UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES LITIGATION	§	Civil Action No. H-01-3624
	§	**(Consolidated)**
This Document Relates To:	§	CLASS ACTION
MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, vs. ENRON CORP., et al., Defendants.	§	CONSOLIDATED COMPLAINT FOR VIOLATION OF THE SECURITIES LAWS
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, vs. KENNETH L. LAY, JEFFREY K. SKILLING, ANDREW S. FASTOW, RICHARD A. CAUSEY, JAMES V. DERRICK, JR.,	§	

[Caption continued on following page.]

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Defendants.

TABLE OF CONTENTS

Page

PREAMBLE 1

OVERVIEW 2

SUMMARY OF COMPLAINT 5

JURISDICTION AND VENUE 51

PARTIES 52

BACKGROUND TO THE CLASS PERIOD 106

CLASS PERIOD EVENTS AND FALSE STATEMENTS 110

DEFENDANTS' SCHEME AND FRAUDULENT COURSE OF BUSINESS 255

ENRON DEFENDANTS' SCIENTER ALLEGATIONS 256

ENRON'S FALSE FINANCIAL STATEMENTS 266

ENRON'S FALSE AND MISLEADING STATEMENTS IN ITS 10-Ks AND REGISTRATION STATEMENTS 329

INVOLVEMENT OF THE BANKS 341

INVOLVEMENT OF THE LAW FIRMS 403

INVOLVEMENT OF ARTHUR ANDERSEN 448

FRAUD-ON-THE-MARKET 485

STATUTORY SAFE HARBOR 485

CLASS ACTION ALLEGATIONS 487

PRAYER FOR RELIEF 498

JURY DEMAND 499

PREAMBLE

The Enron Disaster

Lies. Arrogance. Betrayal.

Start with arrogance. Add greed, deceit, and financial chicanery. What do you get? A company that wasn't what it was cracked up to be.

Fortune, 12/24/01.

Internal Report Cites Extensive Abuse at Enron

Panel puts the blame for the firm's collapse squarely on corporate management, accounting firm, lawyers and the board itself for inadequate oversight.

Los Angeles Times, 2/3/02.

Employee Letter to Enron Chairman/CEO Lay

I am incredibly nervous that we will implode in a wave of accounting scandals.... [T]he business world will consider the past successes as nothing but an elaborate accounting hoax.

* * *

I have heard one manager level employee ... say "I know it would be devastating to all of us, but I wish we would get caught. ***We're such a crooked company***."

Employee Letter to Enron Board

[T]he removal of [Skilling] was ... to correct the wrongdoings of the various management teams at Enron ... (*i.e.*, ***EES's management's ... hiding losses/SEC violations***).... EES ... was losing money on almost all the deals they had booked.... [I]t will add up to over $500MM that EES is losing .... [I]t is closer to $1 Billion.... ***EES has knowingly misrepresented EES[']s earnings. This is common knowledge among all the EES employees*** ...."

OVERVIEW

1. This is a securities class action on behalf of purchasers of Enron Corporation's ("Enron" or the "Company") publicly traded equity and debt securities between 10/19/98 and 11/27/01 (the "Class Period") against:

(a) Enron's top executives and directors (the "Enron Defendants"):

Robert A. Belfer
Norman P. Blake, Jr.
Richard B. Buy
Richard A. Causey
Ronnie C. Chan
James V. Derrick, Jr.
John H. Duncan
Andrew S. Fastow
Joe H. Foy
Mark A. Frevert
Wendy L. Gramm
Kevin P. Hannon
Ken L. Harrison
Joseph M. Hirko
Stanley C. Horton
Robert K. Jaedicke
Steven J. Kean
Mark E. Koenig
Kenneth L. Lay
Charles A. LeMaistre
Rebecca P. Mark-Jusbasche
Michael S. McConnell
Jeffrey McMahon
John Mendelsohn
Jerome J. Meyer
Cindy K. Olson
Lou L. Pai
Paulo V. Ferraz Pereira
Kenneth D. Rice
Frank Savage (Alliance)
Jeffrey K. Skilling
Joseph W. Sutton
John A. Urquhart
John Wakeham
Charls E. Walker
Bruce G. Willison
Lawrence Greg Whalley
Herbert S. Winokur, Jr.

(b) Enron's accountants and affiliated entities and partners and officers therein (collectively, "Andersen"):

Andersen Worldwide, S.C.
Andersen-U.S.
Andersen-India
Andersen-Puerto Rico
Andersen-Cayman Islands
Andersen-Brazil
Andersen-United Kingdom
Joseph F. Berardino
Thomas H. Bauer
Michael L. Bennett
David B. Duncan
Debra A. Cash
Donald Dreyfuss
James A. Friedlieb
David Stephen Goddard, Jr.
Gary B. Goolsby
Michael M. Lowther
Benjamin S. Neuhausen
Michael C. Odom
Richard R. Petersen
John E. Stewart
William E. Swanson
Nancy Temple
Roger D. Willard
Gregory W. Hale
John E. Sorrells
Danny D. Rudloff
Michael D. Jones

Philip A. Randall
C.E. Andrews
Roman W. McAlindon

(c) Law firms that represented Enron and its related entities:

Vinson & Elkins	Kirkland & Ellis

(d) Enron's banks:

JP Morgan	Merrill Lynch
CitiGroup	Bank of America
CS First Boston	Barclays
Canadian Imperial Bank of Commerce	Deutsche Bank
	Lehman Brothers

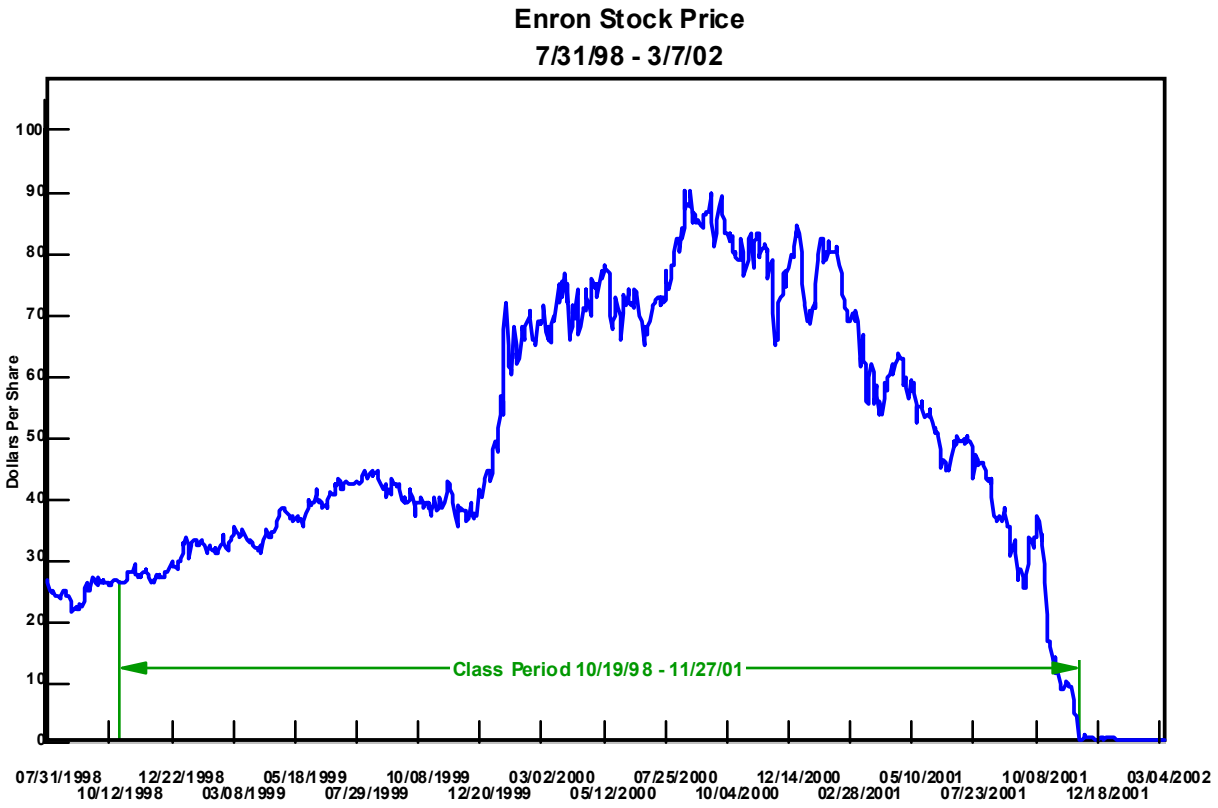
2. Each of the defendants sued for fraud engaged or participated in the implementation of manipulative devices to inflate Enron's reported profits and financial condition, made or participated in the making of false and misleading statements ***and*** participated in a scheme to defraud ***or*** a course of business that operated as a fraud or a deceit on purchasers of Enron's publicly traded securities between 10/19/98 and 11/27/01.[1] Enron extolled the current success and future prospects and earning power of its Wholesale Energy trading business ("WEOS"), its retail Energy Services business ("EES") and its Broadband Content Delivery and Access Trading, *i.e.*, intermediation, business ("EBS"). Both prior to and during the Class Period, Enron reported very strong profits and profit growth and a strong balance sheet which enabled it to maintain an investment grade credit rating. As a result of defendants' wrongful conduct and scheme, Enron's common stock was artificially inflated to as high as $90-3/4 (giving Enron a market capitalization of over $70 billion in 8/00), while Enron's preferred and debt securities also traded at artificially inflated prices. Defendants' scheme and fraudulent course of business was also designed to and did enable Enron to issue billions of dollars of new equity and debt securities to investors during the Class Period.

3. This fraudulent scheme and course of business enabled defendants to pocket ***billions of dollars*** of legal, accounting, auditing and consulting fees, underwriting commissions, interest and

[1] Certain defendants named herein, including Mendelsohn, Meyer, Pereira, Urquhart, Wakeham, Walker, Willison, Winokur, Savage, Alliance Capital Management, Randall, Andrews and McAlindon are not sued for fraud, but rather, only under non-fraud provisions of the 1933 and 1934 Acts. No allegations of fraud are made against or directed at these defendants.

credit facility payments, cash bonuses based on Enron's reported earnings and its stock performance and illegal insider trading proceeds, such that each defendant was significantly enriched. In 10/01, Enron suddenly reported $1 billion (after-tax) in write-offs and a billion dollar shareholder equity writedown. It then restated its previously reported financial results to eliminate hundreds of millions of dollars of previously reported profits and billions more in shareholders' equity. Enron's stock collapsed, its credit rating was downgraded to "junk" and it went bankrupt, as investors realized that the huge profits Enron had reported over the past several years had been grossly inflated and falsified, that Enron had hidden billions of dollars of debt that should have been reported on Enron's balance sheet and that Enron had misrepresented the current success and future prospects of its WEOS, EES and EBS businesses.

4. This fraud was accomplished, in part, through clandestinely controlled partnerships and so-called special purpose entities ("SPEs") that the defendants created, structured, financed and used to do transactions with Enron to inflate its profits and hide its debt and thus perpetuate the fraud by violating Generally Accepted Accounting Principles ("GAAP") and the principles of "fair presentation" of financial results. Virtually all of Enron's top insiders have been kicked out of the Company. The Securities and Exchange Commission ("SEC") and the Department of Justice ("DOJ") are conducting wide-ranging investigations of the Enron fiasco. Enron and Andersen have admitted destroying incriminating evidence and Andersen has been indicted for obstruction of justice. Enron executives and Andersen officials have "***taken the 5th***" and refused to testify because to do so would incriminate them. While the defendants all personally profited from this scheme, public investors – from Enron employees who purchased Enron stock for their 401(k) retirement accounts and lost their life savings, to public and Taft-Hartley pension plans which invested in Enron securities and lost hundreds of millions of dollars – collectively suffered billions of dollars of damages. The chart below shows the rise and collapse of Enron's stock.



SUMMARY OF COMPLAINT

"Quis Custodiet Custodies?"

"But Who Will Guard the Guards Themselves?"

A. The Beginning of Enron

5. Enron was formed in 85 when Kenneth Lay ("Lay") arranged the merger of two pipeline companies and Lay became the Chairman/CEO of the surviving entity. Over the next five years, Enron operated as a stodgy regulated natural gas company, which was burdened by excessive debt and was in danger of being taken over. Between 85-90, Enron's stock performed poorly, trading at between $5-$7 per share and Enron's top executives received very modest annual bonuses and engaged in little if any sales of Enron stock.[2]

6. In 90, Lay decided to attempt to transform Enron into a higher growth, higher profit enterprise and recruited Jeffrey Skilling ("Skilling") and Andrew Fastow ("Fastow") to become

---

[2] All share and per share amounts are adjusted to reflect Enron's 2-for-1 stock split in 8/99.

executives and help him transform Enron into a growth company which engaged in providing and trading wholesale energy resources and services, operating power plants and water supply facilities (WEOS), providing retail energy and management services to companies all over the world (EES) and later building a large broadband fiber optic communication network and also trading in broadband communication access, *i.e.*, "broadband intermediation" (EBS). During 90-96, Enron began to show accelerating growth in revenue and profits and its stock price rose to $23-3/4 in late 96.

7. However, even early on, Lay, Skilling and Fastow began to inflate Enron's results by doing transactions with entities it controlled. In 95, one James Alexander warned Lay that Enron was on a perilous path in this regard. He told Lay he perceived conflicts of interest between Enron and a company Alexander worked for, Enron Global Power and Pipelines, which had been formed by Enron to keep high-debt assets like power plants off Enron's balance sheet. Alexander told Lay that assertions of accounting irregularity were swirling within Enron and that there were stories of deal-makers enriching themselves to the Company's detriment. When confronted, Lay simply said he would have Enron's president look into the matter, ended the discussion and did nothing. Other former Global Power executives agreed that this was an early example of Enron's aggressive financial techniques and a precursor to the later deal-making with controlled entities that led to Enron's collapse:

> "We were the dead canary in the coal mine," Mr. Alexander said.
>
> Accounting principles generally prohibit a company from basing its profits on sales to a subsidiary. But Mr. Alexander's team worked closely with Enron's accounting firm, Arthur Andersen, and its main law firm, Vinson & Elkins, to create a corporate structure that allowed Enron to own 52 percent of the stock of Enron Global Power and Pipelines while maintaining that the unit was independent enough to characterize the sales as profit-making transactions ... Mr. Alexander said. "***How do you have a major interest without having control***?"

New York Times, 2/20/02.

8. However, during mid-97, Enron encountered problems due to a huge ($400+ million) loss on a British natural gas transaction and a $100 million charge due to MTBE transactions, which called into question its trading skills and risk management capabilities and which resulted in analysts downgrading Enron's stock and lowering their forecasts of Enron's future earnings per share ("EPS") growth. Enron's stock price lost one-third of its value by the Fall of 97 and Enron's executives'

performance-based bonuses were slashed. These events were very disturbing to Enron's top executives and Board members who were determined to halt Enron's stock price decline and get the stock to advance back to much higher levels. They knew this could only be accomplished by having Enron report stronger-than-expected financial results going forward, thus enabling it to credibly forecast stronger future revenue and earnings growth. Unfortunately, Enron's actual business operations were not capable of generating such results.

B. Year-End 97 Crisis

9. To make matters worse, in late 97, Enron learned that an entity it had established with an outside investor a few years earlier, Joint Energy Development Incorporated ("JEDI") – and had done transactions with to generate large amounts of the profits Enron had been able to report during 97 – had to be restructured, as the outside investor was going to withdraw from JEDI. This situation created a crisis for Enron's top insiders. Because of the involvement of the outside investor in JEDI, JEDI had been treated as independent of Enron and had ***not*** been consolidated into Enron's financial statements and results. Thus, Enron had been able to engage in transactions with JEDI as an independent third party, recognize revenue and profits from those transactions and not carry JEDI's debt on Enron's books. However, in late 97, unless JEDI could be quickly restructured by having a new, independent investor come forward, ***Enron would have to wipe out all of the profitable transactions it had done with JEDI in 97 – 40% of that year's profits – put JEDI's debt on Enron's balance sheet – some $700 million in debt – and lose the ability to generate profits from similar such deals with JEDI or its successor going forward***.

10. However, Enron ***could not find a legitimate buyer for the outside investor's interest*** in JEDI. So Lay, Skilling and Fastow, with Barclays, Andersen (Enron's accountants), Vinson & Elkins (Enron's lawyers) and Kirkland & Ellis (lawyers picked by Enron to represent Chewco and its investors) quickly formed a new entity called Chewco, which Enron and an Enron executive (Michael J. Kopper ("Kopper")) controlled, to buy the outside investor's interest in JEDI. Chewco ***did not have an outside equity investor willing to commit a 3% stake – the minimum required to enable Chewco and JEDI to be treated as an independent third party. Barclays loaned some $240 million to Chewco, requiring a guarantee from Enron, so that Chewco would invest in JEDI,***

making it possible for transactions between JEDI and Enron to artificially boost Enron's reported results. Barclays also loaned the money to two straw parties (Little River and Big River – which were represented by Kirkland & Ellis) to provide the $11.4 million in funds for the 3% "equity" investment in Chewco. But because Barclays knew that the purported equity investors in Chewco were, in fact, "strawmen" for Enron, Barclays required Chewco to support the purported "equity loans" Barclays made to the two "strawmen" via a $6.6 million reserve paid to Barclays! Because there was no legitimate independent outside investor in Chewco, Chewco was required to have been consolidated with Enron and ***all of Enron's 97 profits generated by transactions with JEDI would have been eliminated***!

11. By forming Chewco at year-end 97, Enron's top insiders avoided a disaster by keeping Enron's previously recorded profits from transactions with JEDI in place, thus inflating Enron's 97 reported profits by $45 million. They also kept as much as $700 million worth of debt off Enron's books, making Enron look much more creditworthy and liquid than it actually was. Chewco was now also positioned to serve as a controlled entity which Enron could use going forward to do non-arm's-length transactions with, creating phony profits for Enron (at least $350 million) and allowing Enron to conceal the true state of its indebtedness by improperly moving debt off its balance sheet and onto the books of Chewco. Between 98 and 01, Enron, its accountants, lawyers and bankers would create numerous other secretly controlled partnerships and entities and use them to generate billions of dollars of additional phony profits for Enron and to conceal billions of dollars of Enron debt by moving it off Enron's balance sheet.

C. The 97-00 Successes – Enron's Stock Soars

12. As Enron reported its ***better-than-expected year-end 97 financial performance***, Enron stock began to move higher, more than recovering all of the ground it had lost in 97. Then, during 98 through mid-01, Enron appeared to evolve into an enormously profitable high-growth enterprise, reaching annual revenues of $100 billion by 00, with net income in excess of $1.2 billion, presenting a very strong balance sheet that entitled it to an investment grade credit rating. As Enron consistently reported ***higher-than-forecasted earnings each quarter***, it forecasted ***continued strong growth going forward***. Enron's financial results from 97 through 6/30/01 are set forth below:

ENRON CORPORATION
Quarterly & Annual Results
(in millions, except EPS)

	1997				
	03/31	06/30	09/30	12/31	Year
Revenues	$ 5,344		$ 3,240	$ 5,800	$ 5,889	$20,273
Net income	$222		($420)	$134	$169	$105
EPS	$.44		($.86)	$.22	$.27	$.16

	1998				
	03/31	06/30	09/30	12/31	Year
Revenues	$ 5,682		$ 6,557	$11,320	$ 7,667	$31,226
Net income	$214		$145	$168	$176	$703
EPS	$.33		$.21	$.24	$.24	$1.00

	1999				
	03/31	06/30	09/30	12/31	Year
Revenues	$ 7,632		$ 9,672	$11,835	$11,049	$40,188
Net income	$122		$222	$290	$259	$893
EPS	$.34		$.27	$.35	$.31	$1.18

	2000				
	03/31	06/30	09/30	12/31	Year
Revenues	$13,145		$16,886	$30,007	$40,751	$100,789
Net income	$338		$289	$292	$347	$1,266
EPS	$.40		$.34	$.34	$.41	$1.47

	2001	
	03/31	06/30
Revenues	$50,129	$50,060
Net income	$425	$404
EPS	$.49	$.45

13. By 01, Enron was accounting for 25% of all U.S. energy trades and had become the 7th largest corporation in the U.S. As a result of its apparent success, Enron's stock price continued to accelerate, ultimately climbing to as high as $90-3/4 per share in late 8/00, giving Enron a market capitalization of over $70 billion – one of the largest in the world. The Company was repeatedly cited in financial and academic circles as one of the world's most innovative companies and success stories of modern capitalism, with Enron's top executives being praised for their skill, creativity and entrepreneurial and financial ability

14. Enron and its bankers consistently stressed the success of Enron's wholesale and retail energy operations, its international prospects and operations, its broadband content delivery and intermediation businesses, its strong financial condition and earnings, and its prospects for continued strong earnings growth:

(a) Throughout 98 and 99, as Andersen certified Enron's record annual profits and very strong financial position, Enron, it lawyers and Enron's banks stated:

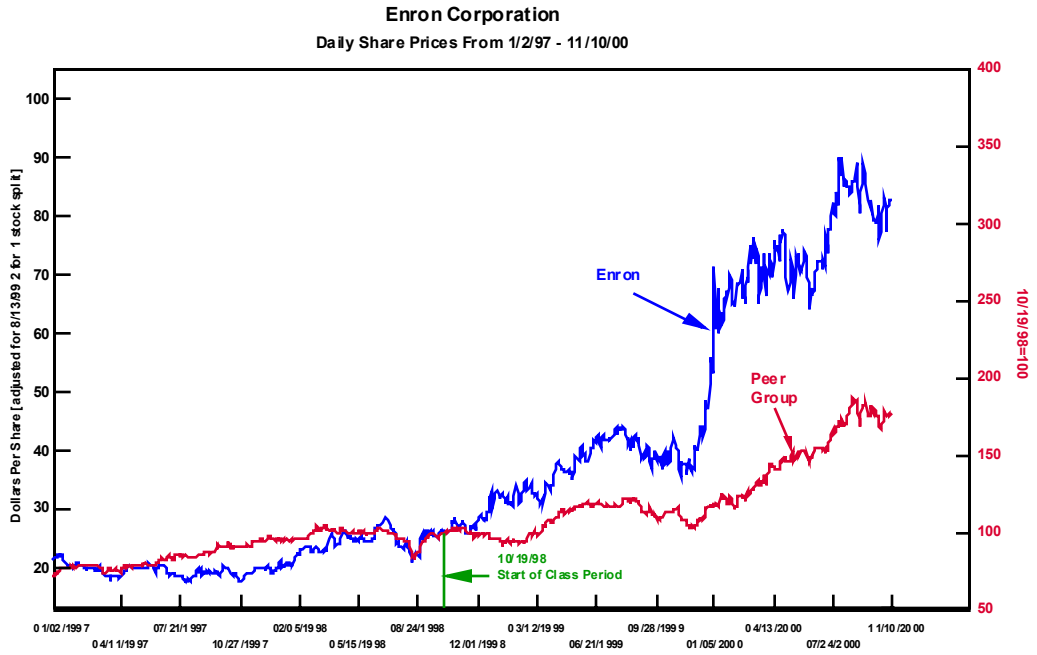
- Enron's strong results were due to the success of all of its business lines.
- Enron had a leading position in each of its businesses. Enron had an extremely strong franchise position.
- Wessex Water would be accretive to Enron's business now and a $20 billion business in five years. Azurix Corp. was becoming a major global water company.
- International projects would drive major earnings growth for Enron. The Dabhol, India power project would contribute to earnings in 99 and beyond.
- WEOS's business remained strong.
- EES was exceeding expectations for contracts and profitability. EES was adding billions in new contracts and would be profitable by 4thQ 00.
- Enron was optimistic about its broadband business. EBS was firing on track.
- Enron's tremendous competitive advantages enabled it to achieve strong EPS growth.
- Enron was very well managed and knew how to manage and mitigate risk. Enron had effectively used off-balance sheet non-recourse financing. Enron had a strong balance sheet. Enron was a master of risk management.
- No other company offered such impressive sustainable growth.
- Enron was hitting on all eight cylinders. Enron's outlook was excellent. Enron was very optimistic.
- Enron was a global powerhouse, with EPS growth to exceed 17%. Enron would maintain strong earnings growth for years.

