities and Exchange Commission to punish corporate wrongdoers and recoup ill-gotten gains. In addition, amendments to the now advisory United States Sentencing Guidelines, adopted in response to the Act, significantly increase the prospect of a lengthy jail term for those convicted of corporate crimes.

The purpose of this article is to review three facets of the Act: (i) the new securities fraud criminal provisions in Title 18 of the United States Code; (ii) the amendments to the sentencing guidelines for corporate white-collar crimes that were adopted in response to the Act; and (iii) the new and expanded regulatory powers concerning corporate officers and directors conferred upon the SEC. As explained below, Sarbanes-Oxley has changed the landscape for securities fraud investigations and prosecutions by expanding the arsenal of weapons available to both criminal and civil prosecutors. These changes will make it easier for federal prosecutors to bring securities fraud charges. Furthermore, the Act's increased penalty provisions and concomitant amendments to the sentencing guidelines make lengthy jail sentences a stark reality for individuals convicted of white-collar crimes.

CRIMINAL FRAUD STATUTES

Securities Fraud

The Act adds three new statutes to Title 18 that are relevant to the federal criminal securities laws. The first, a general securities fraud statute, provides:

[1] PUB. L. NO. 107-204, 116 Stat. 745 (2002).

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> Whoever knowingly executes, or attempts to execute, a scheme or artifice – (1) to defraud any person in connection with any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(d)); or (2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(d)); shall be fined under this title, or imprisoned not more than 25 years, or both.[2]

Aside from omitting the mailing and interstate wire requirements found in 18 U.S.C. 1341, 1343, respectively, section 1348 goes a long way toward demystifying the formidable maze of statutes and regulations that constitutes the Title 15 body of law under which securities fraud cases have been prosecuted. Practically speaking, section 1348 makes it easier to bring these cases by omitting the willfulness requirement found in the criminal provisions of the Securities and Exchange Act of 1934. This will make securities fraud charges under section 1348 more palatable to federal prosecutors, who have extensive experience charging knowing violations in mail and wire fraud cases. In addition, eliminating the willfulness requirement also removes a potentially confusing jury instruction. Although section 1348 cites Title 15 for jurisdictional purposes, the bottom line is that it will apply to securities frauds committed in connection with the stock of companies that trade on the New York and American Stock Exchanges, as well as companies that are required to file periodic reports with the SEC. The vast majority of publicly traded companies in this country fall within those parameters.

[2] 18 U.S.C. § 1348 (2002).

Another noteworthy characteristic of section 1348(1) is that it omits the Exchange Act requirement that the fraud scheme occur "in connection with the purchase or sale" of a security. Section 1348(1) requires only that the scheme occur "in connection with" any security. In light of the Supreme Court's decision in *SEC v. Zandford*,[3] this change may amount to a distinction without a difference, as the Court in that case held that a scheme that coincides with a purchase or sale of a security satisfies the "in connection with" requirement. Nonetheless, prosecutors have one less hurdle to clear by eliminating the purchase or sale requirement. The broader language of section 1348(1) thus encompasses fraudulent and deceptive practices that utilize pledges of securities and hedging mechanisms, regardless of whether or not there is an actual purchase or sale. In addition, by specifying the scheme to defraud, section 1348(1) will allow federal prosecutors to focus juries on the underlying fraud, rather than a specific transaction that may be incidental to the scheme. Finally, for those cases where defendants use dishonest means to deprive investors of money and property in connection with securities transactions, as in broker churning cases, section 1348(2) retains the purchase or sale requirement.

Section 1348 is also important because it increases the statutory maximum for securities fraud to 25 years in jail. Prior to Sarbanes-Oxley, securities crimes prosecuted under Title 15 carried a statutory maximum of 10 years. Although Sarbanes-Oxley increased the Title 15 maximum to 20 years, section 1348 now provides the longest potential jail term for people convicted of securities fraud.[4]

Attempts and Conspiracies

Another new fraud provision in Title 18 is the attempt and conspiracy statute codified at section 1349. It provides:

> Any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those

[3] *SEC v. Zandford*, 535 U.S. 813 (2002).

