

- (C) the number of securities involved;
 - (D) the duration of the offense;
 - (E) the number of participants in the scheme (although such a scheme may exist even in the absence of more than one participant);
 - (F) the efforts undertaken to obtain material, nonpublic information;
 - (G) the number of instances in which material, nonpublic information was obtained; and
 - (H) the efforts undertaken to conceal the offense.
2. **Application of §3B1.3.**—Section 3B1.3 (Abuse of Position of Trust or Use of Special Skill) should be applied if the defendant occupied and abused a position of special trust. Examples might include a corporate president or an attorney who misused information regarding a planned but unannounced takeover attempt. It typically would not apply to an ordinary “tippee”.

Furthermore, §3B1.3 should be applied if the defendant’s employment in a position that involved regular participation or professional assistance in creating, issuing, buying, selling, or trading securities or commodities was used to facilitate significantly the commission or concealment of the offense. It would apply, for example, to a hedge fund professional who regularly participates in securities transactions or to a lawyer who regularly provides professional assistance in securities transactions, if the defendant’s employment in such a position was used to facilitate significantly the commission or concealment of the offense. It ordinarily would not apply to a position such as a clerical worker in an investment firm, because such a position ordinarily does not involve special skill. See §3B1.3, comment. (n.4).

Background: This guideline applies to certain violations of Rule 10b-5 that are commonly referred to as “insider trading”. Insider trading is treated essentially as a sophisticated fraud. Because the victims and their losses are difficult if not impossible to identify, the gain, *i.e.*, the total increase in value realized through trading in securities by the defendant and persons acting in concert with the defendant or to whom the defendant provided inside information, is employed instead of the victims’ losses.

Certain other offenses, *e.g.*, 7 U.S.C. § 13(e), that involve misuse of inside information for personal gain also appropriately may be covered by this guideline.

Subsection (b)(2) implements the directive to the Commission in section 1079A(a)(1)(A) of Public Law 111–203.

<i>Historical Note</i>	Effective November 1, 2001 (amendment 617). Amended effective November 1, 2010 (amendment 746); November 1, 2012 (amendment 761); November 1, 2015 (amendment 791).
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§2B1.5. Theft of, Damage to, or Destruction of, Cultural Heritage Resources or Paleontological Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources

- (a) Base Offense Level: 8