(b) During 00, as Andersen certified Enron's record annual profits and financial position, Enron, with the participation of its lawyers and its banks stated:

- Enron's strong financial results were due to strong results in all operations.
- Enron had very strong momentum. Its new trends were sustainable and would accelerate.
- Enron's business was booming. All its operations were gaining momentum.
- Investors were about to see breakout performance of EES and rapid growth and development of EBS.
- EES's new contracts and profitability were accelerating. EES had the potential to double Enron's size in a few years.
- EBS broadband trading was accelerating. The market was larger than expected, and would reach $100 billion in a few years with 3%-4% margins.

- Enron/Blockbuster video-on-demand ("VOD") deal a "Killer Opp." Unparalleled quality of service. Contract worth over $1 billion. VOD to rollout nationally in 01. All components in place. VOD had solid technology and platform.
- Enron's WEOS merchant investments were protected through hedging.
- Enron had monumental earnings potential over the next five years. Enron was well managed and a pioneer in global energy. Enron was never in better shape. Enron was very optimistic about the continued strong outlook for the Company.
- Growth and strong earnings were why investors should buy Enron stock.

15. As a result of Enron's strong EPS, the positive statements about its business, and the forecasts of continuing strong earnings growth, Enron's common stock was a very strong performer, while its debt and preferred securities also traded at high prices, reflecting Enron's apparent strong financial condition and investment grade credit rating. Enron stock soared to its all-time high of $90-3/4 on 8/23/00. The stock continued to trade at these high levels for months – at $90-3/8 in mid-9/00, $89-15/16 in late 9/00, $88-11/16 in 10/00 and $83-13/16 in 11/00, as shown below:



16. This apparent success drove Enron's stock price to its all-time high and kept its preferred and debt securities trading at high prices. It also enabled Enron to credibly forecast strong revenue and profit growth for the next several years. In combination, these favorable factors gave Enron ready access to the capital markets by which defendants, working together, raised billions of dollars of short-term financing for Enron via the commercial paper market and billions of new long-

term capital to fund Enron's rapidly expanding businesses by selling newly issued Enron securities to public investors.

17. However, the apparent success of Enron was a grand illusion – a false picture created by manipulative devices and contrivances – a scheme to defraud and a wrongful course of business by defendants that operated as a fraud and deceit on the purchasers of Enron's publicly traded securities. Defendants' scheme was accomplished by Enron, Enron's insiders, Enron's accounting firm, Andersen, Enron's general counsel, Vinson & Elkins and Kirkland & Ellis, law firms picked by Enron to help structure and manipulate financial transactions and provide purportedly independent representation to the SPEs, and several banks, including J.P. Morgan Chase & Co. ("JP Morgan"), CitiGroup, Inc. ("CitiGroup"), Credit Suisse First Boston ("CS First Boston"), Merrill Lynch & Co. ("Merrill Lynch"), Canadian Imperial Bank of Commerce ("CIBC"), Deutsche Bank AG ("Deutsche Bank"), Bank of America Corp. ("Bank America"), Barclays PLC ("Barclays") and Lehman Brothers Holding, Inc. ("Lehman Brothers"), who collectively pocketed hundreds of millions of dollars a year from Enron – which by 97-98 had become the ***golden goose of Wall Street – while Enron's insiders pocketed over 2 billion dollars from sales of their Enron stock and bonuses due to Enron's reported record earnings and its strong stock performance***.

18. By 97-98, Enron was a hall of mirrors inside a house of cards – reporting hundreds of millions of dollars of phony profits each year, while concealing billions of dollars of debt that should have been on its balance sheet, thus inflating its shareholder equity by billions of dollars. Enron had turned into an enormous Ponzi scheme – the largest in history – constantly raising money from public offerings of its securities or those of related entities to sustain itself, while appearing to achieve successful growth and profits. But, because most of Enron's reported profits were being generated by phony, non-arm's-length transactions and improper accounting tricks – including the misuse and abuse of "mark-to-market" accounting techniques to accelerate the recognition of hundreds of millions of dollars of profits to ***current periods*** from transactions in which Enron was only entitled to receive ***cash over many future years*** (if ever) – Enron was cash starved. Yet to continue to report ***growing*** profits, Enron was forced to not only continue to engage in such phony transactions and improper accounting tricks, ***but to accelerate the number and size of such***

transactions it engaged in, which created a vicious cycle only further exacerbating Enron's need to obtain cash financing from these transactions. To make matters worse, Enron had capitalized entities it controlled, and was doing phony deals with, with shares of Enron common stock and Enron ***had agreed to issue millions of shares of its stock to these entities if Enron's stock price declined below certain so-called "trigger prices***." Because of the triggers and the way Enron capitalized the SPEs, it was absolutely vital that Enron's stock continue to trade at high levels and that Enron maintain its "investment grade" credit rating, otherwise defendants' scheme would unravel.

19. Enron's investment grade credit rating was indispensable to enabling it to get counterparties to do huge trading transactions with it – transactions others would not do unless assured of Enron's creditworthiness. Since Enron's trading of energy resources was the core of its WEOS business, any downgrade of its credit rating would have disastrous consequences for its core business operation. This investment grade credit rating gave Enron access to the commercial paper market – a market reserved for America's largest and most creditworthy corporations – so that it could borrow billions of dollars to maintain its liquidity and finance its capital-intensive business. Enron's access to the commercial paper market also meant that Enron's $3 billion commercial paper back-up credit line, arranged by the lead banks (JP Morgan and CitiGroup) with participating banks, would not be drawn down upon, thus limiting those banks' financial exposure to Enron. It also meant that Enron and its banks could easily sell debt securities to public investors to raise long-term capital, using the proceeds to reduce its short-term commercial paper and other bank debt. Finally, Enron's investment grade credit rating was critical to the scheme, as only Enron's insiders and its banks knew, because under the terms of the partnerships/SPE deals, ***if Enron's debt was downgraded to below investment grade, the debt of those entities that they had told the securities markets was non-recourse as to Enron would become recourse to Enron, which could cause the house of cards to topple***. As Enron's CFO stated in a 10/01 conference call, "***We understand that our credit rating is critical to both the capital markets as well as our counterparties***." Earlier, Fastow stated to *CFO Magazine*, "***My credit rating is strategically critical***." ***In 10/99, Skilling said "Retaining a high investment-grade rating is critical to the success of our energy franchises .... If we were downgraded, we could lose critical market share in North America***."

20. By 97-98, ***Enron had become completely dependent on maintaining its investment grade credit rating and a high stock price so that Enron could continue to have access to the capital markets to borrow billions in commercial paper and to enable it to periodically raise hundreds of millions of dollars of new longer term capital it needed to repay its commercial paper debt and the short-term loans it was receiving from its banks to sustain its business operations, and so the stock issuance "triggers" would not be hit which would force Enron into a death spiral***. To secure financing for the entities Enron controlled and was using to structure manipulative devices to improperly boost its reported profits, Enron had agreed to issue massive amounts of its common stock or otherwise make payments to those entities if Enron's common stock fell below certain so-called "trigger" levels – $83, $81, $79, $68, $60, $57, $52, $48, $34 and $19 per share – ***and to become liable for the debt of those entities if Enron lost its investment grade credit rating***. Some of the "trigger" prices are listed below:

TRIGGER PRICES

SPE	TRIGGER PRICE
Azurix (a)	$19
Azurix (b)	$19
LJM2	$48-$52
Osprey Trust Osprey I	$60
Talon Raptor I	$81 $57.50
Timberwolf Raptor-II	$79
Bobcat Raptor-IV	$83 $68
Marlin Trust I Marlin Capital II	$34

D. The Partnerships and SPEs

21. To manipulate and thus falsify Enron's financial condition and inflate its reported results, Enron, Andersen, Vinson & Elkins, Kirkland & Ellis and several of Enron's banks engaged in a series of purported "partnership" and "related party" transactions, including those described

below. Many of the entities Enron used to falsify its financial results were known as SPEs. A public company that conducts business with an SPE may treat that SPE as if it were an independent entity ***only*** if it does not control the SPE. At a bare minimum, two conditions must be met: (i) an owner independent of the company must make an equity investment of ***at least 3% of the SPE's assets, and that 3% must remain at risk throughout the transaction***; and (ii) ***the independent owner must exercise control of the SPE***.

22. Prior to 97, Enron was a partner in JEDI. Because the 3% outside equity and independent control conditions were met in JEDI, Enron was not required to consolidate JEDI into its financial statements, and Enron thus recorded its share of profits from JEDI on its income statement but did ***not*** show JEDI's debt on its balance sheet. However, in late 97, Enron had to quickly find a buyer for its partner's interest in JEDI, as the partner wanted to sell its interest. Otherwise, Enron would have to consolidate JEDI into its financial statements, ***which would wipe out much of its 97 reported profits and put millions of dollars of debt back on its balance sheet***. Unfortunately, Enron could not find a party willing to pay for its former partner's 50% interest in JEDI by year-end. So Enron, Vinson & Elkins and Kirkland & Ellis quickly formed a new partnership managed by an Enron executive – called "Chewco" – to purchase the third party's interest. Because Enron was unable to locate an independent outside investor to quickly buy the 50% interest in JEDI, Barclays financed ***Chewco's purchase of the JEDI interest with debt, not equity. Thus, Chewco/JEDI was not a valid SPE meeting the requirements for non-consolidation. Notwithstanding, Enron did not consolidate Chewco/JEDI into Enron's financial statements during 97-01 and used Chewco/JEDI to generate false profits from 97 through 01***.

23. In 99, Enron, Vinson & Elkins, Andersen, certain of Enron's bankers, and Kirkland & Ellis (a law firm recruited by Enron to purportedly represent certain partnerships Enron controlled (the LJM entities – LJM 1 and LJM 2) so they would appear to be separately represented but which were, in fact, beholden to and controlled by Enron), created and then entered into numerous business transactions with two ***LJM partnerships which Enron and Enron's CFO Fastow controlled. Over the next few years, defendants engaged in a series of transactions – which were, in fact, manipulative devices – between Enron and the LJM partnerships and LJM SPEs which resulted***

in Enron inflating its reported financial results by more than a billion dollars – at the same time enriching Fastow and his friends and several of Enron's bankers who were allowed to invest in the LJM2 partnership – by tens of millions of dollars. The reason for establishing these partnerships was that they would permit Enron to accomplish transactions it could not otherwise accomplish with an independent entity, by providing Enron with a buyer of assets that Enron wanted to sell. The LJM1 and LJM2 transactions were structured, reviewed and approved by Andersen, Vinson & Elkins, Kirkland & Ellis, the Enron Defendants and certain of Enron's bankers, which also helped create and finance the LJM partnerships and these transactions.

24. One of the primary manipulative devices used to falsify Enron's financial results during the Class Period was LJM2, which was formed in 10/99 and secretly controlled by Enron and used to help create numerous SPEs (including the "Raptors") which defendants used to engage in transactions to artificially inflate Enron's profits while concealing billions of dollars in debt that should have been included on Enron's balance sheet. Defendants knew that because LJM2 was going to be utilized to engage in transactions with Enron where Enron insiders would be on both sides of the transactions, the LJM2 partnership would be extremely lucrative – ***a deal that was virtually guaranteed to provide huge returns to LJM2's early investors as the Enron Ponzi scheme went forward***. In fact, Fastow's dual role by which he could self-deal on behalf of the LJM2 partnership with Enron's assets was so important ***that investors in LJM2 were assured that they did not have to make any additional capital contributions if Fastow's dual role ended***.

25. Because the LJM2 partnership was potentially so lucrative to investors in that private entity, Enron's top insiders and Merrill Lynch decided that in funding LJM2, they would ***allow certain favored investment banks and high-level officers of those investment banks and other favored Merrill Lynch clients to invest in LJM2 because they knew the investment was virtually guaranteed to produce exceptional returns as the Enron Ponzi scheme continued***. In fact, the offering memorandum for the LJM2 partnership by which Enron and Merrill Lynch brought investors into the partnership – ***which was not a public document*** – contained an invitation to benefit from the insider self-dealing transactions that LJM2 would engage in. It stressed the "***unusually attractive investment opportunity***" resulting from LJM2's connection to Enron. It

emphasized Fastow's position as Enron's CFO, and that LJM2's day-to-day activities would be managed by Enron insiders Fastow, Kopper, and Ben Glisan, Enron's Treasurer. It explained that "***[t]he Partnership expects that Enron will be the Partnership's primary source of investment opportunities***" and that it "***expects to benefit from having the opportunity to invest in Enron-generated investment opportunities that would not be available otherwise to outside investors.***" It specifically noted that Fastow's "***access to Enron's information pertaining to potential investments will contribute to superior returns." In addition, investors were told that investors in a similar Fastow controlled partnership (JEDI) that had done deals with Enron like the ones LJM2 would do had tripled their investment in just two years and that overall returns of 2,500% to LJM2 investors were actually anticipated***. In short, the non-public offering memorandum was an invitation to join in the benefits of self-dealing transactions with Enron. Enron's bankers and the top executives of those banks were permitted to invest in LJM2, ***as a reward to them for their ongoing participation in the scheme – a sure thing for them***.

26. It was indispensable to defendants' scheme that LJM2 be formed before year-end 99 because of the need to use it as a vehicle to consummate some transactions with Enron before year-end 99 to create huge profits for Enron in the 4thQ 99 so that Enron could meet and exceed its forecasted 99 earnings. However, as had been the case with Chewco at year-end 97, there was tremendous time pressure and Merrill Lynch could not raise the money from outside investors in LJM2 in time to fund LJM2 by year-end 99 with sufficient capital to enable it to do the desperately needed transactions with Enron. So, in an extraordinary step, in 12/99, Enron, Fastow, Kopper, Andersen, Vinson & Elkins and Kirkland & Ellis, Enron's banks and bankers (JP Morgan, CIBC, Deutsche Bank, CS First Boston, Lehman Brothers and Merrill Lynch), knowing that LJM2 was going to be an extraordinarily lucrative investment anyway, created documentation that enabled the banks to advance virtually 100% of the monies needed to initially fund LJM2, *i.e.*, many times more than their allocated shares in 12/99. Then, after LJM2 was fully funded in 00 and other investors' money flowed into LJM2, those banks' initial "over-funding" in 12/99 was adjusted for in subsequent capital contributions to LJM2.

27. To ensure that LJM2 could be an effective instrumentality of defendants' scheme to manipulate Enron's reported profits and financial condition and enable Enron to conceal the true extent of its debt, LJM2 needed bank financing. So JP Morgan initially provided a $65 million line of credit to LJM2 – later, increased to $120 million with CS First Boston doing the lending – to facilitate and finance LJM2's illicit deals and manipulative devices with Enron. ***In addition, JP Morgan and CitiGroup administered all the financial affairs of LJM2, i.e., profit distributions and capital calls, and were completely knowledgeable about the details of LJM2's deals, finances and distributions***.

28. The reason the banks put up virtually all the money to pre-fund LJM2 in 12/99 was that they knew Enron doing the 99 year-end deals with the LJM2 and its SPEs was indispensable to Enron avoiding reporting a very bad 4thQ 99 – which would have caused its stock to plunge. These vital year-end 99 deals included:

(a) ***Collateralized Loan Obligations ("CLOs")***. ***On 12/22/99***, Enron pooled purchaser CLO rights and sold the lowest-rated tranche to Whitewing LLP (an Enron affiliate) and LJM2. Whitewing loaned LJM2 the money to purchase its interest in the CLOs. Enron secretly guaranteed Whitewing's investment and loan to LJM2. This transaction allowed Enron to record the sale of millions of dollars in the 4thQ 99 to an entity that should have been consolidated.

(b) ***Nowa Sarzyna (Poland Power Plant)***. ***On 12/21/99***, Enron sold LJM2 a 75% interest in the Nowa Sarzyna power plant. Enron had tried to sell this interest by year-end to an independent buyer but could not find an independent buyer in time, so it used LJM2, which paid $30 million. This transaction moved millions of dollars of debt off Enron's balance sheet. This was a sham transaction. The debt financing required Enron to maintain ownership of at least 47.5% of the equity until the project was completed. However, the lender ***granted a waiver*** of this until 3/31/00, at which time Enron and Whitewing reacquired LJM2's equity interest and repaid that loan.

(c) ***MEGS, LLC***. ***On 12/29/99***, Enron sold LJM2 a 90% equity interest in MEGS, a natural gas system in the Gulf of Mexico. This allowed Enron to avoid consolidating the asset at year-end 99, avoiding millions of dollars of debt on Enron's balance sheet. Enron repurchased LJM2's interest in MEGS in early 00.

(d) ***Yosemite***. ***On 12/29/99***, Enron purportedly sold certificates in Yosemite to LJM2, however, in fact, this transaction did not occur until 2/28/00. The transaction was made to appear to occur at year-end 99 to reduce Enron's interest in Yosemite from 50% to 10% so Enron would not have to disclose its ownership of these certificates in Enron's 99 financial statements and that, in effect, Enron owned some of its own debt. On 12/29/99, Condor (an affiliate of Whitewing), which was controlled by Enron, loaned the $35 million to LJM2 to buy the certificates. On 12/30/99, LJM2 transferred the certificates to Condor, satisfying the one-day loan.

29. After LJM2 was formed and JP Morgan, CitiGroup, CS First Boston, CIBC, Merrill Lynch, Lehman Brothers, Bank America, Deutsche Bank and/or their top executives had secretly been permitted to invest in LJM2 to the tune of some $150 million, each of these banks continued to issue very positive analyst reports on Enron. Each of these reports contained "boilerplate" disclosures like:

> We may from time to time have long or short positions in any buy and sell securities referred to herein. The firm may from time to time perform investment banking or other services for, or solicit investment banking or other business from, any company mentioned in this report.

These boilerplate disclosures did not change after these banks and/or their top executives became huge investors in LJM2. The failure to disclose the LJM2 investments of these banks and/or their top executives made their "boilerplate" disclosure false and misleading and concealed from the market the very significant and serious conflict of interests which Enron and the banks knew would have cast serious doubts on the objectivity and honesty of those banks' analyst reports and disclosed that the banks or their executives had compromising ties to and serious conflicts of interest regarding Enron.

30. This blatant self-dealing by Enron's banks during the Class Period has not gone unnoticed:

> Many institutional investors declined to buy into LJM2 because of Fastow's conflict of interest. But some of the world's biggest institutions took a piece. Among them ***were Citigroup, Credit Suisse Group, Deutsche Bank, J.P. Morgan Chase, and Lehman Brothers.***
>
> ***What were they thinking? Much of the world's financial community turned out to be willing enablers of Enron. No wonder "Wall Street credibility" is fast becoming an oxymoron. Investors are angry***....

* * *

> ***It is increasingly clear that Wall Street has known for years that many corporations had wildly exaggerated earnings, but it didn't tell the investing public. Some on the Street may be guilty of worse. Take the case of Enron Corp. and Merrill Lynch & Co. Merrill executives helped create the LJM2 Enron partnership and attracted institutional investors. As many as 100 of Merrill's own top executives put their personal money into the deal. Why? Because Enron's chief financial officer, Andrew S. Fastow, would run it, and he promised enormous returns.... Fastow's glaring conflict of interest, which should have stopped the Merrill executives, actually acted as an incentive to them: "A. Fastow's dual role creates advantages for the fund and Enron," said the Merrill Lynch prospectus sent to a select group of potential investors.***

Business Week, 2/11/02. As reported by *Bloomberg* on 2/5/02:

> "In this case, the Enron banker at each of the firms probably went back and said, '***This is a sweetheart deal and we can make a lot of money, Enron is a huge player in this business and they have access to some juicy trades***,'" [a professor of finance at New York University and a former partner at Goldman, Sachs & Co.] said. "***The bankers wanted to suck up some of the juice***."

According to *The Washington Post* on 3/22/02:

> **Vast LJM2 Returns Lured Partners**
>
> The ... confidential LJM2 promotion ***promised returns of 30 percent or more a year, and promoters suggested the actual returns could be even higher***. Fastow, for example, estimated in confidential reports to the LJM2 partners obtained by The *Washington Post* that rates of return on investments ***with Enron reached as high as 2,500 percent***.
>
> Enron's closeness to LJM2 was reinforced not just by Fastow's role, but by an appearance by Enron then-President Jeffrey Skilling at an LJM2 partnership meeting in the fall of 2000.
>
> In a Feb. 6, 2001, letter to investors, Fastow recounted a successful year with "deal flow higher than originally expected" and the projected returns "***far in excess of the targeted 30%***."
>
> The partnership still had nearly $400 million in assets in early January ....

31. Not only did these favored investors in LJM2 get a promise of superior returns when LJM2 was formed, they actually ***witnessed*** a series of extraordinary pay outs from the Raptor SPEs which LJM2 controlled over the next two years – securing hundreds of millions of dollars in distributions from the Raptors to LJM2 and ***then to themselves*** – cash generated by the illicit and improper transactions Enron was engaging in – *i.e.*, the manipulative devices – with the Raptors to falsify Enron's financial results. Thus, the banks and bankers who were partners in LJM2 ***were not only knowing participants in the Enron scheme to defraud, they were economic beneficiaries of***

it. Had the Enron Ponzi scheme continued to operate for the full life of the LJM2 partnership, Enron's banks would have achieved the stupendous returns they were promised – measured in thousands of percent. And these actual and potential payments from LJM2 were on top of the huge advisory fees, underwriter fees, interest and loan commitment fees these banks were already getting from Enron and would continue to get if the Enron scheme continued.