[4] *Compare*, 15 U.S.C. § 78ff (2005) and 18 U.S.C. § 1348 (2002).

prescribed for the offense, the commission of which was the object of the attempt or conspiracy.[5]

Section 1349 is important in three respects. First, it is a stand-alone conspiracy statute that does not contain an overt act requirement. Thus, there is one less element of proof than is required for a conspiracy charged under 18 U.S.C. §371. Second, conspiracies charged under section 1349 adopt the maximum penalty for the underlying substantive offense, rather than the five-year maximum in section 371. Notably, section 1349 applies to all conspiracies to violate Chapter 63 offenses, including mail fraud, wire fraud, bank fraud, and the new Title 18 securities fraud statute.[6] Thus, conspiracies charged under section 1349 now carry a 20-year term if the object is mail or wire fraud, a 30-year term if the object is bank fraud or if the conspiracy affects a financial institution, and a 25-year term if the object is securities fraud under section 1348.[7]

In many ways, section 1349 is the unheralded sleeping giant of Sarbanes-Oxley. The combination of a conspiracy statute with fewer elements than section 371 and the current Justice Department (DOJ) charging policy, as embodied in the "Ashcroft Memo" to federal prosecutors, will eventually cause federal prosecutors to turn instinctively to section 1349 when making white-collar fraud charging decisions.[8] Current DOJ policy requires federal prosecutors, with limited exceptions, to charge the **most serious readily provable offense.**[9] Because section 1349 has no overt act requirement, it is more readily provable than section 371,[10] and it provides for longer sentences. Thus, under the Ashcroft memo, federal prosecutors will have little choice but to charge white-collar conspiracies under section 1349.

Finally, section 1349 is important in that it does not entirely displace section 371. If the facts and circumstances of a particular case warrant a five-year cap on exposure to incarceration, such as when a cooperating witness provides substantial assistance to the government, section 371 still provides that cap. In addition, prosecutors cannot charge section 1349 when the object of the conspiracy is something other than a Chapter 63 offense, such as obstruction of justice, or a Title 15 securities fraud offense or reporting violation.

False Certifications of Financial Statements

The final new provision added by Sarbanes-Oxley to Title 18 is section 1350. It addresses certifications of financial statements by a Chief Executive Officer (CEO), Chief Financial Officer (CFO), and equivalent officers, and provides:

> (a) Certification of periodic financial reports. – Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (§ 15 U.S.C. 78m(a) or § 78o(d)) shall be accompanied by a written statement by the chief executive officer and chief financial officer (or equivalent thereof) of the issuer.
>
> (b) Content – The statement required under subsection (a) shall certify that the periodic report containing the financial statements fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act and that information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer.
>
> (c) Criminal penalties. – Whoever (1) certifies any statement as set forth in subsections (a) and (b) of this section knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section shall be fined not more than $1,000,000 or imprisoned not more than 10 years, or both; or (2) willfully certifies any statement as set forth in subsections (a) and (b) of this section knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section shall be fined not more than

[5] 18 U.S.C. § 1349 (2002).

[6] 18 U.S.C. §§ 1341, 1343, 1344 and 1348 (2002).

[7] *Id.*

[8] *See*, Attorney General John Ashcroft Memorandum to All Federal Prosecutors re: Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing, dated September 22, 2003. *Available at*: http://files.findlaw.com/news.findlaw.com /hdocs/docs/doj/ashcroft92203chrgmem.pdf.

[9] The limited exceptions most relevant to white-collar fraud cases include post-indictment reassessments of the strength of a case by the prosecutors and substantial assistance provided by cooperators.

[10] The language of section 1349 is identical to the drug conspiracy statute, 21 U.S.C. § 846 (1988), and almost identical to the money-laundering conspiracy statute, 18 U.S.C. § 1956(h), neither of which requires proof of an overt act for a conviction. *See, Whitefield v. United States*, 125 S. Ct. 687 (2005) (interpreting 18 U.S.C. § 1956(h)(1992)) and *United States v. Shabani*, U.S. 10 (1994) (interpreting 21 U.S.C. § 846(1988)).