32. From 6/99 through 6/01, Enron entered into numerous transactions with the LJM partnerships. Enron sold assets to LJM that it wanted to get off its books on terms that no independent third party would ever have agreed to. ***The transactions between the LJM partnerships and Enron or its affiliates occurred close to the end of financial reporting periods to artificially boost reported results to meet forecasts Enron and other participants in the scheme had been making***. For instance, near the end of the 3rd and 4thQ 99, Enron sold interests in seven assets to LJM1 and LJM2 in transactions structured, reviewed and approved by Andersen, Vinson & Elkins, Kirkland & Ellis and certain of Enron's banks. The transactions permitted Enron to conceal its true debt levels by removing the assets from Enron's ***balance sheet and, at the same time, record large gains. However, (i) as it had agreed in advance it would do, Enron bought back five of the seven assets after the close of the financial reporting period; (ii) the LJM partnerships made large profits on every transaction, even when the asset they had purchased actually declined in market value; and (iii) those transactions generated "earnings" for Enron of $229 million in the second half of 99 out of total earnings for that period of $549 million. In three of these transactions where Enron ultimately bought back LJM's interest, Enron had agreed in advance to protect the LJM partnerships against any loss. Thus, the LJM partnerships functioned only as vehicles to accommodate defendants in the manipulation, falsification and artificial inflation of Enron's reported financial results, while enriching the LJM investors***.

33. One "hedging" transaction with LJM1 in 6/99 involved Rhythms NetConnections ("Rhythms") stock owned by Enron, ***to "hedge" Enron's huge gains in Rhythms stock and enable Enron to create a huge profit. Enron transferred its own stock to the SPE in exchange for a note. But if the SPE were required to pay Enron on the "hedge," the Enron stock would be the source of payment. Other "hedging" transactions occurred in 00 and 01 and involved SPEs known as***

the "Raptor" vehicles. These were also structures, funded principally with Enron's own stock, that were intended to "hedge" against declines in the value of certain of Enron's merchant investments. These transactions were not economic hedges. They actually were manipulative devices devised to circumvent accounting rules. The economic reality was that Enron never escaped the risk of loss, because it had provided the bulk of the capital with which the SPEs would pay Enron. The Enron Defendants, Andersen, Vinson & Elkins, Kirkland & Ellis and Enron's banks used these contrivances and manipulative devices to inflate Enron's reported financial results. In 99, Enron recognized income of over $100 million from the Rhythms' "hedging" transaction. ***In the last two quarters of 00, Enron recognized pre-tax earnings of $530 million on several transactions with the Raptor entities*** out of reported pre-tax earnings of $650 million. These ***"earnings" from the Raptors' manipulative contrivances accounted for more than 80% of the total***!

34. Hedging Enron's investments with the value of Enron's stock created an enormous and unusual motive for the participants in the Enron scheme to keep Enron stock trading at inflated levels. This was because if the value of the investments fell at the same time as the value of Enron stock fell, the SPEs would be unable to meet their obligations and the "hedges" would fail. This happened in late 00 and early 01 when the Raptor SPEs lacked sufficient credit capacity to pay Enron on the "hedges." By 11/00, Enron had entered into derivative transactions with the Raptors with a notional value of over $1.5 billion. Enron's accounting department prepared a daily tracking report on the performance of the Raptors. In 12/00, Enron calculated its net gain (and the Raptors' corresponding net loss) on these transactions to be slightly over $500 million. Enron could recognize these gains – offsetting corresponding losses on the investments in its merchant portfolio – only if the Raptors had the capacity to make good on their debt to Enron. If they did not, Enron would be required to record a "credit reserve." Such a loss would defeat the very purpose of the Raptors, which was to shield Enron's financial statements from reflecting the change in value of its merchant investments.

35. As year-end 00 approached, two of Enron's Raptor SPEs were in danger of coming unwound as they lacked sufficient credit capacity to support their obligations, let alone continue to engage in similar transactions with Enron. If something were not done to prevent the unwinding of

these SPEs, Enron would have to take a multi-million dollar charge against earnings which would expose the prior falsification of Enron's financial results and result in Enron's stock plunging, more and more of the stock issuance "triggers" would begin to be hit, and a vicious fatal down-cycle would kick in. Therefore, with the participation of Andersen, Vinson & Elkins, Kirkland & Ellis and certain of Enron's banks, Enron restructured and capitalized the Raptor SPEs at year-end 00 via artificial transactions which transferred rights ***to even more shares*** of Enron stock to these entities in exchange for notes, creating ever-increasing pressure on Enron and the other participants in the scheme to support Enron's stock price. This artifice enabled Enron to avoid recording a huge credit reserve for the year ending 12/31/00.

E. Abuse of Mark-to-Market Accounting

36. In addition to falsifying its financial results by engaging in transactions with SPEs that it secretly controlled, Enron engaged in several other accounting tricks and manipulations to falsify its financial results during the Class Period. Chief among these was the misuse and abuse of "***mark-to-market accounting***" (also known as "fair value accounting") whereby Enron would compute the purported economic value or profit it would ultimately obtain on a multi-year contract, discount that to present value and recognize the entire "mark-to-market" profit in the current period. Unless Enron's expected profit on the transaction was truly hedged, Enron was required in each following quarter to recompute or readjust the profit computation to adjust for changing economic values. "Mark-to-market" accounting was appropriate only where Enron had a long-term track record which gave it the ability to accurately estimate and forecast future values (as was true with certain aspects of Enron's wholesale energy business). However, Enron misused and abused mark-to-market accounting ***throughout its entire business to grossly inflate its reported revenues and profits during the Class Period***, a tactic furthered by the fact that Enron managers willing to engage in such falsifications were able to obtain larger bonuses based on the inflated values. In Enron's wholesale energy business this was done by assigning unrealistic values to wholesale energy transactions which inflated current period income. In Enron's new retail energy services operations where Enron had no long-term track record to justify the use of mark-to-market accounting, Enron nevertheless consistently utilized mark-to-market accounting to record huge current period profits on long-term,

highly speculative retail energy risk-management contracts which, in fact, Enron had no basis to project a profit on and in fact knew would likely result in losses. Finally, in Enron's broadband business – also a new business where Enron had absolutely no track record which would justify the use of mark-to-market accounting – Enron utilized mark-to-market accounting to generate hundreds of millions of dollars of phony current period profits in several transactions – the most notable of which was the Blockbuster/Enron Video-On-Demand ("VOD") joint venture. Enron not only misused and abused mark-to-market accounting to initially value multi-year transactions to generate inflated current period profits, it also, when reviewing those computations on a quarterly basis as it was required to do, consistently ***increased*** the estimated value of the transaction even though subsequent data revealed ***a reduction of the estimated value of the transaction, a practice known within the Company as "moving the curve***."

F. Enron Energy Services ("EES")

37. The falsification of Enron's financial statements was not limited to the illicit partnership and SPE transactions. While Enron's wholesale energy business was the largest single contributor to its profits on an ongoing basis, consistently reporting strong profit growth due to defendants' accounting tricks and manipulations, defendants were also telling investors that an area of tremendous growth for Enron was its retail energy services business – EES – whereby Enron purportedly undertook to manage the energy needs of corporate consumers for multi-year periods in return for fees to be paid over a number of years. Enron presented this business as achieving tremendous success during the Class Period by constantly signing new multi-million or even billion dollar contracts which allowed it to exceed Enron's internal forecasts and, later, that this division had turned profitable in the 4thQ 99 and was achieving substantial gains in its profitability thereafter.

38. However, in fact, EES was actually losing hundreds of millions of dollars. This was because in order to induce large enterprises to sign long-term energy management contracts and "jumpstart" this business so it could appear to obtain the huge contract volumes Enron was promising, Enron was entering into energy management contracts which it knew would likely result in huge losses. Worse yet, many of these contracts required Enron to make large up-front expenditures for more efficient energy equipment, etc., which only served to exacerbate Enron's ever-

increasing cash shortfalls. However, by the misuse and abuse of mark-to-market accounting, Enron grossly overvalued the ultimate value of these contracts and created greatly inflated current period profits from transactions which generated little, if any, current period cash, and which Enron, its accountants and lawyers knew would likely actually result in long-term losses. In order to conceal the true nature of the large, multi-million dollar losses being suffered by EES, Enron moved those losses over into its much larger wholesale energy operation and covered up the losses there by the abuse of mark-to-market accounting and phony hedging transactions with SPEs. As a letter written in 8/01 to Enron's Board by an EES manager stated:

> One can only surmise that the removal of Jeff Skilling was an action taken by the board to correct the wrongdoings of the various management teams at Enron .... (*i.e.*, ***EES's management's ... hiding losses/SEC violations***).
>
> * * *
>
> ... [I]t became obvious that EES had been doing deals for 2 years and was losing money on almost all the deals they had booked.
>
> * * *
>
> ... [I]t will add up to over $500MM that EES is losing and trying to hide in Wholesale. Rumor on the 7th floor is that it is closer to $1 Billion.... [T]hey decided ... to hide the $500MM in losses that EES was experiencing.... ***EES has knowingly misrepresented EES[']s earnings. This is common knowledge among all the EES employees, and is actually joked about. But it should be taken seriously***.

G. Enron Broadband ("EBS")

39. Another purported growth area of Enron's business was its broadband services business, which consisted of building out an 18,000-mile fiber optic network which Enron was constructing and engaging in trading access to Enron's and others' fiber optic cable capability, *i.e.*, "***Broadband Intermediation***." Enron presented ***both parts*** of its broadband business as poised to achieve and later as actually achieving huge success, reporting that its fiber optic network was being and had been successfully constructed, was state of the art and provided unparalleled quality of service, and that its broadband trading business was succeeding and achieving much higher trading volume and revenues than expected – *i.e.*, "***exponential growth***."

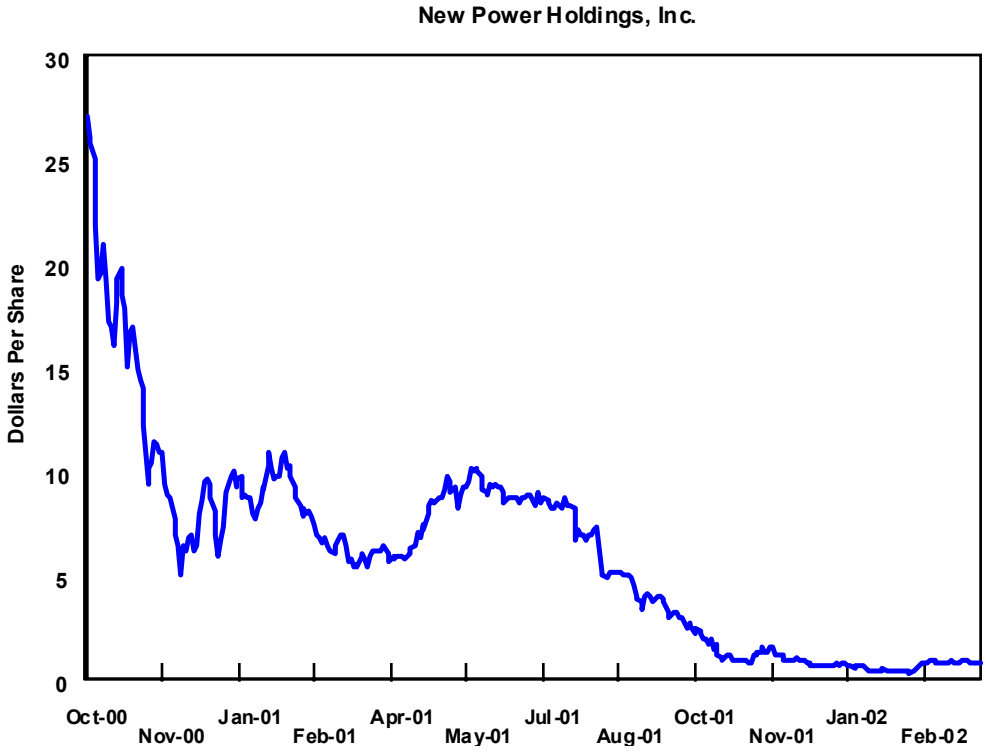
40. Another example of the purported success of Enron's broadband content business was its joint venture with Blockbuster Entertainment, announced with great fanfare in 7/00. Enron

presented this 20-year agreement as having a billion dollar value, that it was a first-of-its-kind agreement whereby consumers would obtain video-on-demand content to be provided by Blockbuster in their home as if they were watching the movie on their own VCR, and that this incredible advance in technology was made possible due to the ***high quality of Enron's fiber optic network***. Abusing mark-to-market accounting, with the help of CIBC, which purportedly invested in the deal ***while secretly getting a no-loss guarantee from Enron***, Enron recognized an astonishing $110+ million profit on this deal in the 4thQ 99 and 1stQ 00, even though the project was nothing more than a failed pilot project – failing in its test markets because Enron did not have the technology to deliver the product as represented – which was unable to go forward because Blockbuster had not yet obtained and could not obtain the legal right to deliver movies from movie studios in a digital format, the only format which could be utilized for VOD.

41. Just eight months after announcing this contract with great fanfare and just weeks after representing that testing of the system in four cities had ***succeeded*** and that the service was being launched nationwide, Enron was forced to abandon the venture due to the failure of Enron's technology and the inability of Blockbuster to obtain the ability to provide content in digital format. But Enron did not reverse the huge profits it had secretly recorded and improperly reported on this transaction earlier, for to do so would have not only exposed its ongoing abuse and misuse of mark-to-market accounting, but also would have crushed Enron's stock at a time when Enron and the other participants in the scheme were desperately attempting to support Enron's then falling stock price so that it would not fall below certain trigger prices in the SPE agreements which would obligate Enron to pay off investors in the SPEs. CIBC did not force Enron to honor its secret guarantee against losses, as it knew to do so would undermine Enron's fragile financial condition, but rather, carried it as part of its overall exposure to Enron. After CIBC became an investor in the Blockbuster VOD joint venture with Enron and received its secret guarantee, CIBC refused to disclose its economic relationship with Enron or its affiliates, continuing to use the same "boilerplate" disclosures in its analyst reports on Enron, concealing its investment and resulting conflicts of interest.

H. New Power

42. Another example of how Enron, Vinson & Elkins, Kirkland & Ellis, Andersen and CIBC falsified Enron's reported results is the New Power transaction, including the New Power IPO, by which Enron improperly recognized $370 million in profits in the 4thQ 00. In 00, Enron owned millions of shares of New Power stock – then a private company – and controlled New Power. If Enron could take New Power public and create a trading market in its stock, then Enron could recognize a profit on the gain in value on its shares by "hedging" that gain via yet another non-arm's length transaction with the LJM2 entity. In the 4thQ 00, Enron desperately needed to create profits to perpetuate the Ponzi scheme. Enron and its bankers, CS First Boston, CitiGroup and CIBC, did the huge New Power IPO – 27.6 million shares at $21 per share in 10/00. After the IPO, Enron continued to hold 13.6 million shares of New Power common stock and warrants to purchase 42 million more shares. With the participation of Vinson & Elkins, Andersen and CIBC, in a deal secretly structured before the IPO, Enron quickly moved to create a huge phony profit using LJM2. Immediately after the New Power IPO, Enron, Vinson & Elkins, Kirkland & Ellis, Andersen and CIBC created an SPE called Hawaii 125-0. CIBC (and several other of Enron's banks) made a "loan" of $125 million to Hawaii 125-0, but received a "total return swap" guarantee that was supposed to protect CIBC and the other banks against ***any loss*** from Enron. Enron transferred millions of its New Power warrants to Hawaii 125-0 to "secure" the banks' loan and thus created a huge $370 million "profit" on the purported gain on the New Power warrants made possible by the New Power IPO. Hawaii 125-0 simultaneously supposedly "hedged" the warrants with another entity created and controlled by Enron called "Porcupine." To supposedly capitalize Porcupine, LJM2 put $30 million into Porcupine to facilitate the so-called hedge of the New Power warrants, but, one week later, Porcupine paid the $30 million back to LJM2 plus a $9.5 million profit – leaving Porcupine with no assets. During 01, New Power stock fell sharply, as the chart below shows:



This collapse in New Power's stock converted Enron's huge gain on its New Power equity holdings into a huge loss early in 01 – a loss of about $250 million – which Enron, Vinson & Elkins, Kirkland & Ellis and Andersen agreed to conceal and did conceal until 10/01 – when Enron shocked the markets by revealing a $1 billion write-off and $1 billion reduction in shareholders' equity

I. Dark Fiber Swaps

43. In late 9/01, as Enron stock was falling sharply, frequently piercing equity issuance "trigger" prices, and Enron knew it was going to have to take large asset writedowns in connection with its 3rdQ 01 results, Enron was desperate to find a way to limit the size of these writeoffs and generate apparently healthy "operating" earnings. So, on Sunday, 9/30/01, Enron and Qwest (another Andersen client), with the help of Andersen and Vinson & Elkins, arranged a "swap" of fiber optic assets. This Qwest-Enron deal, one of the largest ever recorded, allowed Enron to avoid recording a huge loss by selling an asset whose value had plummeted on the open market. "***Qwest said we will overpay for the assets, and you will overpay me on the contract***," one former Enron executive said. A financial analyst looking at the deal's details stated: "***This is clearly a swap for***

accounting purposes." Executives at Enron and Qwest held discussions into the final days of the 3rdQ, discussing how to account for the deal so that each would gain accounting benefits and improve their quarterly earnings results. On 9/30/01, ***a Sunday and the final day of the 3rdQ***, Qwest signed a deal to buy from Enron "dark fiber" along a route from Salt Lake City to New Orleans. Enron agreed to buy "lit wavelength," or active fiber optic cable services, from Qwest over a 25-year period, and each company exchanged checks for about $112 million around the close of the deal. The deal enabled Enron to book a sale and avoid recording a loss on the dark fiber assets, whose value in the open market had dropped far below the price on Enron's books. Enron had recorded a high value on its dark fiber assets after selling some dark fiber to LJM2.

J. Hidden/Disguised Loans

44. Another tactic utilized by Enron to falsify its financial condition and hide the true extent of its debt and liquidity involved transactions with certain of its banks – JP Morgan, CitiGroup and CS First Boston. In the case of JP Morgan, these manipulations used an entity controlled by JP Morgan, known as "Mahonia," which was located in the Channel Islands off England. JP Morgan and Enron utilized a scheme which JP Morgan had originally utilized before with a commodities trader from Sumitomo, by which large bank loans are disguised to be commodity trades. In fact, offsetting trades were arranged with the ultimate cost differential being in favor of the bank, representing the interest rate on the disguised loan. Enron, Mahonia and JP Morgan got Vinson & Elkins to give a false legal opinion that these transactions were in fact legitimate commodities trades. Thus, by utilizing this manipulative device, JP Morgan and Enron falsified Enron's financial condition to make it appear much stronger than it really was, concealing some $3.9 billion in debt, which, had it been known and disclosed, would likely have resulted in Enron losing its investment grade credit rating with all the negative consequences that would flow from that. JP Morgan attempted to insure against default on those disguised loans by buying performance bonds from several insurance companies. However, the insurers refused to pay, alleging that in fact the commodity trades were fraudulent and a subterfuge to conceal the real nature of the transactions, *i.e.*, done for the purpose of disguising loans. ***A federal district court judge has ruled that there is***

significant evidence to support the insurers' claims of fraud and deception and that these transactions were, in fact, disguised loans.

45. CitiGroup and CS First Boston also engaged in subterfuges to disguise large loans to Enron to help Enron present a misleading picture of its liquidity, financial condition and balance sheet. CitiGroup lent Enron $2.4 billion in a series of "pre-paid" swaps via what were called "Delta" transactions because they were conducted through CitiGroup's Cayman Island subsidiary named "Delta." In a true swap, neither party receives all the agreed payments up front. However, in these transactions, CitiGroup paid an estimate of the fair value of its portion of the swaps – hundreds of millions of dollars each time – immediately, and Enron was obliged to repay the cash over five years. The transactions perfectly replicated loans and were, in fact, loans – but Enron never disclosed them as such on its balance sheet. CS First Boston also engaged in making disguised loans/trades in derivatives to Enron so that Enron's true credit situation, liquidity and debt levels were being disguised. In 00, CS First Boston gave Enron $150 million to be repaid over two years, with Enron's payments to vary with the price of oil. The transaction was made to appear to be a "swap." But because CS First Boston paid Enron up front, the transaction was, in fact, a loan – a reality noted by the bank: "***It was like a floating-rate loan***," said Pen Pendleton, a CS First Boston spokesman. "***We booked the transaction as a loan***." However, Enron kept the loans off its balance sheet by accounting for the loans from CS First Boston and CitiGroup as "***assets from price risk management***" and as "***accounts receivable***."

46. The secret offshore JP Morgan "Mahonia" and CitiGroup "Delta" transactions substantially increased in monetary amount at the end of 00 and then during 01 as Enron's stock price began to decline sharply and pierced certain of the higher priced equity issuance triggers, and the structure of the Raptor SPEs threatened to collapse for lack of credit capacity. JP Morgan and CitiGroup knew that this created the threat of a death spiral for Enron. Also, by this time Enron's accumulated financial chicanery had created a liquidity crunch inside Enron, which made Enron increasingly desperate for additional cash to try to stave off its growing liquidity problems. Enron, JP Morgan and CitiGroup substantially increased the amount of money flowing to Enron in the disguised loan transactions they were engaging in, *i.e.,* the phony commodity oil and gas trades and

swaps. By so doing, JP Morgan and CitiGroup were able to ***secretly*** prop up Enron's deteriorating finances without any disclosure that in fact Enron ***had just borrowed between $4-$6 billion from those two banks***. Had these phony commodity and swap transactions in fact been treated as the bank loans that they really were, the internal procedures at JP Morgan and CitiGroup would have required a syndication of those loans to other lending institutions – but that would have greatly increased the scope of knowledge of the liquidity problems Enron was then encountering. Also, any attempt to even put together loans of this size, either by JP Morgan or CitiGroup (individually or collectively), would have quickly become public knowledge in the financial community and been reported in specialized journals which follow bank lending syndication activity. And because of the high profile of Enron and the controversy over its finances, attempted borrowings of this size would have been reported on by the financial press. This would not only have called into question the health of Enron's finances, but very likely would have resulted in a substantial downgrade of Enron's credit rating because of the huge amount of debt it was undertaking. That, in turn, would have endangered, if not ended, Enron's ability to borrow in the commercial paper market, triggering a further decline in its stock, causing it to pierce more stock issuance price triggers – a death spiral for Enron – which Enron, JP Morgan and CitiGroup were desperate to avoid. Also astonishing about the Mahonia and Delta transactions is the way JP Morgan and CitiGroup were "***paid off***" to engage in this manipulative subterfuge. Based on Enron's purported investment-grade credit rating, Enron could have borrowed money from banks at 3.75%-4.25%. However, in the phony Mahonia and Delta transactions, ***Enron paid JP Morgan and CitiGroup between 6.5%-7.0% for the disguised loans – a huge difference from the cost of a legitimate bank loan – which made these disguised loans hugely profitable for JP Morgan and CitiGroup***!

47. In addition to charging extortionate interest rates for engaging and participating in the Mahonia and Delta contrivances, both JP Morgan and CitiGroup took unusual steps to protect themselves financially against loss and what they knew were not only dubious but highly dangerous transactions. In the case of JP Morgan, it purchased security bond insurance (deceiving the insurance companies into thinking they were insuring commodity trades and not loans) and obtained other letters of credit from other financial institutions (deceiving them as well), while CitiGroup undertook

to lay off substantial portions of its economic risk by selling Enron-linked securities as notes, including the concealed Delta loans in that package of linked securities.

K. Enron's Access to the Capital Markets

48. Because of the nature of and the rapid expansion of Enron's business, Enron needed constant access to huge amounts of capital. For Enron to continue to appear to succeed it had to keep its investment grade credit rating and keep its stock price high. Enron's investment grade credit rating and high stock price could ***only*** be maintained by (i) limiting the amount of debt shown on Enron's balance sheet; (ii) reporting strong current period earnings; ***and*** (iii) forecasting strong future revenue and earnings growth. Yet Enron was able to achieve these ends only through pursuing an increasing number of phony transactions, many of which were accomplished by increasing the number and size of transaction entities which were supposedly independent of Enron but which, in fact, Enron controlled through a series of secret understandings and illicit financing arrangements, including the LJM1 and LJM2 partnerships. The creation of these SPEs and the billions of dollars of complex transactions Enron engaged in with them were accomplished with the knowing and active participation of Enron's bankers, lawyers and accountants. Enron's illicit financial transactions with the SPEs identified above allowed Enron to conceal hundreds of millions of dollars of losses and generate hundreds of millions of dollars of phony profits, while concealing billions of dollars of debt that belonged on its balance sheet and inflating its reported stockholders' equity by billions of dollars. As a result of reporting strong earnings, the apparent success of its business and its future earnings growth forecasts, Enron had unlimited access to the capital markets, borrowing billions of dollars in the commercial paper markets and selling Enron securities to the public. Enron and its commercial/investment bankers, working with Enron's lawyers and accountants, raised at least $6 billion in new debt and equity capital from public investors through numerous securities offerings between late 96 and mid-01, thus raising the capital necessary to allow Enron to repay or pay down its short-term debt and continue to operate while associated entities, like Azurix, New Power, Osprey and Marlin, raised some $4 billion more, which directly and/or indirectly benefitted Enron. These Enron offerings are shown below:

ENRON SECURITIES UNDERWRITINGS		
Banks Named As Defendants	**Date of Offering**	**Security Sold**
Merrill Lynch CitiGroup	11/96	8 million shares Enron Capital Trust I 8.3% Trust Originated Preferred Securities at $25 per share
JP Morgan	7/97	$100,000,000 6-5/8% Enron Notes
Lehman Brothers CitiGroup	08/97	$150,000,000 6.5% Notes due 8/1/2002
Merrill Lynch	11/97	$200,000,000 Remarketed Reset Notes due 11/15/2037
Merrill Lynch CitiGroup	1/97	6 million shares Enron Capital Trust II 8-1/8% Trust Originated Preferred Securities at $25 per share
Bank America	11/97	$250,000,000 6.625% Notes due 11/15/2005
CitiGroup	11/97	$300,000,000 6.45% Notes due 2001
CS First Boston Lehman Brothers Merrill Lynch CIBC JP Morgan Bank America	5/98	35 million shares of common stock at $25 per share
JP Morgan Lehman Brothers	07/98	$250,000,000 6.40% Notes due 7/15/2006 $250,000,000 6.95% Notes due 7/15/2028
Merrill Lynch CitiGroup	09/98	$250,000,000 Floating-rate Notes due 3/30/2000
CS First Boston	11/98	$250,000,000 6.95% Notes due 7/15/2028
CS First Boston Lehman Brothers Merrill Lynch CitiGroup	02/99	27.6 million shares of common stock at $31.34
Lehman Brothers Bank America CIBC	05/19/99	$500,000,000 7.375% Notes due 5/15/2019
Bank America CitiGroup	08/10/99	$222,500,000 7% Exchangeable Notes due 7/31/2002

Banks Named As Defendants	Date of Offering	Security Sold
Bank America Lehman Brothers	05/00	$500,000,000 Notes due 5/23/2005 and 6/15/2003
Deutsche Bank JP Morgan Bank America Barclays CitiGroup	02/01 (private placement) 7/01 (resales)	$1,907,698,000 Zero Coupon Convertible Senior Notes due 2021, original issue date 2/7/2001

49. Some of the offerings of the associated entities are shown below:

ENRON-RELATED SECURITIES UNDERWRITINGS		
Banks Named As Defendants	**Date of Offering**	**Security Sold**
Merrill Lynch CS First Boston Deutsche Bank Bank America	6/99	38.5 million shares Azurix stock at $19 per share
Bank America	7/99	27 million shares of Enron Oil & Gas at $22.25 per share
CS First Boston Merrill Lynch	2/00	$600 million Azurix 10.375% and 10.75% Senior Notes
CS First Boston Deutsche Bank Lehman Brothers	9/00	$1+ billion 7.797% and 6.375% Osprey Trust and Osprey I Inc. Notes
CS First Boston CitiGroup CIBC	10/00	27.6 million shares New Power at $21 per share
CS First Boston Deutsche Bank Bank America CIBC JP Morgan	7/01	$1 billion 6.31% and 6.19% Marlin Water Trust II and Marlin Water Capital Corp. II Notes
CitiGroup Barclays	2/00	$240,000,000 8.75% Yosemite Enron-linked securities

L. Enron's Corporate Culture

50. Inside Enron there was a fixation on the price of Enron stock and doing whatever was necessary to generate the financial results necessary to push the stock ever higher. For instance, throughout Enron's corporate headquarters in Houston were TV monitors that constantly displayed

the price of Enron stock. Inside Enron there was a saying that managers were to always be "***ABC***ing," meaning to "***a***lways ***b***e ***c***losing" deals to generate revenues and profits, even if the economics of the deal were suspect – a practice facilitated by a compensation system inside Enron for corporate managers and executives that directly rewarded them financially for ***closing*** transactions and placing a high (*i.e.*, inflated) value on them, regardless of the true economic substance of the deal, so long as the deal generated an apparent profit when "marked to market."

51. Inside Enron, the pressures applied to corporate managers by the top executives to do anything necessary to enable Enron to make its numbers was widespread, as was the knowledge that Enron's revenues and earnings were being falsified at the direction of top executives who rewarded the lower level managers who engaged in such conduct with bonuses in larger amounts to those who were willing to facilitate what had become a Company-wide fraudulent pattern of behavior. Former insiders have been quoted as saying "***[y]ou don't object to anything***" and "***[t]he whole culture at the vice-president level and above just became a yes-man culture***."

> But that culture had a negative side beyond the inbred arrogance. ***Greed was evident, even in the early days. "More than anywhere else, they talked about how much money we would make," says someone who worked for Skilling. Compensation plans often seemed oriented toward enriching executives rather than generating profits for shareholders. For instance, in Enron's*** energy services division, which managed the energy needs of large companies like Eli Lilly, executives were compensated based on a market valuation formula that relied ***on internal estimates. As a result, says one former executive, there was pressure to, in effect, inflate the value of the contracts – even though it had no impact on the actual cash that was generated.***

Fortune, 12/24/01.

> ***"If your boss was [fudging], and you have never worked anywhere else, you just assume that everybody fudges earnings," says one young Enron control person. "Once you get there and you realized how it was, do you stand up and lose your job? It was scary. It was easy to get into 'Well, everybody else is doing it, so maybe it isn't so bad.'"***
>
> * * *
>
> ***The flaw only grew more pronounced as Enron struggled to meet the wildly optimistic expectations for growth it had set for itself. "You've got someone at the top saying the stock price is the most important thing, which is driven by earnings," says one insider. "Whoever could provide earnings quickly would be promoted***."
>
> ***The employee adds that anyone who questioned suspect deals quickly learned to accept assurances of outside lawyers and accountants. She says there was little scrutiny of whether the earnings were real or how they were booked. The more***

> ***people pushed the envelope with aggressive accounting, she says, the harder they would have to push the next year. "It's like being a heroin junkie," she said. "How do you go cold turkey?"***

Business Week, 2/25/02. In fact, in mid-8/01, an Enron executive (who was a former Andersen accountant) wrote Lay, tellinghim the Company was "***nothing but an elaborate accounting hoax***," and, in referring to the SPE transactions, that nothing "***will protect Enron if these transactions are ever disclosed in the bright light of day***" – warning that many employees believed "***[W]e're such a crooked company***."

M. Late 00/Early 01 Prop-Up

52. In late 00/early 01, Enron's financial results began to come under scrutiny from a few accounting sleuths and short-sellers, who began to question the quality of Enron's reported financial results. While Enron, its top insiders and its bankers assured investors of the correctness of Enron's accounting and the high quality of Enron's reported earnings, the success and strength of its business and its solid prospects for continued strong profit growth, in part because of this increasing controversy, Enron stock began to decline. As this price decline accelerated, it put pressure on Enron's top executives to do something – anything – to halt the decline in the price of the stock as they knew that if that price decline continued and the stock fell to lower levels, more and more of the Enron stock "triggers" contained in agreements for deals with entities controlled by Chewco, LJM1 and LJM2 would be triggered, ***which would require Enron to issue over 100 million shares of its common stock to those partnerships, causing a huge reduction in Enron's shareholders' equity***.

53. ***In late 3/01, inside Enron it appeared that Enron would be required to take a pre-tax charge against earnings of more than $500 million*** to reflect a shortfall in credit capacity of the Raptor SPEs, which would have been catastrophic and exposed the scheme. Rather than take that loss and face these consequences, Enron, Andersen, Vinson & Elkins, Kirkland & Ellis and certain of Enron's banks "restructured" the Raptor vehicles by transferring ***more than $800 million of contracts to receive Enron's own stock to them just before quarter-end. This was a transfer of huge value for no consideration and was accounted for as increases to equity and to assets in violation of GAAP. It also permitted the participants in the scheme to continue the concealment***

of the substantial losses in Enron's merchant investments, keep billions of dollars of debt off Enron's balance sheet and allowed the Enron Ponzi scheme to continue.

54. During early 01, Enron continued to report record results (certified by Andersen) and with its lawyers and bankers made very positive statements:

- Enron's strong results reflected breakout performance in all business units. Enron was a strong unified business.
- WEOS had strong growth and a tremendous market franchise with significant sustainable competitive advantages.
- EBS intermediation was great. Broadband glut and lowered prices ***would help Enron***.
- VOD was successfully tested and launched. Proven technology created enormous opportunities.
- All of Enron's businesses were generating high levels of earnings. Fundamentals were improving. Enron was very optimistic. Enron was confident growth was sustainable for years to come.

N. The Impending Collapse

55. By the Summer of 01, Enron's top insiders realized that Enron would not be able to continue to sustain the illusion of strong profitable growth much longer and that it would have to take large write-offs in the second half of 01 that, in turn, could result in a downgrade of Enron's critical investment-grade credit rating – an event that they knew would mean that debt on the books of the SPEs Enron did business with (and partnerships controlled by them), which debt Enron had assured investors was "***non-recourse***" to Enron would, in fact, become Enron's obligation.

56. ***In a 6/01 meeting between an Enron manager and two CS First Boston managing directors, the CS First Boston people made statements showing they had knowledge about the nature and extent of Enron's off-balance sheet exposure***. During discussions about structuring an off-balance-sheet partnership, the CS First Boston people commented to the Enron manager, "How can you guys keep doing this?" – referring to Enron's repeated statements to the market that its stock was undervalued. The CS First Boston people said that even at $40 per share, ***Enron's stock was still overvalued in their view and added, "Do employees actually believe it's worth what management is saying***?" At the time, Enron's stock was trading at around $48.50. ***The CS First Boston people said "you guys are at a critical price point right now" and referenced the Raptor***

deal and said that if Enron's stock continued to fall, that would cause Raptor to unwind and the debt balance to come due. The CS First Boston people asked the Enron manager, "Do you know how much off-balance sheet debt you [Enron] have?" When the Enron executive said he thought it was around one to two billion dollars, the CS First Boston people said, "***Try eight to 12 billion***." ***They added that if Enron's stock hits $20 a share, things were going to come falling down and "you guys are gonna be fucked***." This knowledge did not stop CS First Boston, however, from issuing a report on 8/14/01 rating Enron a "***Strong Buy***" with a price target of $84!

57. Faced with this impending catastrophe on 7/13/01, Skilling told Lay that he was going to quit because he knew that the Enron house of cards was crumbling. To conceal the horrible problems at Enron that were the true reason Skilling quit, in the ensuing weeks, Lay, Skilling and other top Enron insiders concocted a story that Skilling's resignation would be presented as being for "***personal reasons***," so as to try to conceal the true reasons and limit the damage to Enron's stock from what they knew would be an incendiary revelation. On 8/14/01, when Enron announced that Skilling – who had become Enron's CEO just months earlier – was resigning, they said it was for "***personal reasons***." While this resignation fanned the controversy over the true nature of Enron's finances and the condition of Enron's business, Lay, Fastow, Skilling, Enron's other top executives and its bankers lied to investors, telling them that Skilling's resignation was only for personal reasons and did not raise "***any accounting or business issues of any kind***" and that Enron's financial condition "***had never been stronger***" and its "***future had never been brighter***." They said there was "***nothing to disclose***," Enron's "***numbers look good***," there were "***no problems***" or "***accounting issues***." According to them, the Enron "***machine was in top shape and continues to roll on – Enron's the best of the best***."

58. As the value of Enron's stock and its merchant investments continued to fall in 01, ***the credit problems in the Raptor SPE entities became insoluble***. As the end of Enron's 3rdQ 01 (9/30/01) was looming, Enron's top insiders realized that despite continuing to falsify Enron's reported results with phony transactions like the Enron/Qwest fiber optic swap, they could not avoid recognizing a multi-hundred million dollar loss in the 3rdQ 01 due to the write-off of hundreds of millions of dollars of impaired assets on Enron's balance sheet, would have to eliminate one billion

dollars of shareholders' equity and that Enron would have to restate and eliminate hundreds of millions of dollars of profits it had reported over the prior several years. Shortly after the close of Enron's 3rdQ 01 (9/30/01), as these events crystalized, Enron's top executives and its accounting firm, Andersen, realized that there was a very substantial likelihood that these negative revelations and accounting restatements would result in the collapse of Enron and in governmental investigations as well as shareholder lawsuits against them. ***Thus, Enron and Andersen both began to destroy evidence of their prior illegal conduct, complicity and fraudulent course of conduct, destroying millions of pages of documents and vast amounts of electronically stored data over the ensuing weeks***.

O. The Attempted Coverup

59. By 8/01, inside Enron management employees were complaining to Enron's Board that the fraud at Enron was so widespread it was out of control. In 8/01, two employees complained to the Board:

(a) One employee wrote:

> Skilling's abrupt departure will raise suspicions of accounting improprieties and valuation issues. Enron has been very aggressive in its accounting – most notably the Raptor transactions and the Condor vehicle. We do have valuation issues with our international assets and possibly some of our EES MTM positions.
>
> * * *
>
> We have recognized over $550 million of fair value gains on stock via our swaps with Raptor, much of that stock has declined significantly – Avici by 98%, from $178 mm to $5 mm. The New Power Co. by 70%, from $20/share to $6/share. The value in the swaps won't be there for Raptor, so once again Enron will issue stock to offset these losses. Raptor is an LJM entity. It sure looks to the layman on the street that we are hiding losses in a related company and will compensate that company with Enron stock in the future.
>
> ***I am incredibly nervous that we will implode in a wave of accounting scandals.... [T]he business world will consider the past successes as nothing but an elaborate accounting hoax***....
>
> ***[W]e booked the Condor and Raptor deals in 1999 and 2000, we enjoyed a wonderfully high stock price, many executives sold stock, we then try and reverse or fix the deals in 2001 and it's a bit like robbing the bank in one year and trying to pay it back 2 years later. Nice try, but investors were hurt, they bought at $70 and $80/share looking for $120/share and now they're at $38 or worse***. We are under too much scrutiny and there are probably one or two disgruntled "redeployed" employees who know enough about the "funny" accounting to get us in trouble.

* * *

I realize that we have had a lot of smart people looking at this .... ***None of that will protect Enron if these transactions are ever disclosed in the bright light of day***.....

* * *

I firmly believe that the probability of discovery significantly increased with Skilling's shocking departure. Too many people are looking for a smoking gun.

* * *

3. ***There is a veil of secrecy around LJM and Raptor. Employees question our accounting propriety consistently and constantly***....

   a. Jeff McMahon was highly vexed over the inherent conflicts of LJM. ***He complained mightily to Jeff Skilling*** .... 3 days later, Skilling offered him the CEO spot at Enron Industrial Markets ....

   b. ***Cliff Baxter complained mightily to Skilling and all who would listen about the inappropriateness of our transactions with LJM***.

   c. I have heard one manager level employee ... say "***I know it would be devastating to all of us, but I wish we would get caught. We're such a crooked company."... Many similar comments are made when you ask about these deals***....

   (b) A second employee wrote:

One can only surmise that the removal of Jeff Skilling was an action taken by the board to correct the wrong doings of the various management teams at Enron. However ... I'm sure the board has only scratched the surface of the impending problems that plague Enron at the moment. (*i.e.*, EES's ... hiding losses/SEC violations ... lack of product, etc.).

* * *

[I]t became obvious that EES had been doing deals for 2 years and was losing money on almost all the deals they had booked. (JC Penney being a $60MM loss alone, then Safeway, Albertson's, GAP, etc.). Some customers threatened to sue if EES didn't close the deal with a loss (Simon Properties – $8MM loss day one).... Overnight the product offerings evaporated.... Starwood is also mad since EES has not invested the $45MM in equipment under the agreement.... Now you will loose [sic] at least $45MM on the deal.... You should also check on the Safeway contract, Albertson's, IBM and the California contracts that are being negotiated.... It will add up to over $500MM that EES is losing and trying to hide in Wholesale. Rumor on the 7th floor is that it is closer to $1 Billion....

This is when they decided to merge the EES risk group with Wholesale to hide the $500MM in losses that EES was experiencing. But somehow EES, to everyone's amazement, reported earnings for the 2nd quarter. According to FAS 131 – Statement of Financial Accounting Standards (SFAS) #131, "Disclosures about Segments of an Enterprise and related information," EES has knowingly misrepresented EES' earnings. This is common knowledge among all the EES employees, and is actually joked about....

There are numerous operational problems with all the accounts.

* * *

... Some would say the house of cards are falling....

You are potentially facing Shareholder lawsuits, Employee lawsuits ... Heat from the Analysts and newspapers. The market has lost all confidence, and its obvious why.

You, the board have a big task at hand. You have to decide the moral, or ethical things to do, to right the wrongs of your various management teams.

* * *

... But all of the problems I have mentioned, they are very much common knowledge to hundreds of EES employees, past and present.

60. Despite receiving these detailed accounts of fraud throughout Enron, Enron's directors did not take any positive action to investigate or to disclose these issues. Instead, Vinson & Elkins – which had participated in many of the fraudulent transactions – was brought in to cover up the wrongdoing so the scheme could continue, which Vinson & Elkins did by writing a whitewash report dismissing these detailed accounts of fraud, even though Vinson & Elkins knew them to be true.

P. The End of Enron

61. ***On 10/16/01, Enron shocked the markets with revelations of $1.0 billion in charges and a reduction of shareholders' equity by $1.2 billion***. Within days, *The Wall Street Journal* began an exposé of the JEDI, Chewco and the LJM SPEs, the SEC announced an investigation of Enron, and Fastow, Enron's Chief Financial Officer, resigned. In 11/01 Enron was ***forced to admit that Chewco had never satisfied the SPE accounting rules and – because JEDI's non-consolidation depended on Chewco's status – neither did JEDI, and Enron consolidated Chewco and JEDI retroactive to 97. Enron also admitted it had failed to correct $51 million in errors found by Andersen for 97. This retroactive consolidation resulted in a massive reduction in Enron's reported net income and massive increase in its reported debt***. Enron revealed that it was restating its 97, 98, 99 and 00 financial results to eliminate $600 million in previously reported profits and approximately $1.2 billion in shareholders' equity as detailed below:

ENRON ACCOUNTING RESTATEMENTS				
	1997	1998	1999	2000
Recurring Net Income Amount of Overstatement	$ 96,000,000	$113,000,000	$250,000,000	$ 132,000,000
Debt Amount of Understatement	$711,000,000	$561,000,000	$685,000,000	$ 628,000,000
Shareholders' Equity Amount of Overstatement	$313,000,000	$448,000,000	$833,000,000	$1,208,000,000

62. These partnerships – Chewco, LJM1 and LJM2 – ***were used by Enron management to enter into transactions that Enron could not, or would not, do with unrelated commercial entities***. Many of the most significant transactions were designed to ***accomplish favorable financial results, i.e., not to achieve bona fide economic objectives or to transfer risk***. Other transactions were implemented improperly ***to offset losses***. These transactions allowed Enron to conceal from the market ***very large losses resulting from Enron's merchant investments by creating an appearance that those investments were hedged – that is, that a third party was obligated to pay Enron the amount of those losses, when in fact that third party was simply an entity in which only Enron had a substantial economic stake. The Raptors transactions alone resulted in Enron reporting earnings from the 3rdQ 00 through the 3rdQ 01 that were almost $1 billion higher than should have been reported***!

63. As huge as the 11/01 restatements of Enron's 97-00 financial statements were, they just scratched the surface of the true extent of the prior falsification of Enron's financial statements, failing to eliminate additional hundreds of millions of dollars of phony profits as Enron, Andersen, Vinson & Elkins and the banks were still trying to keep Enron afloat and trying to conceal how extensive the fraud had really been.

64. Notwithstanding the write-offs and restated revelations of 10/01-11/01, the Enron insiders, JP Morgan and CitiGroup believed that they could limit their legal exposure for participation in the scheme if they could effectuate a sale of Enron to another company. So, in 10/01

to 11/01, as the Enron scheme began to unravel and Enron reported a huge 3rdQ 01 loss and restated its 97-01 financial results, JP Morgan and CitiGroup worked hand-in-hand with Enron to desperately try to save Enron in the hope that by arranging a salvation merger with Dynegy (for which JP Morgan and CitiGroup would each be paid approximately $45 million in fees) they could prevent the insolvency of Enron and the inevitable investigations and revelations that would follow such insolvency.

65. In late 11/01, JP Morgan and CitiGroup were desperately trying to arrange the sale of Enron to Dynegy so they could split a $90 million fee and so Enron would not go bankrupt, which they knew would lead to suits over, and investigations into, their prior deals with Enron – which they knew would be highly embarrassing and could expose them to liability to third parties and subordination of their creditor claims against Enron. A key part of achieving a sale of Enron and thereby avoiding public exposure of defendants' participation in the Enron Ponzi scheme required Enron to keep its investment grade credit rating, as failing to do so meant that Enron's debt would be accelerated and the Enron scheme would immediately collapse. So, in late 11/01, Robert Rubin, the Vice Chairman of CitiGroup, and William Harrison, the Chairman of JP Morgan, called Moody's – a key rating agency – and pressured Moody's to keep Enron's investment grade credit rating in place until they had completed the sale of Enron to Dynegy.