$5,000,000, or imprisoned not more than 20 years, or both.[11]

Aside from explicitly requiring that CEOs, CFOs, and similar officers affirmatively certify the accuracy of financial statements of publicly traded companies, section 1350 is notable in that it draws a distinction between knowing violations, which carry a $1,000,000 fine and a 10-year jail term, and willful violations, which carry a $5,000,000 fine and a 20-year jail term.

Since willful conduct has been defined as the voluntary and intentional violation of a known legal duty, such as that imposed under either provision of section 1350, it is difficult to fathom how there could ever be a violation of section 1350 that is knowing but not willful.[12] By distinguishing between knowing and willful violations, Congress has given federal prosecutors wide latitude and leverage in determining whether to seek a 10- or 20-year jail term. Indeed, it appears that Congress has given prosecutors wide latitude to draw distinctions between putative defendants who knowingly certify false financials and those who willfully do so – a distinction with a difference of up to 10 years in jail.

Thus, in practice, section 1350's distinction between knowing and willful violations will allow prosecutors to assess the context of each alleged violation and to consider the level of culpability and responsibility of the putative defendant. For example, the different exposure levels between sections 1350(c)(1) and 1350(c)(2) provide federal prosecutors an opportunity to distinguish between the corporate officer who knows that a company's financial statements are misleading but still certifies them, and the corporate officer who causes the financial statements to be misleading and also certifies them. Similarly, while the use of sub-certifications by lower-level employees has become popular following the enactment of section 1350, and has provided some level of insulation for the corporate officers who sign the section 1350 certifications, the sub-certifications also extend exposure to lower-level employees who knowingly or willfully cause violations of section 1350 by their superiors.

UNITED STATES SENTENCING GUIDELINES

One of the most significant intended changes in the treatment of corporate criminals under Sarbanes-Oxley is in the post-Sarbanes-Oxley amendments to the sentencing guidelines. When Congress passed Sarbanes-Oxley, it directed the United States Sentencing Commission to develop modifications to, *inter alia*, the fraud and deceit guidelines within 180 days. In response, the Commission adopted a series of temporary guideline modifications for fraud cases, which became effective January 25, 2003.[13] These temporary modifications became permanent on April 30, 2003.[14] Following the Supreme Court's decision in *U.S. v. Booker*,[15] the guidelines are no longer mandatory; however, they are still advisory and post-*Booker* sentences must be reasonable. Although the majority of federal circuit courts to address the issue have held that a sentence within a properly calculated guideline range is presumptively reasonable, the recent trend is to refuse to make that presumption.[16]

The net effect of these amendments is that a corporate officer or director who is convicted of securities fraud in a case that has more than 250 victims *and* jeopardizes the solvency of the issuer will see seven additional points added to the calculation of his/her sentencing guidelines score. For example, consider the CEO convicted of securities fraud with a total loss to the company's 300 investors of $500,000 in a case where the company filed for Chapter 11 bankruptcy protection following revelations of the misconduct. As set forth in Appendix A, this hypothetical defendant would catapult from a 78-97 month range under the 2002 guidelines to a 168-210 month range under the post-Sarbanes-Oxley amended guidelines. Both of these ranges increase

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[11] 18 U.S.C. § 1350 (2002).

[12] *Cheek v. United States*, 498 U.S. 192, 201 (1991).

[13] *See*, U.S. SENTENCING COMMISSION SUPPLEMENT TO THE 2002 GUIDELINES MANUAL.

[14] PROTECT ACT, PUB. L. NO. 108-21, 117 Stat. 650 (2003).

[15] *United States v. Booker*, 543 U.S. 220 (2005).

[16] Federal circuits that *do not* treat a sentence within a correctly calculated guideline's range as presumptively reasonable include the First, Second and Third Circuits. *See, e.g., United States v. Fernandez*, No. 05-1596 (2d Cir., April 3, 2006); *United States v. Jiménez-Beltre*, 440 F.3d 514, (1st Cir. 2006) (*en banc*); *United States v. Cooper*, 437 F.3d 324 (3d Cir. 2006). However, federal circuits that *do* treat such sentences as presumptively reasonable include the Fourth, Fifth, Sixth, Seventh, Eighth and Tenth Circuits. *See, e.g., United States v. Kristl*, 437 F.3d 1050, 1054 (10th Cir. 2006); *United States v. Lewis*, 436 F.3d 939, 946 (8th Cir. 2006); *United States v. Green*, 436 F.3d 449, 457 (4th Cir. 2006); *United States v. Williams*, 436 F.3d 706, 708 (6th Cir. 2006); *United States v. Alonzo*, 435 F.3d 551, 554 (5th Cir. 2006); *United States v. Cunningham*, 429 F.3d 673 (7th Cir. 2005). *See also*, United States Sentencing Commission: *Final Report on the Impact of United States v. Booker on Federal Sentencing* (March 2006); available at: http://www.ussc.gov/booker_report/Booker_Report.pdf.

proportionately if further adjustments apply under section 3B1.1 for an aggravating role in the offense.[17]

Securities fraud cases often exceed $500,000 in losses, and most public companies have well in excess of 300 investors (*i.e.*, potential victims); thus, these guideline amendments will have a significant impact on the calculation of a guidelines sentence. Notably, a comment to one of the guideline amendments directs courts to consider "The reduction that resulted from the offense in the value of equity securities or other corporation assets" when making loss determinations at sentencing.[18] Loss amounts are frequently the primary driver of sentencing guideline calculations in securities fraud cases, as they can add anywhere from two points for $5,000 in losses to 30 points for $400,000,000 in losses.[19] Thus, the potential for astronomical guideline calculations due solely to the loss amount that results from a reduction in the value of a company's stock is very real in an era when mid-size companies have market capitalizations (*i.e.*, "the value of equity securities") in the $50 to $100 million range and large companies measure their market capitalization in the billions.

The increase in exposure to jail time also increases pressure to plead guilty and cooperate. For example, under the pre-Sarbanes guidelines, the CEO referenced above who received a three-point reduction for entering a guilty plea and accepting responsibility would have faced jail time of 57-71 months, rather than 78-97 months. Following the Sarbanes-Oxley spawned amendments to the guidelines, the same CEO can reduce his range of possible incarceration from 168-210 months to 121-151 months by accepting responsibility. The pressure to plead guilty and cooperate is even greater when the government offers the possibility of an even lower sentence, either under guidelines section 5K1.1 or pursuant to Rule 35 of the Federal Rules of Criminal Procedure, in exchange for substantial assistance with the investigation and prosecution of others.[20]

The specific Sarbanes-Oxley adjustments to the guidelines are relatively straightforward. The first adjustment changes the base offense level for fraud cases to seven for all crimes that carry a statutory maximum term of 20 years or more.[21] As noted above, most Chapter 63 fraud offenses, including mail, wire, bank, and securities fraud, have statutory maximum periods of incarceration of between 20 and 30 years. Under section 1349, conspiracies to violate Chapter 63 offenses adopt the statutory maximum of the underlying substantive offense. Thus, the increased base offense level will influence most white-collar fraud prosecutions.

The next adjustment is a two-point enhancement that applies in cases where there are more than 250 victims. Under the pre-Sarbanes-Oxley guidelines, cases with more than 50 victims would trigger a four-point upward adjustment to the offense level. The amendments retain that four-point adjustment and add a new six-point adjustment for cases with more than 250 victims, for a net increase of two points in cases with more than 250 victims.[22] Corporate financial fraud cases with fewer than 250 victim shareholders are rarely the subject of a federal prosecution.