66. Rubin's and Harrison's effort to strong-arm Moody's failed. Despite the efforts of Enron, JP Morgan and CitiGroup to conceal Enron's true financial condition from Dynegy and get Dynegy to agree to acquire Enron, the due diligence efforts of Dynegy and its investment bankers uncovered that the true financial condition of Enron was far worse than had ever been disclosed publicly to date and that Enron had been engaged in a wide-ranging falsification of its financial statements over the several prior years. Thus, Dynegy refused to acquire Enron and Enron went bankrupt. By 11/28/01, the charade could be continued no longer and Enron's publicly traded debt had been downgraded to "junk" status by the rating agencies, and on 12/2/01, Enron filed for bankruptcy – ***the largest bankruptcy in history***. Enron's common and preferred stock have become virtually worthless and its publicly traded debt securities have suffered massive price declines, inflicting billions of dollars of losses on purchasers of those securities.

67. While Enron's publicly filed reports disclosed the existence of the LJM partnerships, ***these disclosures did not reveal the essence of the transactions completely or clearly, and failed to convey the substance of what was going on between Enron and the partnerships. The disclosures also did not fully disclose the nature or extent of Fastow's financial interest in the LJM partnerships. This was the result of an effort to avoid disclosing Fastow's financial interest and to downplay the significance of the related-party transactions and to disguise their substance and import. The disclosures also represented that the related-party transactions were reasonable compared to transactions with third parties when, in fact, they were not. These misleading disclosures were crafted and approved by Enron's outside auditors and its outside counsel in meetings between Enron's top insiders and Enron's counsel at Vinson & Elkins and Enron's auditors at Andersen, as well as Kirkland & Ellis as relating to the LJM partnerships***. Enron's manipulative devices, contrivances and related-party transactions were extraordinarily lucrative for Fastow and others. In exchange for their passive and largely risk-free roles in these transactions, the LJM partnerships and their investors were richly rewarded. Fastow and other Enron employees received tens of millions of dollars at Enron's expense. Enron employees involved in the partnerships were enriched, in the aggregate, ***by tens of millions of dollars they should never have received – Fastow by at least $30 million, Kopper by at least $10 million, two other Enron employees by $1 million each and still two more by hundreds of thousands of dollars***.

68. As outrage over what is likely the worst financial scandal involving a public company in the history of the United States erupted, Congress launched the most massive investigation it has ever undertaken of a public company's financial fraud, summoning before it some of the Enron executives and Andersen partners who were intimately involved in these matters. Defendants Lay, Fastow, Buy and Causey of Enron and David Duncan, the Andersen partner in charge of the Enron account, and Nancy Temple, a senior Andersen lawyer who directed the destruction ***of documents, have all refused to testify, asserting that their testimony would incriminate them***.

69. As *Newsweek* has written:

> In the late 1990s, by my count, Enron lost about $2 billion on telecom capacity, $2 billion in water investments, $2 billion in a Brazilian utility and $1 billion on a controversial electricity plant in India. Enron's debt was soaring. If these harsh

> truths became obvious to outsiders, Enron's stock price would get clobbered – and a rising stock price was the company's be-all and end-all. Worse, what few people knew was that Enron had engaged in billions of dollars of off-balance-sheet deals that would come back to haunt the company if its stock price fell.

Newsweek, 1/21/02.

> The key to the Enron mess is that the company was allowed to give misleading financial information to the world for years. Those fictional figures, showing nicely rising profits, enable Enron to become the nation's seventh largest company, with $100 billion of annual revenues. Once accurate numbers started coming out in October, thanks to pressure from stockholders, lenders and the previously quiescent SEC, Enron was bankrupt in six weeks. The bottom line: we have to change the rules to make companies deathly afraid of producing dishonest numbers, and we have to make accountants mortally afraid of certifying them. Anything else is window dressing.

Newsweek, 1/28/02.

70. As detailed herein, the scheme to defraud Enron investors was extraordinary in its scope, duration and size. Billions of dollars in phony profits were reported. Billions of dollars of debt was hidden. Enron's shareholders' equity was overstated by billions of dollars. This was accomplished over a multi-year period through numerous manipulative devices and contrivances and misrepresentations to investors in Enron releases and SEC filings, including Registration Statements utilized to raise billions of dollars of new capital which was indispensable to keep Enron afloat. This fraudulent scheme could not have been and was not perpetrated only by Enron and its insiders. It was designed and/or perpetrated only via the active and knowing involvement of Enron's general counsel, Vinson & Elkins, the law firm for the LJM2 entity and its SPEs, Kirkland & Ellis, Enron's accounting firm, Andersen, and Enron's banks, including JP Morgan, CitiGroup, CS First Boston, Merrill Lynch, Deutsche Bank, Barclays, Lehman Brothers and Bank America. Each of these actors directly violated the securities laws and played an important role in the fraudulent scheme and wrongful course of business complained of:

(a) Andersen, Enron's purportedly independent public accounting firm, was never independent of Enron but, in fact, economically dependent on what was the second largest client of Andersen, providing Andersen with annual fees approximating $50 million, which Andersen estimated internally could increase to $100 million per year. Andersen not only permitted Enron to falsify its financial results and then falsely certify them, but actually actively engaged and

participated in structuring transactions to help falsify Enron's financial results, including the illicit partnerships and SPEs, misuse of mark-to-market accounting and arranging dark fiber swaps with other of Andersen's clients in the telecom business (like Qwest and Global Crossing) and, when the Enron scheme began to unwind in earnest in the Fall of 01, Andersen (along with Enron) moved quickly to destroy evidence of the fraudulent accounting and scheme.

(b) Vinson & Elkins and Kirkland & Ellis participated and engaged in several aspects of the fraudulent scheme, including issuing opinions they knew were false or had no basis in fact. Vinson & Elkins participated in writing, reviewing and approving Enron's SEC filings, as well as its shareholder reports and financial press releases. Vinson & Elkins and Kirkland & Ellis also participated in setting up Chewco, JEDI, LJM1 and LJM2 and virtually ***all*** of the related SPE transactions. Vinson & Elkins also participated in structuring and opined on the bogus commodity trades used by JP Morgan and Enron to hide billions of dollars of Enron debt – manipulative devices – engaged in by them to falsify Enron's financial condition and results. Also, when the Enron scheme was unraveling in 8/01 and Skilling quit, Vinson & Elkins participated in the cover up of the fraudulent scheme by writing a report to Enron's insiders which dismissed (whitewashed) detailed allegations of fraud at Enron that had been presented by a management level employee – allegations Vinson & Elkins knew were true because of its own involvement in many of the bogus transactions that the employee detailed. Kirkland & Ellis was hand-picked by Enron to purportedly provide "independent" representation for Chewco, JEDI, LJM1 and LJM2 and other SPEs, but, in fact, worked under the direction of Enron and its top insiders in helping to structure those partnerships and their related transactions – manipulative devices – engaged in by them to falsify Enron's financial condition and results.

(c) Enron's banks sued for fraud structured and/or financed the secretly controlled partnerships and SPEs, and in fact, at key times advanced funds to them to allow them to complete bogus transactions just before year- or quarter-end and helped create huge profits via transactions between Enron and those entities. The banks also provided loans that enabled Enron to preserve its liquidity and continue to operate while helping Enron sell billions of dollars of securities to public investors to utilize to pay down Enron's short-term commercial paper and bank debt, again to keep

the Enron Ponzi scheme in operation, and the banks also played an indispensable role in helping to inflate and support Enron's stock price by issuing research reports which contained false and misleading information about Enron's business, finances and future prospects. Secret or disguised transactions by JP Morgan, CitiGroup and CS First Boston also concealed billions of dollars of loans to Enron. The banks and/or their top executives were rewarded by allowing the banks or certain top executives of the banks to invest in the LJM2 partnership, which they knew would be very lucrative as it was going to engage in self-dealing with Enron.

71. On 2/19/02, *The New York Times* reported:

> Citigroup ... structured some of the deals to remove poorly performing assets from Enron's balance sheet.... Dozens of Wall Street firms were involved in financing Enron's rapid rise, selling its stock and bonds, arranging acquisitions, and, later, putting together the off-the-book deals that masked Enron's true financial condition. In doing so, these firms earned tens of millions of dollars in fees and put billions of dollars of Enron securities into the market.
>
> They helped Enron on the way up and on the way down. As Enron's downward spiral began, Wall Street firms – among them CS First Boston, Citigroup and Deutsche Banc Alex. Brown – helped finance Enron's side partnerships that removed lagging assets from the company's balance sheet. In these deals, the banks arranged partnerships that allowed Enron to appear more profitable than it actually was and then sold several billions of dollars in bonds backed by Enron stock.
>
> In other cases, dozens of banks and brokerage firms were approached about investing in Enron side partnerships and were shown confidential documents disclosing the extent of Enron's off-balance-sheet deals. Yet this information was considered confidential and not shared with Enron shareholders or clients of these Wall Street firms.
>
> ***One of these firms was Merrill Lynch, the nation's largest retail broker, which was the underwriter of a partnership called LJM2***, Other LJM2 investors – all of whom had more information about Enron's finances than Enron shareholders – ***were Citigroup; Travelers Insurance, a Citigroup unit; an investment group affiliated with Morgan Stanley Dean Witter; and a group of Merrill Lynch executives***.

72. On 2/26/02, *Dow Jones News Service* ran a story headlined "***Next Stop on the Enron Express: Wall Street***." It noted the "***long gravy train of stock and bond offerings that Enron sent the Street's way over the past decade***," and stated:

> This review of Wall Street's ties to Enron makes sense given the parade of major financial institutions that were investors in the now-infamous LJM2 partnership set up by Enron's former chief financial officer, Andrew Fastow. It's been well-documented now – both by SmartMoney.com and other publications – that high-powered finance firms such as ***CS First Boston, Merrill Lynch, JP Morgan***

> ***and Citigroup, were lured into the LJM2 partnership by the promise of potentially rich returns and the chance to get an inside peek into Enron's mysterious deals***....
>
> ... Wall Street – which got rich touting Enron – is still acting as if it has nothing to answer for in the Enron mess.
>
> So far, most Wall Street institutions have said little about the Enron debacle, issuing either blanket "no comments," or denying any responsibility for the company's collapse. CS First Boston, which underwrote more than $4.5 billion in Enron stock and bond offerings – roughly 20% of Enron's total underwriting work since 1990, according to Thomson Financial Securities Data – has refused to say anything whatsoever. Merrill Lynch, which lined up investors for Fastow's LJM2 partnership and underwrote more than $4 billion in stock and bond offerings for Enron, has been a bit more talkative – but only to say it's utterly blameless.
>
> * * *
>
> Between them, Citigroup and J.P. Morgan served as lead manager on more than $20 billion in syndicated bank loans to Enron over the past decade, with Citigroup also underwriting more than $4 billion in stock and bond offerings for the company ....
>
> ... Wall Street has plenty of explaining to do. Jonathan Kord Lagemann, a securities lawyer and former general counsel for a brokerage firm, says the Enron affair exposes the "***enormous conflict of interest" inherent in these firms' efforts to be three things at one time: underwriter, corporate analyst and stock seller***.

73. This frenzy of fraud created enormous financial benefits for the participants. In addition to the billions of dollars of capital Enron was able to raise during the Class Period to sustain Enron's operations, hundreds of millions of dollars of interest, underwriting, consulting and advisory fees were generated for Enron's bankers, Andersen received hundreds of millions of dollars of consulting and auditing fees, Vinson & Elkins received over $100 million in legal fees, Kirkland & Ellis received tens of millions of dollars in fees, and Enron's top insiders pocketed almost $1.1 billion of illegal insider trading proceeds, together with over a billion dollars in cash bonuses which were based on the phony financial results they generated and because they artificially inflated Enron's stock to meet certain stock price targets. The favored investors in LJM2 were placed to obtain huge returns from the self-dealing and unfair transactions LJM2 and entities it controlled engaged in with Enron.

74. At end of the day, the Enron fiasco represents a massive wealth transfer from public investors, including individual and institutional investors, including pension funds and thousands of Enron employees who purchased Enron stock for their retirement, to corporate insiders, Wall Street

bankers and the accounting and legal professionals who perpetrated the fraud. The graphic that follows outlines these sordid events:

FOLD-OUT CHART

JURISDICTION AND VENUE

75. The claims asserted herein arise under and pursuant to §§10(b), 20(a) and 20A of the Securities Exchange Act of 1934 ("1934 Act") [15 U.S.C. §§78j(b), 78t(a) and 78t-1] and Rule 10b-5 promulgated thereunder by the SEC [17 C.F.R. §240.10b-5], §§11 and 15 of the Securities Act of 1933 ("1993 Act") [15 U.SC. §§77k and 77o] and Texas Rev. Civ. Stat., art. 581-33.

76. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1367; §27 of the 1934 Act [15 U.S.C. §78aa] and §22 of the 1933 Act [15 U.S.C. §77v].

77. Venue is proper in this District pursuant to §27 of the 1934 Act and §22 of the 1933 Act, and 28 U.S.C. §1391(b). Enron maintains its principal place of business in this District and many of the acts and practices complained of herein occurred in substantial part in this District.

78. In connection with the acts alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

PARTIES

A. Lead Plaintiff

79. Court Appointed Lead Plaintiff, the Regents of the University of California, purchased more than 2 million shares of Enron securities at artificially inflated prices during the Class Period as detailed in its Certification previously filed with the Court, and suffered damages of more than $144 million as a result thereof.

80. The Regents of the University of California, the nation's premier public research university, was founded in 1868 and is composed of 10 campuses with a mission of teaching, research and public service. The University has over 183,000 graduate and undergraduate students, three law schools, five medical schools and the nation's largest continuing education program. The University has more than 155,000 employees and is governed by a 26 member Board of Regents. The Regents oversee the management of a portfolio totaling more than $54 billion. The investment funds managed consist of the University's retirement, defined contribution and endowment funds, including both actively managed equity portfolios and passively managed index funds. These investments provide substantial benefits to current and retired employees and support the University's mission of education, research and public service.

B. Plaintiffs

81. (a) Plaintiff Washington State Investment Board (the "Washington Board") purchased publicly traded debt securities of Enron at artificially inflated prices as detailed in its Certification previously filed with the Court, including the 6.75% Notes due 8/1/09, 6.40% Notes due 7/15/06, 6.95% Notes due 7/15/28, and 7.375% Notes due 5/15/19, and has suffered substantial damage as a result thereof. The Washington Board is responsible for the management and investment of public and retirement funds for the State of Washington.

(b) Plaintiff San Francisco City and County Employees' Retirement System ("SFERS") purchased publicly traded Enron equity securities at artificially inflated prices during the Class Period as detailed in its Certification, and has suffered substantial damage as a result thereof. SFERS provides benefits for thousands of active and retired City and County employees.[3]

(c) Plaintiff Employer-Teamsters Local Nos. 175 & 505 Pension Trust Fund ("Teamsters 175 & 505") purchased Enron debt securities, including Enron 7.375% Notes due 5/15/19, at artificially inflated prices during the Class Period as detailed in its Certification, and has suffered substantial damage as a result thereof. Teamsters 175 & 505 is a Taft-Hartley pension fund which oversees the retirement savings of thousands of Teamsters and has approximately $225 million in assets.

(d) Plaintiff Hawaii Laborers Pension Plan ("Hawaii Laborers") purchased Enron debt securities, including Enron debt issued and sold in connection with Enron's sale of $500 million of medium and short term notes, at artificially inflated prices during the Class Period as detailed in its Certification, and has suffered substantial damage as a result thereof. Hawaii Laborers is a $700 million Taft-Hartley pension fund which administers the retirement savings of thousands of building tradesmen and women.

(e) Plaintiff Staro Asset Management LLC ("Staro") purchased the Zero Coupon Convertible Senior Notes due 2021, as detailed in its Certification previously filed with the Court, and has suffered substantial damage as a result thereof. It is a plaintiff only as to the §11 claim for relief.

(f) Plaintiff Murray van de Velde ("van de Velde") purchased Enron debt securities, including the 7% Exchangeable Notes due 7/31/02, during the Class Period, as detailed in his Certification previously filed with the Court, and has suffered substantial damage as a result thereof.

(g) Plaintiff Amalgamated Bank, as Trustee for the LongView Collective Investment Fund, LongView Core Bond Index Fund and Certain Other Trust Accounts

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[3] Plaintiffs' Certifications referenced herein that have not previously been filed with the Court are attached to Lead Plaintiffs' Appendix of Certifications in Support of Consolidated Complaint.

("Amalgamated"), purchased over 115,000 shares of Enron stock and millions of dollars of Enron debt securities at artificially inflated prices during the Class Period, as detailed in its Certification previously filed with the Court, and has suffered damage as a result thereof. Amalgamated is America's oldest union owned and operated labor bank.

(h) Plaintiff Central States Southeast & Southwest Areas Pension Fund ("Central States") purchased publicly traded equity and debt securities of Enron at artificially inflated prices during the Class Period, as detailed in its Certification previously filed with the Court, and has suffered substantial damage as a result thereof. Central States was established in 1955 and is one of the nation's largest Taft-Hartley funds with more than $21 billion in assets and more than 370,000 active participants and retirees.

(i) Plaintiff Robert V. Flint ("Flint") is an 87 year old retiree who purchased Enron equity securities at artificially inflated prices during the Class Period, as detailed in his Certification, and has suffered substantial damage as a result thereof. Notwithstanding his substantial professional and investment experience, including 57 years investing in the securities markets and 40+ years working as a metallurgical engineer, Flint was fraudulently induced to purchase Enron equity securities as detailed in his Certification and has been damaged thereby.

(j) Plaintiff John Zegarski ("Zegarski") is a former Enron employee who purchased equity securities of Enron in his 401(k) account at $84.50 per share, as detailed in his Certification, and has suffered substantial damage as a result thereof. Zegarski's ability to fund his retirement plan has been substantially impaired by the fraud alleged herein.

(k) Each of the plaintiffs detailed in Ex. A attached to Lead Plaintiffs' Appendix of Exhibits in Support of Consolidated Complaint ("Exhibit Appendix") purchased Enron common stock contemporaneously with the sale of Enron stock by one or more of the defendants named in ¶999-1000 below in violation of §20A of the 1934 Act, as detailed in their Certifications, and suffered substantial damage as a result thereof.

(l) Plaintiff Mervin Schwartz, Jr. ("Schwartz") purchased 1,420 shares of the Preferred Securities during the Class Period as detailed in his Certification and suffered substantial damage as a result thereof.

(m) Plaintiff Seymour Berman ("Berman") purchased 4,000 shares of the Preferred Securities during the Class Period as detailed in his Certification and suffered substantial damage as a result thereof.

(n) Plaintiff Steven Smith ("Smith") purchased 1,000 shares of the Preferred Securities during the Class Period as detailed in his Certification and suffered substantial damage as a result thereof.

(o) Plaintiff Archdiocese of Milwaukee ("Archdiocese") purchased publicly traded debt securities of Enron at artificially inflated prices detailed in its Amended Certification, including the 7.875% Notes due 6/15/03, and suffered substantial damage as a result thereof.

D. Defendants and Related Parties

(1) Enron

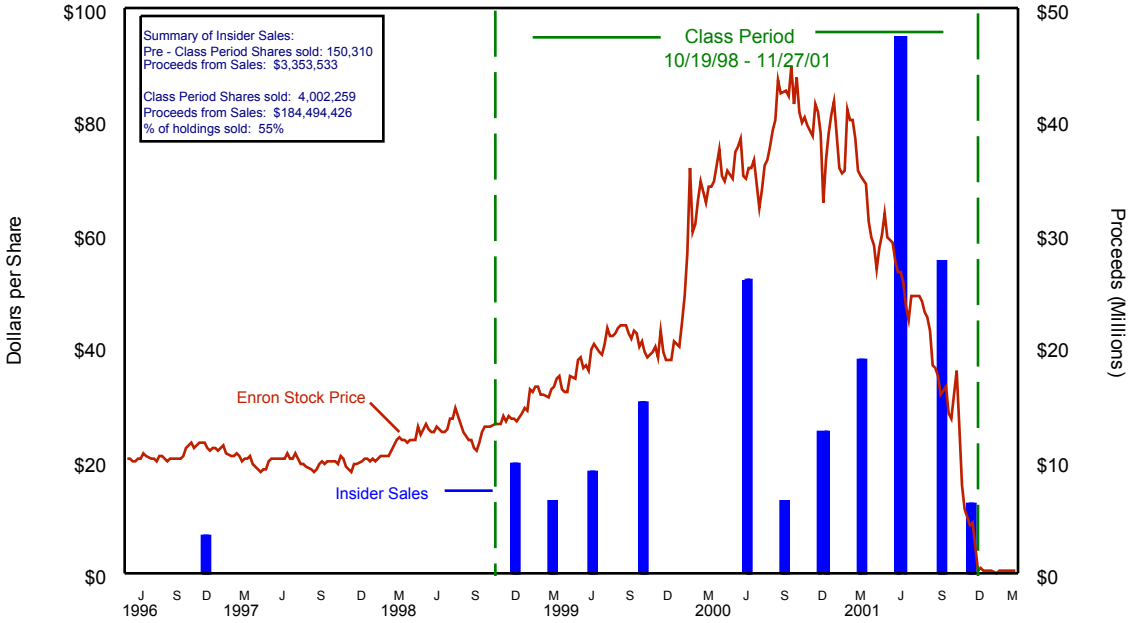
82. Enron is not named as a defendant in this action as it has filed for protection pursuant to Chapter 11 of the U.S. Bankruptcy Code.

83. (a) Defendant Kenneth L. Lay ("Lay") was director of the Company and Chairman of the Board of Directors of Enron and was Chief Executive Officer at various times during the Class Period. Lay also served as Enron's Chief Executive Officer from 86 until 2/01 and again from 8/01 through the end of the Class Period. During the Class Period, while in possession of adverse undisclosed information about the Company, Lay sold 4,002,259 shares of his Enron stock for $184,494,426 in illegal insider trading proceeds. Lay also transferred 1,456,421 shares of his Enron stock valued at $76,305,838 to the Company to pay the exercise price of options he was exercising, plus related tax withholding, such that the vast majority of his insider trading proceeds went directly into his pocket. Lay also received bonus payments of $18.1 million, in addition to his salary, for 97, 98, 99 and 00 based on Enron's false financial reports and because Enron stock hit certain performance targets. This defendant's insider selling before and during the Class Period is shown below:

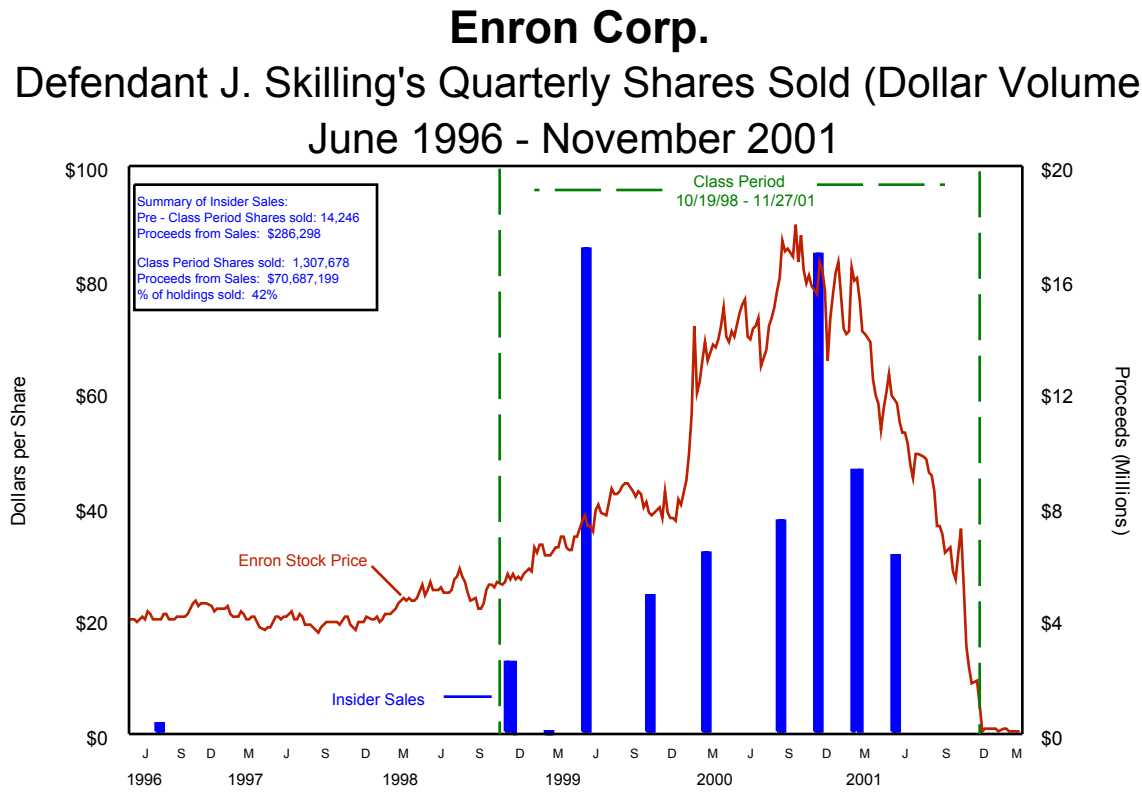
Enron Corp.