The third guideline amendment adds a specific offense characteristic of up to four points to the offense level in cases where the crime substantially endangers the solvency of: (i) a publicly traded company; or (ii) a private company with more than 1000 employees; or (iii) more than 100 victims.[23] However, this amendment will often add only two net points to a guidelines calculation if six points have already been added for cases with more than 250 victims. This is because the amendments provide that the cumulative effect of both sections cannot exceed eight points if the resulting offense level is 24 or higher.[24]

The non-exhaustive list of factors that courts are directed to consider in determining whether a company's financial solvency has been endangered includes: (i) whether the company has become insolvent or suffered a substantial reduction in the value of its assets; (ii) whether the company has filed for bankruptcy; (iii) whether the company's stock or retirement accounts have experienced a substantial reduction in value; (iv) whether the company has substantially reduced its workforce; (v) whether the company has substantially reduced pension benefits; and (vi) whether trading in the company's stock has been halted and/or the stock has

[17] U.S. SENTENCING GUIDELINES MANUAL § 3B1.1 (2002).

[18] U.S. SENTENCING COMMISSION SUPPLEMENT TO THE 2002 GUIDELINES MANUAL § 2B1.1. cmt. n. 2(c)(iv) (2003).

[19] *Id.* at § 2B1.1(b)(1) (2003).

[20] U.S. SENTENCING GUIDELINES MANUAL § 5K1.1 (2005); Fed. R. Crim. P. 35.

[21] *Id.* at § 2B1.1(a)(1) (2003).

[22] *Id.* at § 2B1.1(b)(2)(C) (2003).

[23] *Id.* at § 2B1.1(b)(12)(B) (2003).

[24] *Id.*

been de-listed.[25] Some of these factors are often present in securities fraud prosecutions.

Finally, the Sentencing Commission added a new offense characteristic worth four points for crimes involving violations of the securities laws committed by officers and/or directors of publicly traded companies.[26] Since this is a specific offense characteristic, the net effect for sentencing purposes will be two additional points, as it will cancel out the two-point adjustment for abuse of trust found in guidelines section 3B1.1.[27] However, this adjustment applies to all securities laws violations, including the aforementioned Title 18 statutes and Title 15 violations of the SEC's rules and regulations.[28] In addition, this adjustment will apply to an officer or director convicted under a general fraud statute whose conduct also violates the securities laws.[29] Thus, federal prosecutors will undoubtedly attempt to include this adjustment when negotiating plea agreements that contain guideline stipulations in securities, mail, and wire fraud cases.

SEC ENFORCEMENT POWERS

In addition to the criminal provisions discussed above, the Act also provides significant changes to the SEC's enforcement powers. These new and expanded powers have the potential to alter significantly the direction and progress of a parallel SEC civil investigation, which can, in turn, influence the pace and direction of a criminal case. The changes include: (i) making it easier for the SEC to obtain officer and director bars (O&D); (ii) granting the SEC the ability to seek freezes of extraordinary payments to officers and directors in certain circumstances; and (iii) bestowing upon the SEC new forfeiture powers in situations where earnings restatements result from misconduct.

First, the Act makes it easier for the SEC to bar individuals from being officers and directors of publicly traded companies. Before the Act, the SEC could petition federal district courts to bar individuals from serving as officers and directors when they committed fraud violations under either Section 17(a)(1) of the Securities Act or Section 10(b) of the Exchange Act. The SEC can now seek O&D bars in administrative proceedings, as an alternative to federal district courts, which means the administrative law judges who have specific expertise in securities fraud cases will be making those determinations.[30] In addition, the Act lowered the eligibility threshold for an O&D bar from "substantially unfit" to "unfit."[31] While the precise parameters of this new standard are not entirely clear, it is evident that Congress has reduced the SEC's burden for obtaining an O&D bar. It is also a safe bet that the SEC will attempt to apply the "unfit" standard to a broader range of conduct. Indeed, it is likely that the SEC itself will attempt to define the range of conduct that it deems "unfit" through settled enforcement proceedings that contain agreed-upon O&D bars and are not subject to any judicial review.

Next, the Act enhances the SEC's power to preserve a company's assets for the benefit of defrauded shareholders. Under section 1103 of the Act, the SEC can, in certain circumstances, petition federal courts to freeze extraordinary payments to any director, officer, partner, controlling person, agent, or employee of a company during an investigation.[32] The initial freeze order will last for 45 days, with a 45-day extension available for good cause shown, or an extension until the resolution of a case if the SEC files charges.[33]

Finally, section 304 of the Act also enhances the SEC's enforcement powers. This section applies when a company restates financial results due to "material noncompliance" resulting from "misconduct."[34] In these situations, which generally occur when "accounting regularities" are the cited reason for a restatement, the SEC can force a company's CEO and CFO to forfeit bonuses, as well as profits from trading in the company's stock, that they received within 12 months of the filing that is being restated.[35] Notably, there is no requirement for the SEC to allege or prove that a CEO and/or CFO engaged in the alleged misconduct at issue in order to enforce this new power.

While the SEC's new powers are not available to criminal prosecutors, most securities fraud investigations proceed on parallel criminal and civil tracks, with a high degree of cooperation between the SEC and Department of Justice.[36] Thus, the SEC's new powers are part of the

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[25] *Id.* at § 2B1.1(b)(12)(B), cmt. n. 10(B)(ii) (2003).

[26] *Id.* at § 2B1.1(b)(13) (2003).

[27] *Id.* at § 2B1.1(b)(12)(B), cmt. n. 11(c) (2003).

[28] *Id.* at § 2B1.1(b)(12)(B), cmt. n. 11 (B) (2003).

[29] *Id.*

[30] 15 U.S.C. §§ 77h-1 and 78u-3 (2002).

[31] 15 U.S.C. §§ 77t(e), 78u(d)(2) (2002).

[32] 15 U.S.C. § 78u-3(c) (2002).

[33] *Id.*

[34] 15 U.S.C. § 7243 (2002).

[35] *Id.*

[36] However, improper coordination between the SEC and DOJ has twice resulted in criminal charges being dismissed during the past year.

arsenal of joint law enforcement efforts between the SEC and DOJ.

CONCLUSION

Sarbanes-Oxley has altered how federal prosecutors can and will combat corporate crime. Broader statutes like section 1348, which focus on the scheme to defraud, go a long way toward demystifying the complex maze of securities fraud statutes and regulations. Indeed, Congress's simple act of placing a securities fraud offense in Title 18, in the same chapter as the mail and wire fraud statutes that are the mainstay of federal white-collar prosecutors, will make the investigation and prosecution of complex financial fraud cases far less daunting to them. Increased maximum penalties in the statutes, and concomitant offense characteristic adjustments in the guidelines, whether mandatory or not, likely will induce cooperation at the early stages of an investigation. In addition, new SEC enforcement powers will enhance the impact of parallel investigations by civil and criminal authorities. Taken together, these changes both strengthen the government's hand and increase the risks associated with being a defendant in a securities fraud prosecution. ■

Appendix A

The following table illustrates how the guidelines calculation differs before and after Sarbanes-Oxley for the hypothetical CEO defendant convicted of securities fraud in a case that has more than 250 victims *and* jeopardizes the solvency of the defendant's company:

2002 Guidelines		**Sarbanes-Oxley Amendments:**	
§ 2B1.1(a) base level	6	§ 2B1.1(a) base level	7
§ 2B1.1(b)(1) loss ($500,000)	+14	§ 2B1.1(b)(1) loss ($500,000)	+14
§ 2B1.1(b)(2)(B) (>50 victims)	+4	§ 2B1.1(b)(2)(C) (>250 victims)	+6
§ 2B1.1(b)(8) sophisticated means	+2	§ 2B1.1(b)(8) sophisticated means	+2
	--	§ 2B1.1(b)(12)(B) substantially endangers solvency of (i) a public company, (ii) a company with more than 1000 employees or (iii) more than 100 victims	+2
§ 3B1.3 abuse of position of trust	+2	§ 2B1.1(b)(13) securities fraud by officer/director	+4
Total Offense Level	28	**Total Offense Level**	35
First time offender = 78-97 months		First time offender = 168-210 months	

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See, United States v. Scrushy, 366 F. Supp. 2d 1134 (N.D. Al. 2005); *United States v. Stringer*, 408 F. Supp. 2d 1083 (D.Or. 2006).

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