Defendant K. Lay's Quarterly Shares Sold (Dollar Volume)

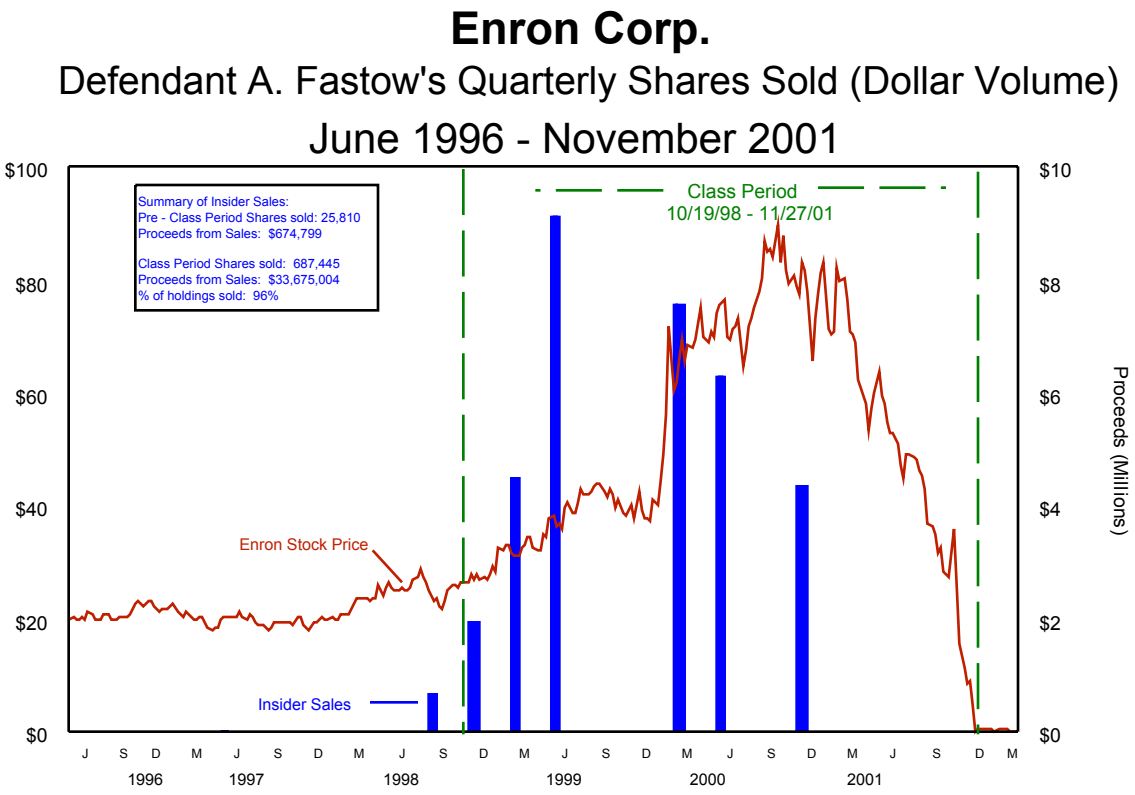
June 1996 - November 2001



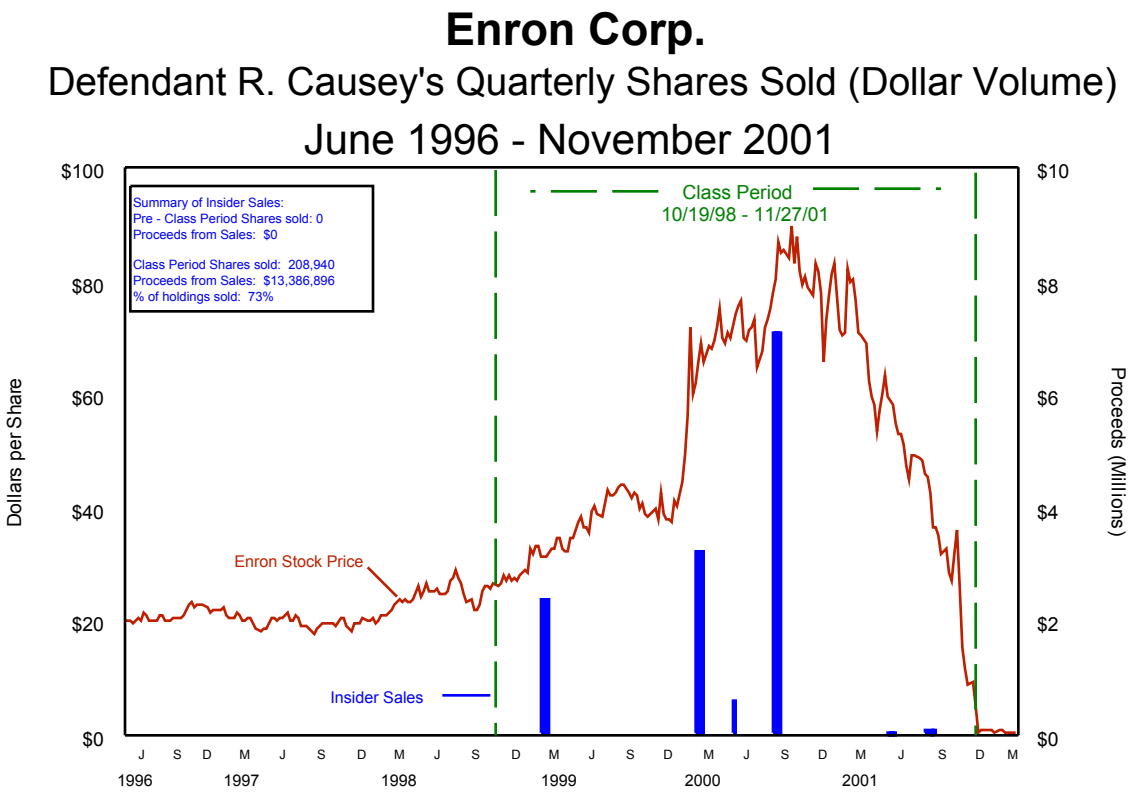
(b) Defendant Jeffrey K. Skilling ("Skilling") was a director of the Company. Skilling also served as the Company's President and Chief Operating Officer until 2/01, when he became Chief Executive Officer of Enron. During the Class Period, while in possession of adverse undisclosed information about the Company, Skilling sold 1,307,678 shares of his Enron stock for $70,687,199 in illegal insider trading proceeds. Skilling also transferred 2,063,625 shares of his Enron stock valued at $114,220,286 to the Company to pay the exercise price of options he was exercising plus related tax withholding, such that the vast majority of his insider trading proceeds went directly into his pocket. Skilling also received bonus payments of $13.2 million, in addition to his salary, for 97, 98, 99 and 00 based on Enron's false financial reports and because Enron stock hit certain performance targets. This defendant's insider selling before and during the Class Period is shown below:



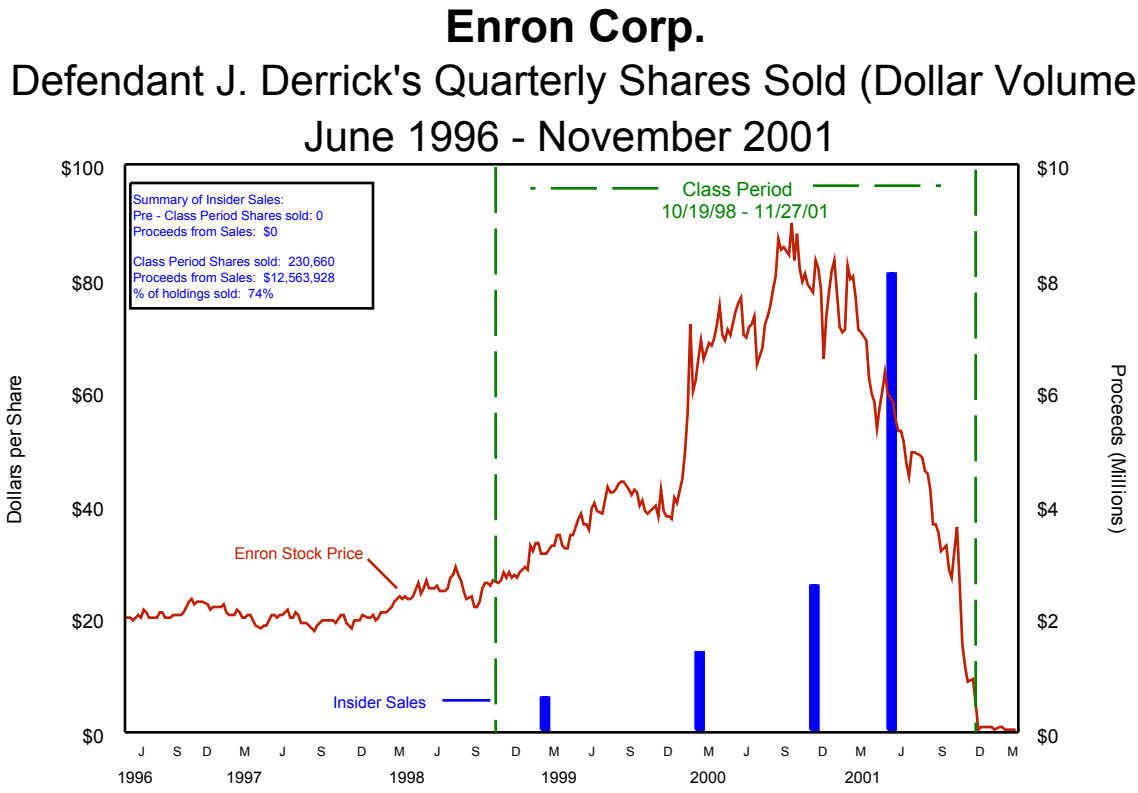
(c) Defendant Andrew S. Fastow ("Fastow") was Chief Financial Officer of Enron until he was fired in 10/01. During the Class Period, while in possession of adverse undisclosed information about the Company, Fastow sold 687,445 shares of his Enron stock for $33,675,004 in illegal insider trading proceeds. Fastow also received bonus payments of over $3 million, in addition to his salary, for 97, 98, 99 and 00 based on Enron's false financial reports and because Enron stock hit certain performance targets. Fastow also pocketed millions of dollars (over $30 million) of ill-gotten gains via the partnership and SPE transactions detailed herein. This defendant's insider selling before and during the Class Period is shown below:



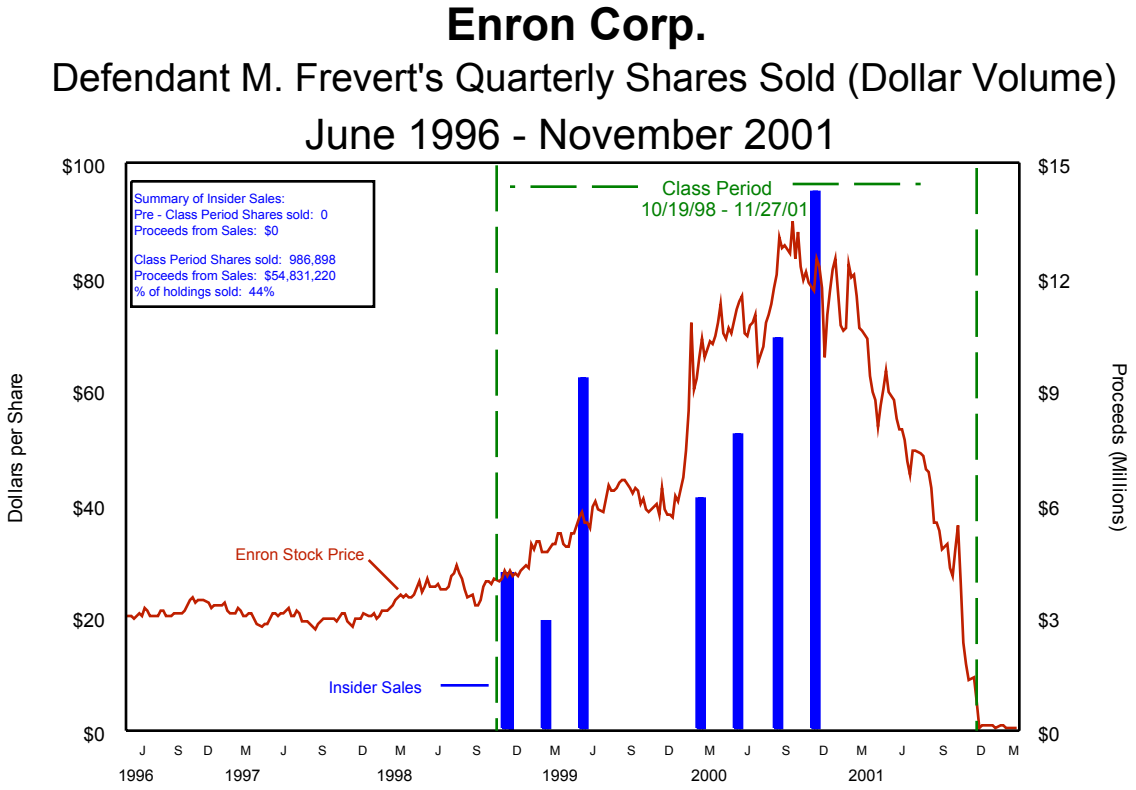
(d) Defendant Richard A. Causey ("Causey") was Executive Vice President and Chief Accounting Officer of Enron. During the Class Period, while in possession of adverse undisclosed information about the Company, Causey sold 208,940 shares of his Enron stock for $13,386,896 in illegal insider trading proceeds. Causey also received bonus payments of over $1.5 million, in addition to his salary, for 97, 98, 99 and 00 based on Enron's false financial reports and because Enron stock hit certain performance targets. This defendant's insider selling before and during the Class Period is shown below:



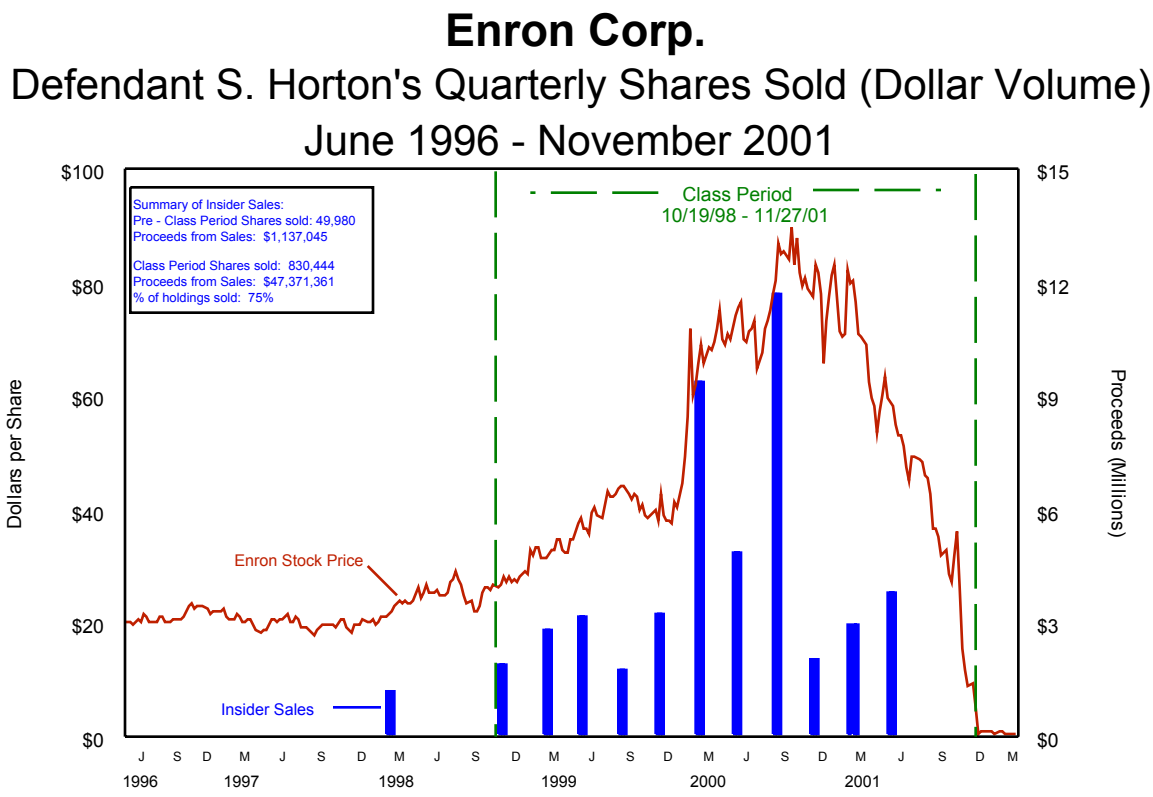
(e) Defendant James V. Derrick, Jr. ("Derrick") was Executive Vice President and General Counsel of Enron since 7/99, and prior to that was Senior Vice President and General Counsel. During the Class Period, while in possession of adverse undisclosed information about the Company, Derrick sold 230,660 shares of his Enron stock for $12,563,928 in illegal insider trading proceeds. Derrick also received bonus payments of over $1.2 million, in addition to his salary, for 97, 98, 99 and 00 based on Enron's false financial reports and because Enron stock hit certain performance targets. This defendant's insider selling before and during the Class Period is shown below:



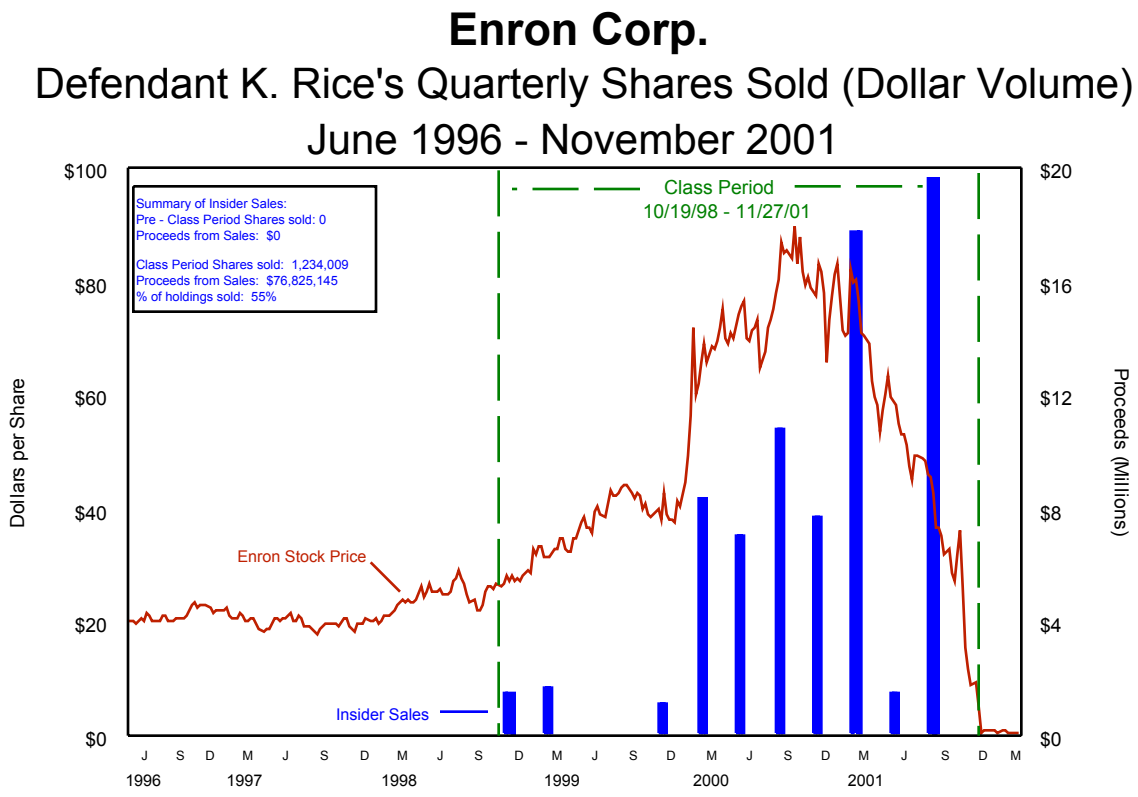
(f) Defendant Mark A. Frevert ("Frevert") was Chairman and Chief Executive Officer of Enron's Wholesale Services since 6/00, and Chairman and Chief Executive Officer of Enron Europe from 3/97-6/00. During the Class Period, while in possession of adverse undisclosed information about the Company, Frevert sold 986,898 shares of his Enron stock for $54,831,220 in illegal insider trading proceeds. Frevert also transferred 81,104 shares of his Enron stock valued at $5,570,831 to the Company to pay the exercise price of options he was exercising plus related tax withholding, such that much of his insider trading proceeds went directly into his pocket. Frevert also received bonus payments of $5.3 million, in addition to his salary, for 97, 98, 99 and 00 based on Enron's false financial reports. This defendant's insider selling before and during the Class Period is shown below:



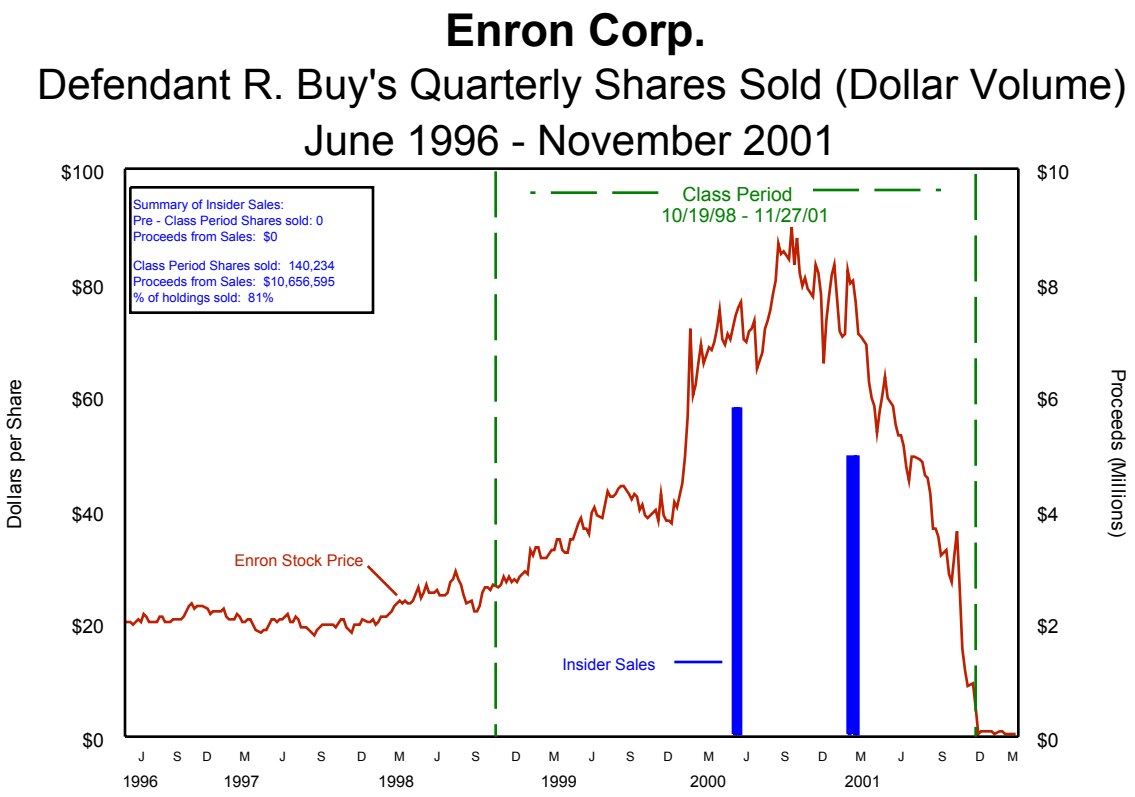
(g) Defendant Stanley C. Horton ("Horton") was Chairman and Chief Executive Officer of Enron Transportation Services. During the Class Period, while in possession of adverse undisclosed information about the Company, Horton sold 830,444 shares of his Enron stock for $47,371,361 in illegal insider trading proceeds. Horton also transferred 10,147 shares of his Enron stock valued at $722,565 to the Company to pay the exercise price of options he was exercising plus related tax withholding, such that the vast majority of his insider trading proceeds went directly into his pocket. Horton also received bonus payments of over $3.1 million, in addition to his salary, for 97, 98, 99 and 00 based on Enron's false financial reports. This defendant's insider selling before and during the Class Period is shown below:



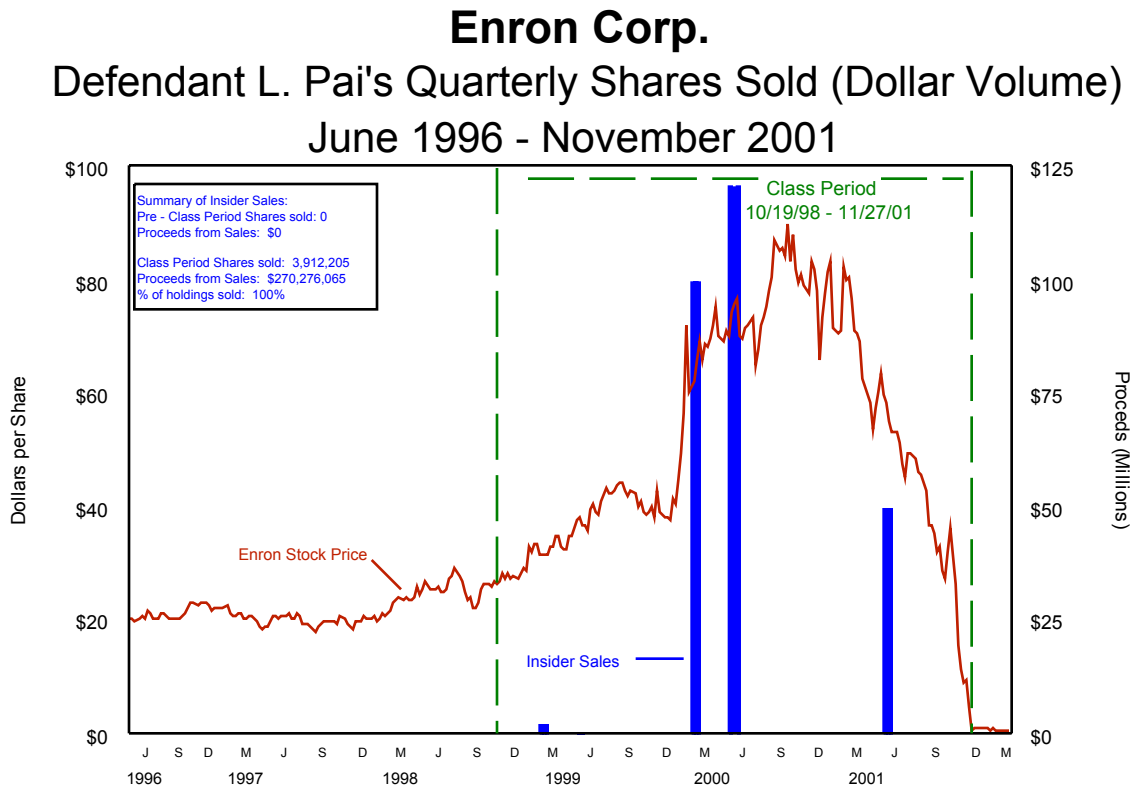
(h) Defendant Kenneth D. Rice ("Rice") was Chairman and Chief Executive Officer of EBS since 6/00. Prior to that, Rice was Chairman and Chief Executive Officer of Enron Capital & Trade ("ECT") - North America from 3/97 until 6/99. During the Class Period, while in possession of adverse undisclosed information about the Company, Rice sold 1,234,009 shares of his Enron stock for $76,825,145 in illegal insider trading proceeds. Rice also transferred 27,847 shares of his Enron stock valued at $2,222,691 to the Company to pay the exercise price of options he was exercising plus related tax withholding, such that much of his insider trading proceeds went directly into his pocket. Rice also received bonus payments of $6.4 million in addition to his salary, for 97, 98, 99 and 00 based on Enron's false financial reports and because Enron stock hit certain performance targets. This defendant's insider selling before and during the Class Period is shown below:



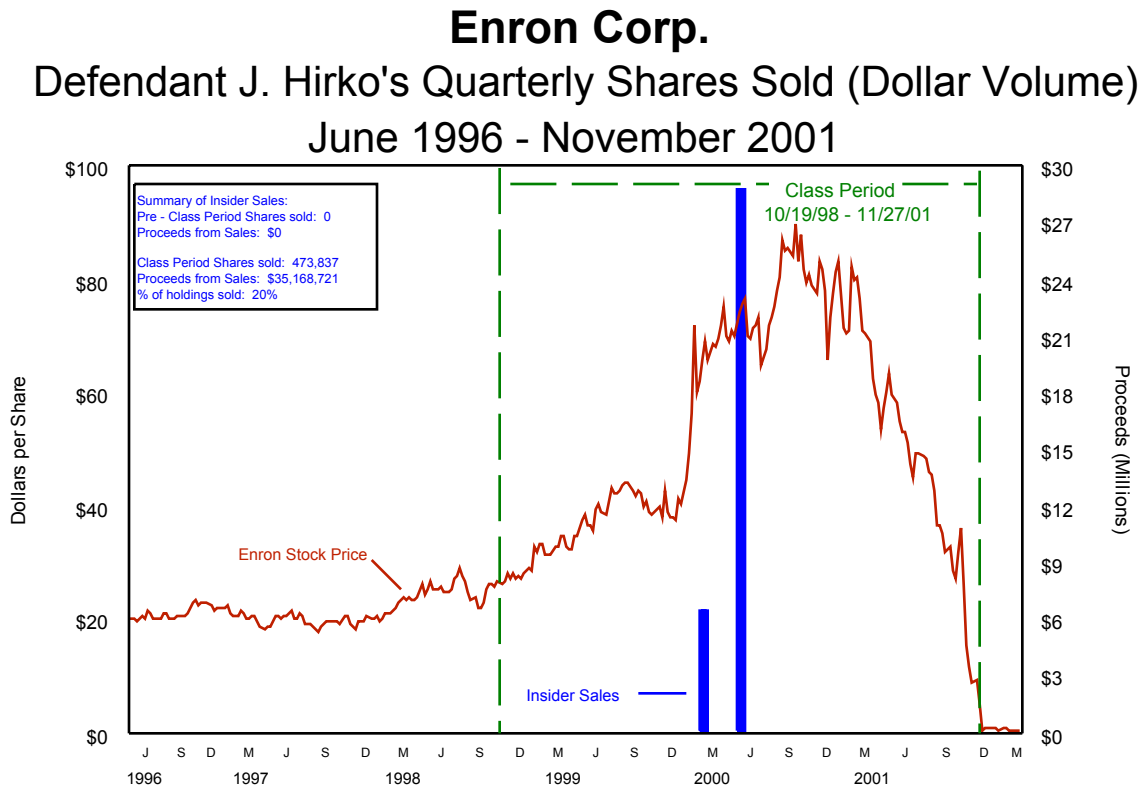
(i) Defendant Richard B. Buy ("Buy") was Executive Vice President and Chief Risk Officer of Enron since 6/99, Senior Vice President and Chief Risk Officer from 3/99-7/99, and Management Director and Chief Risk Officer of ECT from 1/98-3/99. Buy previously worked for Bankers Trust, now part of Deutsche Bank. During the Class Period, while in possession of adverse undisclosed information about the Company, Buy sold 140,234 shares of his Enron stock for $10,656,595 in illegal insider trading proceeds. Buy also received bonus payments of over $1.6 million, in addition to his salary, for 97, 98, 99 and 00 based on Enron's false financial reports and because Enron stock hit certain performance targets. This defendant's insider selling before and during the Class Period is shown below:



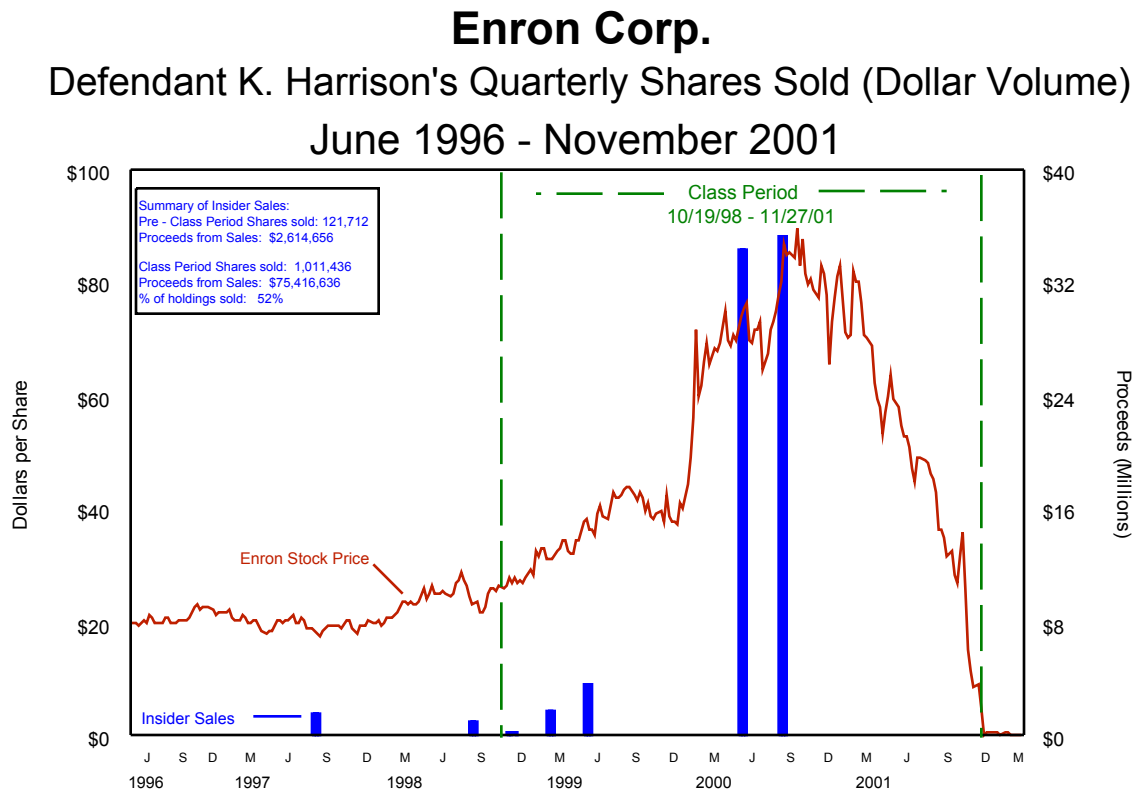
(j) Defendant Lou L. Pai ("Pai") was Chairman and Chief Executive Officer of Enron Accelerator, and prior to that Pai was a director of EES and was involved in setting up some of the bad deals. During the Class Period, while in possession of adverse undisclosed information about the Company, Pai sold 3,912,205 shares of his Enron stock for $270,276,065 in illegal insider trading proceeds. Pai also transferred 57,756 shares of his Enron stock valued at $3,961,973 to the Company to pay the exercise price of options he was exercising plus related tax withholding, such that much of his insider trading proceeds went directly into his pocket. Pai also received bonus payments of millions of dollars, in addition to his salary, for 97, 98, 99 and 00 based on Enron's false financial reports and because Enron stock hit certain performance targets. This defendant's insider selling before and during the Class Period is shown below:



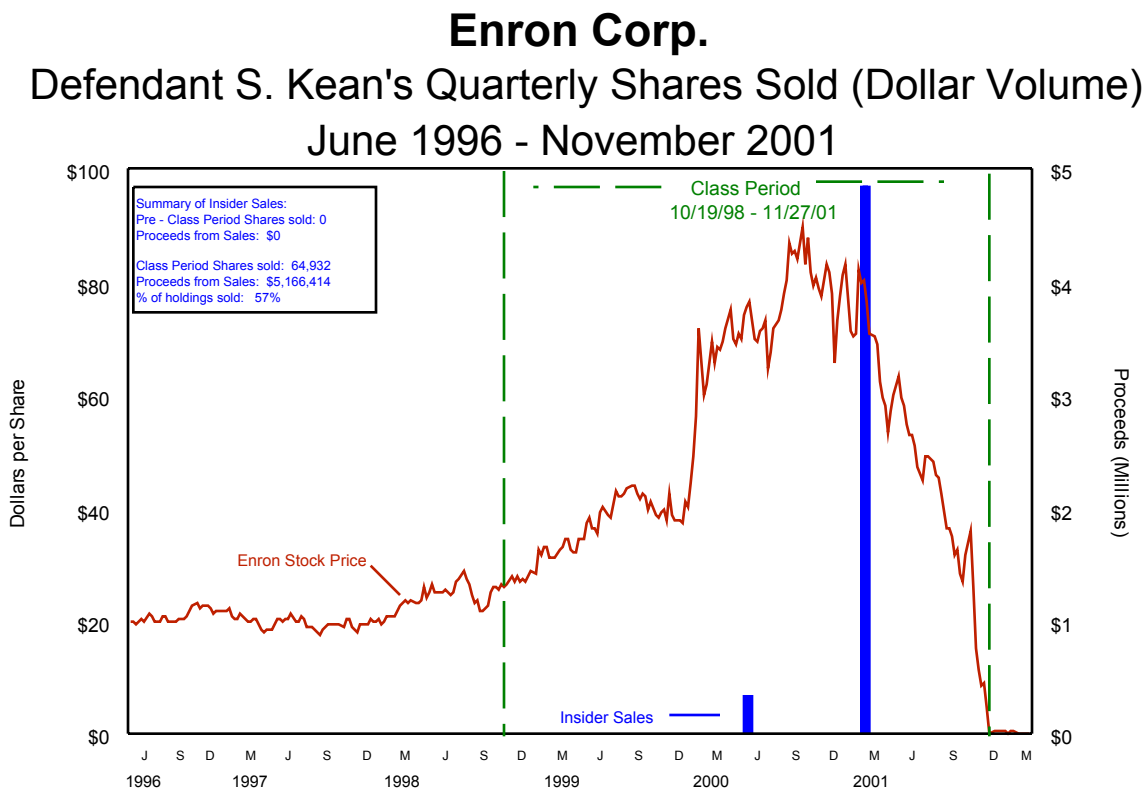
(k) Defendant Joseph M. Hirko ("Hirko") was, at all relevant times, Chief Executive Officer of EBS. During the Class Period, while in possession of adverse undisclosed information about the Company, Hirko sold 473,837 shares of his Enron stock for $35,168,721 in illegal insider trading proceeds. This defendant's insider selling before and during the Class Period is shown below:



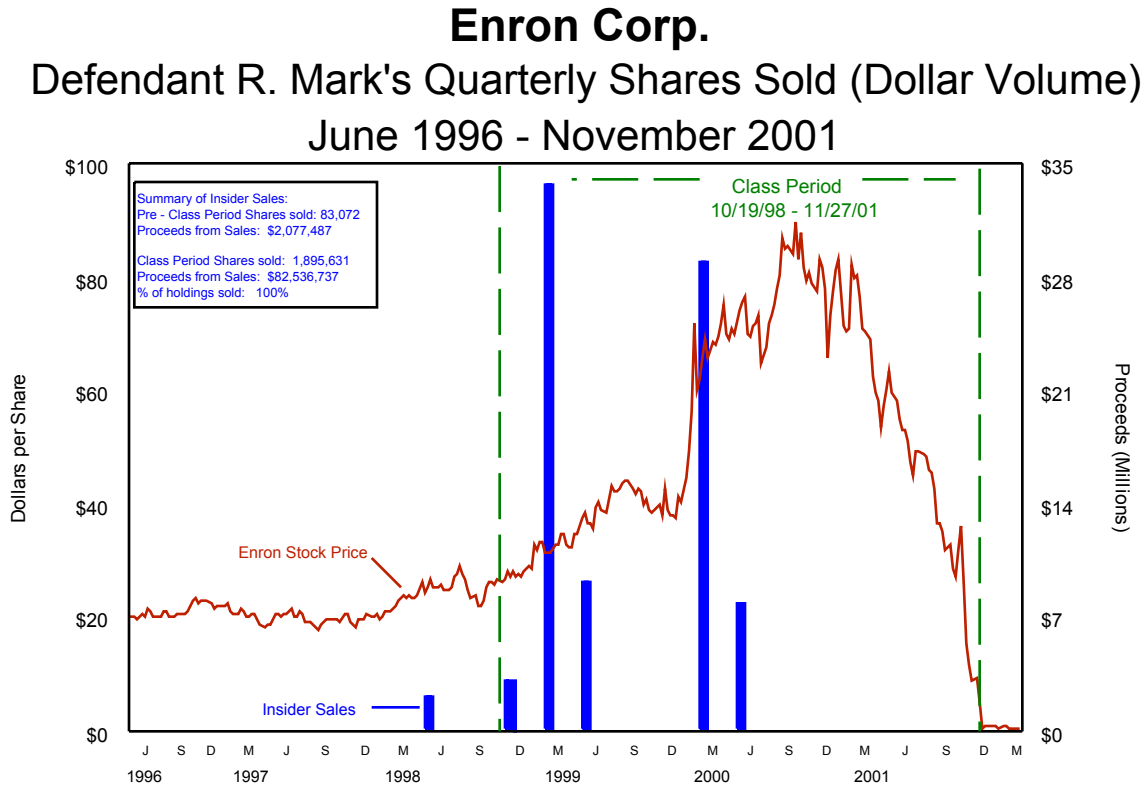
(l) Defendant Ken L. Harrison ("Harrison") was, at all relevant times, Chief Executive Officer of Portland General Electric (a subsidiary of Enron) until 3/31/00, and was a director of Enron. During the Class Period, while in possession of adverse undisclosed information about the Company, Harrison sold 1,011,436 shares of his Enron stock for $75,416,636 in illegal insider trading proceeds. This defendant's insider selling before and during the Class Period is shown below:



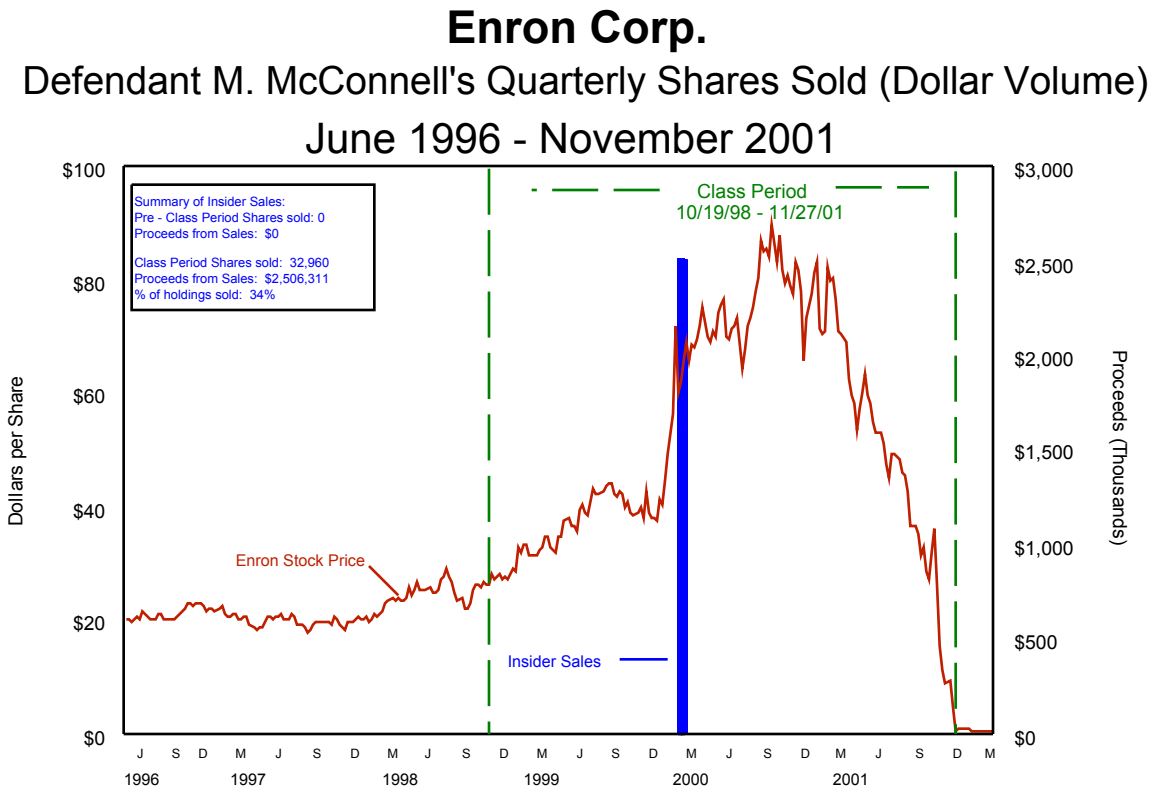
(m) Defendant Steven J. Kean ("Kean") was Executive Vice President and Chief of Staff of Enron since 99. During the Class Period, while in possession of adverse undisclosed information about the Company, Kean sold 64,932 shares of his Enron stock for $5,166,414 in illegal insider trading proceeds. This defendant's insider selling before and during the Class Period is shown below:



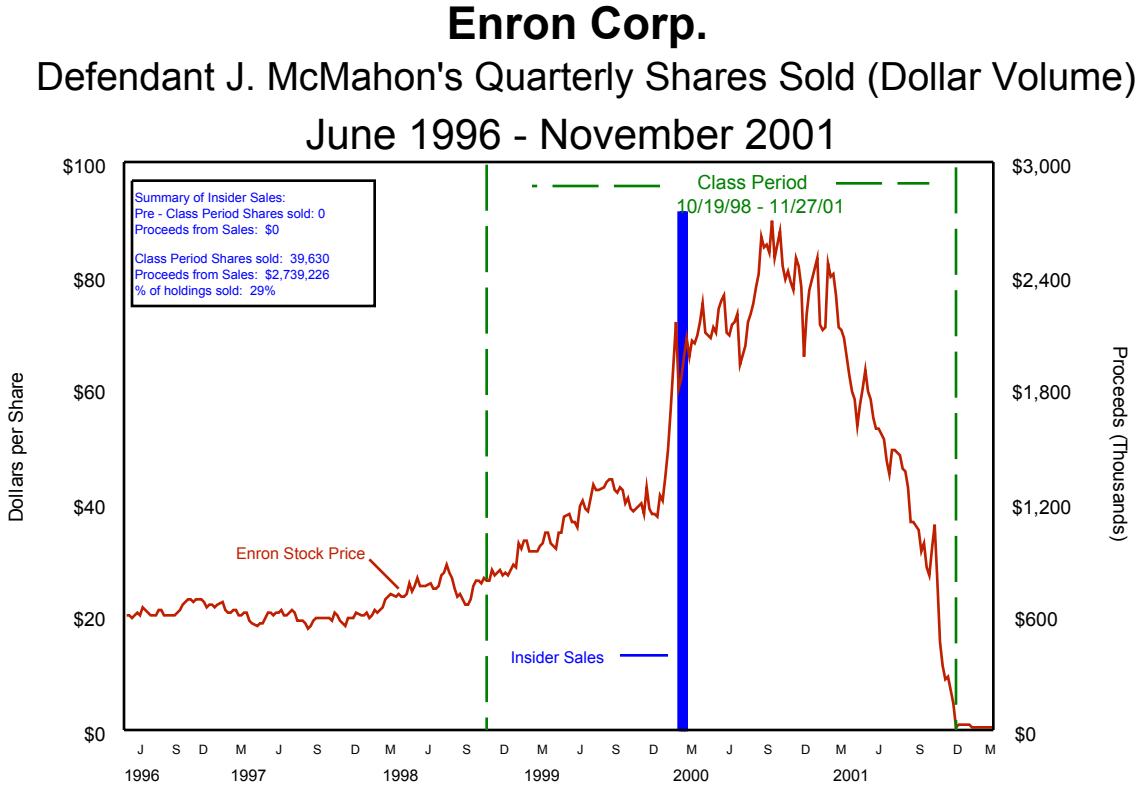
(n) Defendant Rebecca P. Mark-Jusbasche ("Mark-Jusbasche") was a top executive of Enron during the Class Period, *i.e.*, Chairman and CEO of Enron International, and later Vice Chairman, as well as CEO of Azurix. During the Class Period, while in possession of adverse undisclosed information about the Company, Mark-Jusbasche sold 1,895,631 shares of her Enron stock for $82,536,737 in illegal insider trading proceeds. Mark-Jusbasche also received bonus payments of $1.9 million, in addition to her salary, for 97, 98, 99 and 00 based on Enron's false financial reports and because Enron stock hit certain performance targets. This defendant's insider selling before and during the Class Period is shown below:



(o) Defendant Michael S. McConnell ("McConnell") was, at all relevant times, Executive Vice President, Technology of Enron. During the Class Period, while in possession of adverse undisclosed information about the Company, McConnell sold 32,960 shares of his Enron stock for $2,506,311 in illegal insider trading proceeds. This defendant's insider selling before and during the Class Period is shown below:

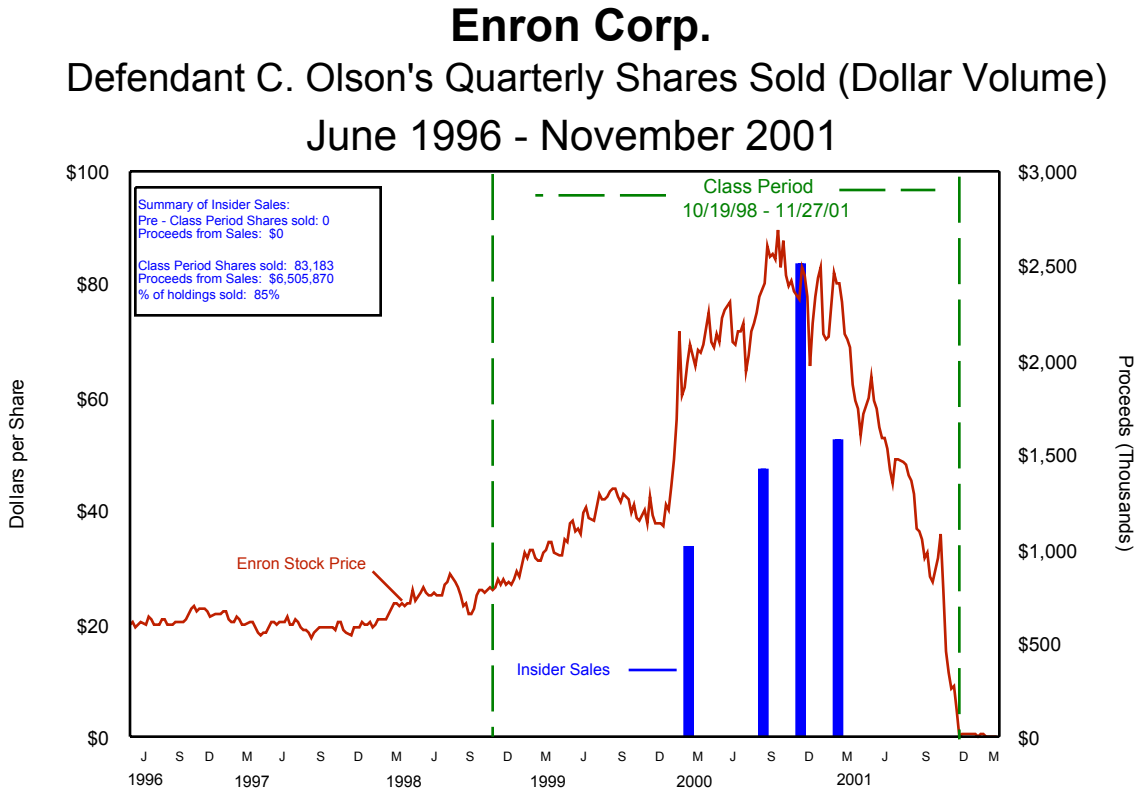


(p) Defendant Jeffrey McMahon ("McMahon") was Executive Vice President, Finance and Treasurer of Enron since 7/99. Prior to that he was Senior Vice President, Finance and Treasurer from 7/98-7/99, and from 94-7/98 was Chief Financial Officer of Enron Europe. During the Class Period, while in possession of adverse undisclosed information about the Company, McMahon sold 39,630 shares of his Enron stock for $2,739,226 in illegal insider trading proceeds. McMahon also received bonus payments of $3.3 million, in addition to his salary, for 97, 98, 99 and 00 based on Enron's false financial reports and because Enron stock hit certain performance targets. This defendant's insider selling before and during the Class Period is shown below:

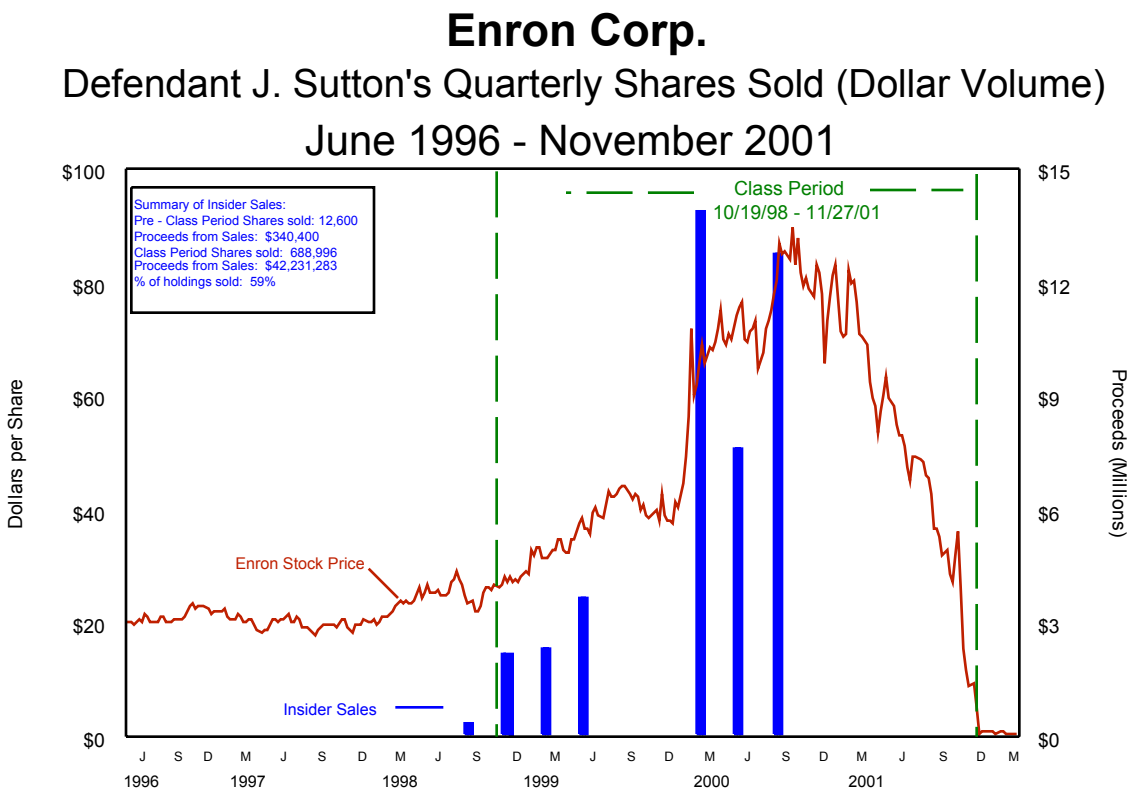


(q) Defendant Cindy K. Olson ("Olson") was, at all relevant times, Executive Vice President, Human Resources of Enron. During the Class Period, while in possession of adverse undisclosed information about the Company, Olson sold 83,183 shares of her Enron stock for $6,505,870 in illegal insider trading proceeds. Olson also received bonus payments of over $1 million, in addition to her salary, for 97, 98, 99 and 00 based on Enron's false financial reports and

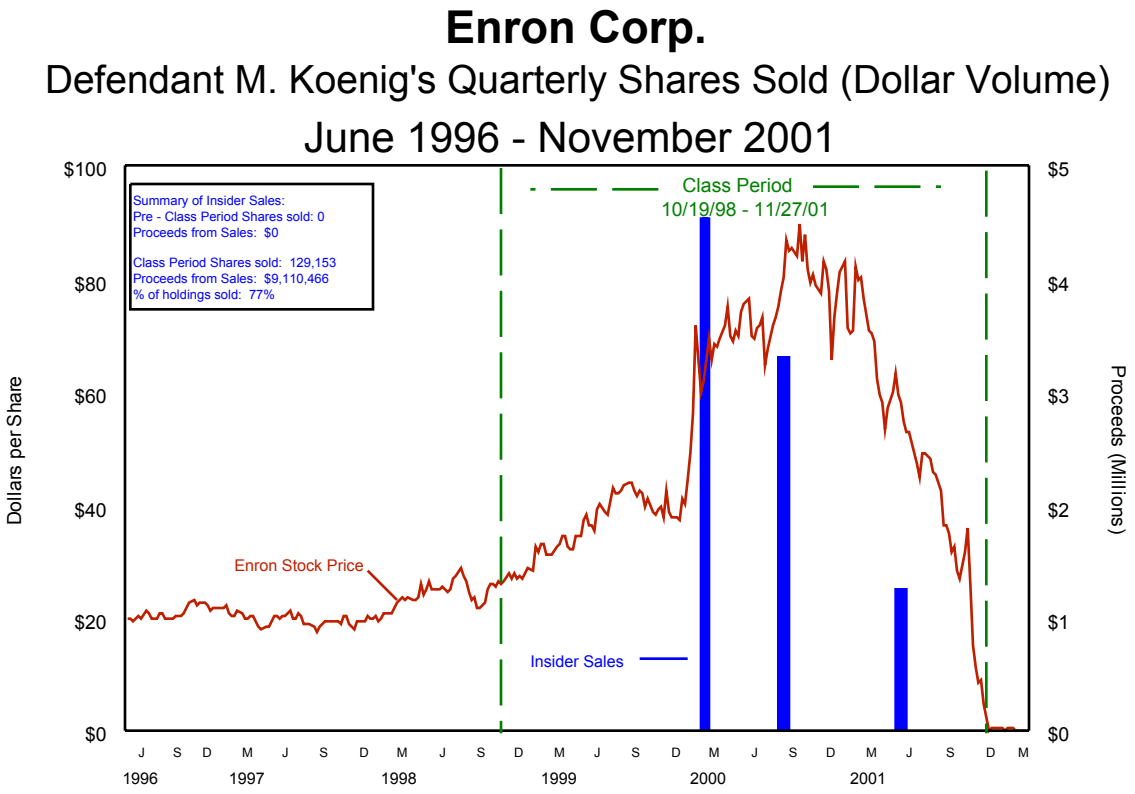
because Enron stock hit certain performance targets. This defendant's insider selling before and during the Class Period is shown below:



(r) Defendant Joseph W. Sutton ("Sutton") was, at all relevant times, Vice Chairman of Enron until early 01. During the Class Period, while in possession of adverse undisclosed information about the Company, Sutton sold 688,996 shares of his Enron stock for $42,231,283 in illegal insider trading proceeds. Sutton also transferred 45,454 shares of his Enron stock valued at $3,079,003 to the Company to pay the exercise price of options he was exercising plus related tax withholding, such that much of his insider trading proceeds went directly into his pocket. Sutton also received bonus payments of $2.3 million, in addition to his salary, for 97, 98, 99 and 00 based on Enron's false financial reports and because Enron stock hit certain performance targets. This defendant's insider selling before and during the Class Period is shown below:



(s) Defendant Mark E. Koenig ("Koenig") was, at all relevant times, Executive Vice President, Investor Relations of Enron. During the Class Period, while in possession of adverse undisclosed information about the Company, Koenig sold 129,153 shares of his Enron stock for $9,110,466 in illegal insider trading proceeds. Koenig also received bonus payments of over $1 million, in addition to his salary, for 97, 98, 99 and 00 based on Enron's false financial reports and because Enron stock hit certain performance targets. This defendant's insider selling before and during the Class Period is shown below:

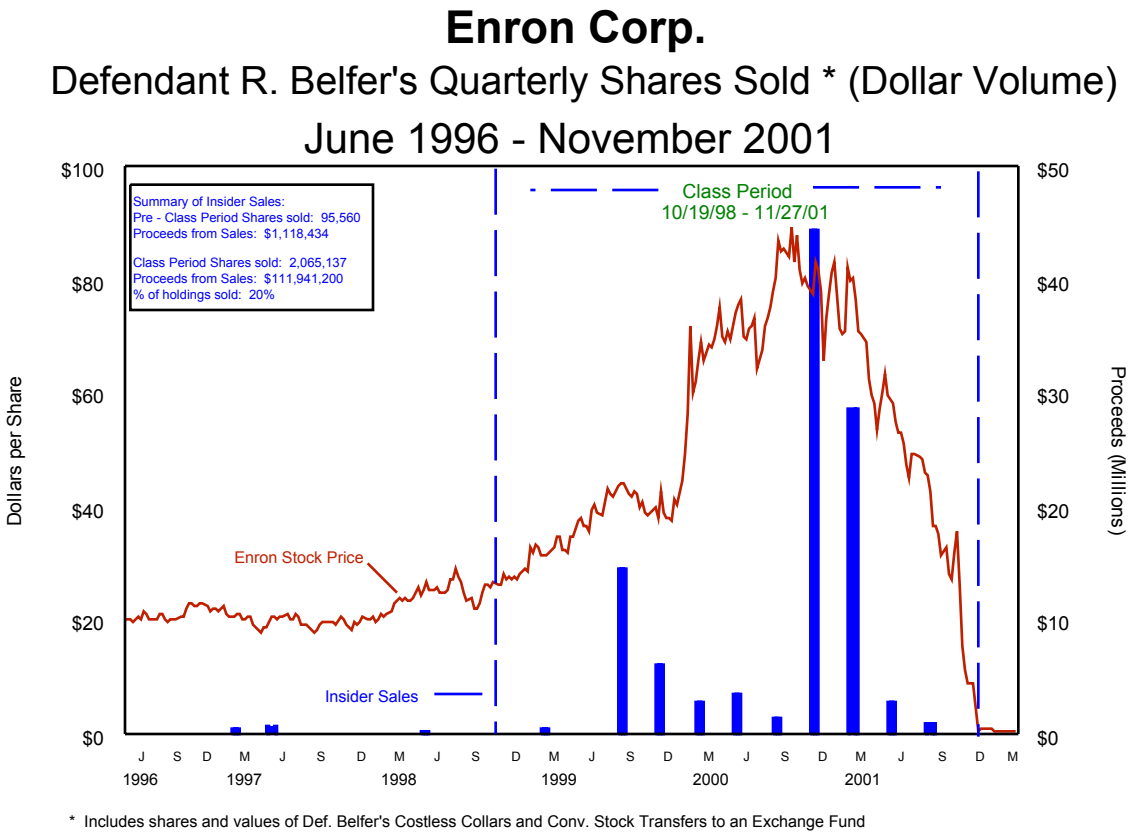


(t) Defendant Kevin P. Hannon ("Hannon") was, until his resignation in 8/01, Operating Officer of EBS. Hannon previously was Enron's president of trading and commodities business. Hannon was involved with, and made positive public statements about, Enron-Online. Hannon also participated in the bandwidth trading by which Enron misstated its financial results. At Hannon's request, he was not considered an officer of Enron specifically so he could avoid reporting his stock sales. During the Class Period, while in possession of adverse undisclosed information about the Company, Hannon sold shares of his Enron stock for millions in illegal insider trading proceeds. Hannon did sell call options[4] on Enron stock prior to 5/1/01 such that he would profit so long as Enron stock dropped below $70 per share by 1/19/02.

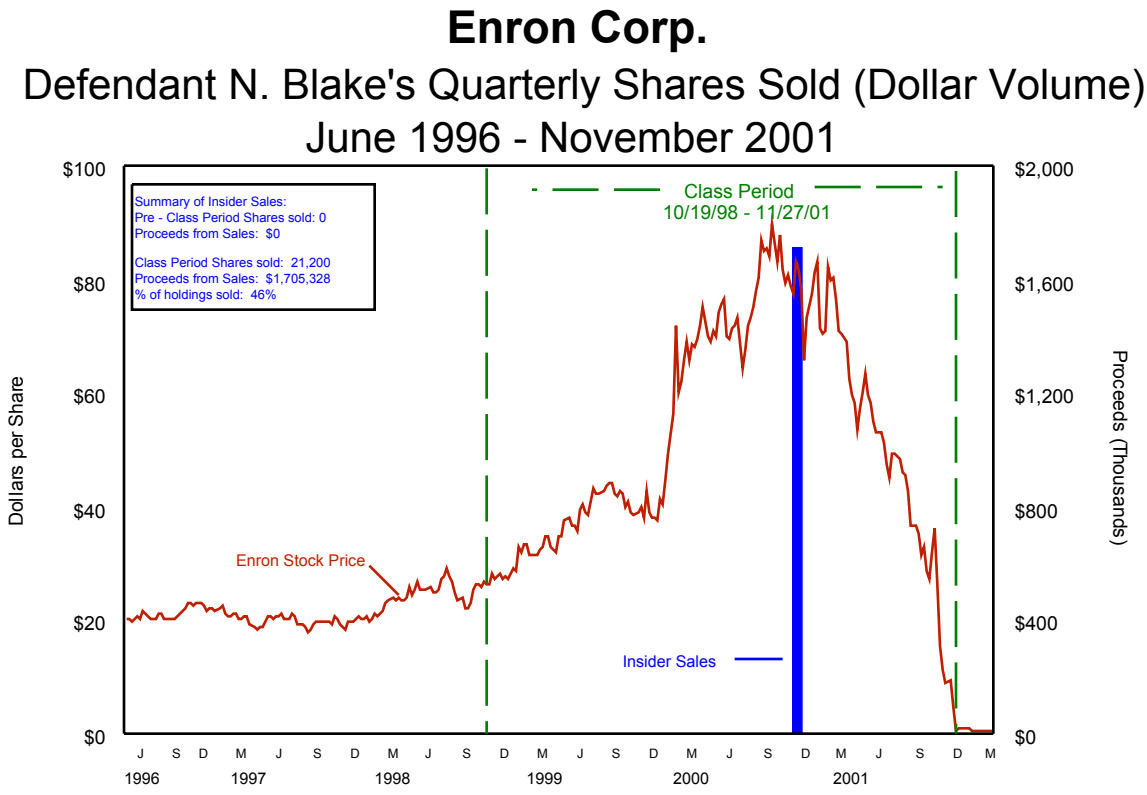
(u) Defendant Lawrence Greg Whalley ("Whalley") was President and Chief Operating Officer of Enron since 8/01. Prior to that, Whalley was President and Chief Operating Officer of Enron Capital Wholesale Services. Whalley, in 11/01, told analysts and rating agencies that there were no additional partnerships that had undisclosed debt. Whalley was not considered an officer of Enron (at his request), so that his stock sales would not have to be reported. During the Class Period, while in possession of adverse undisclosed information about the Company, Whalley sold shares of his Enron stock for millions in illegal insider trading proceeds.

[4] A call option entitles a buyer the right to force Hannon to sell, at a specified exercise price, such that Hannon would (and did) profit if the stock price declined below the exercise price.

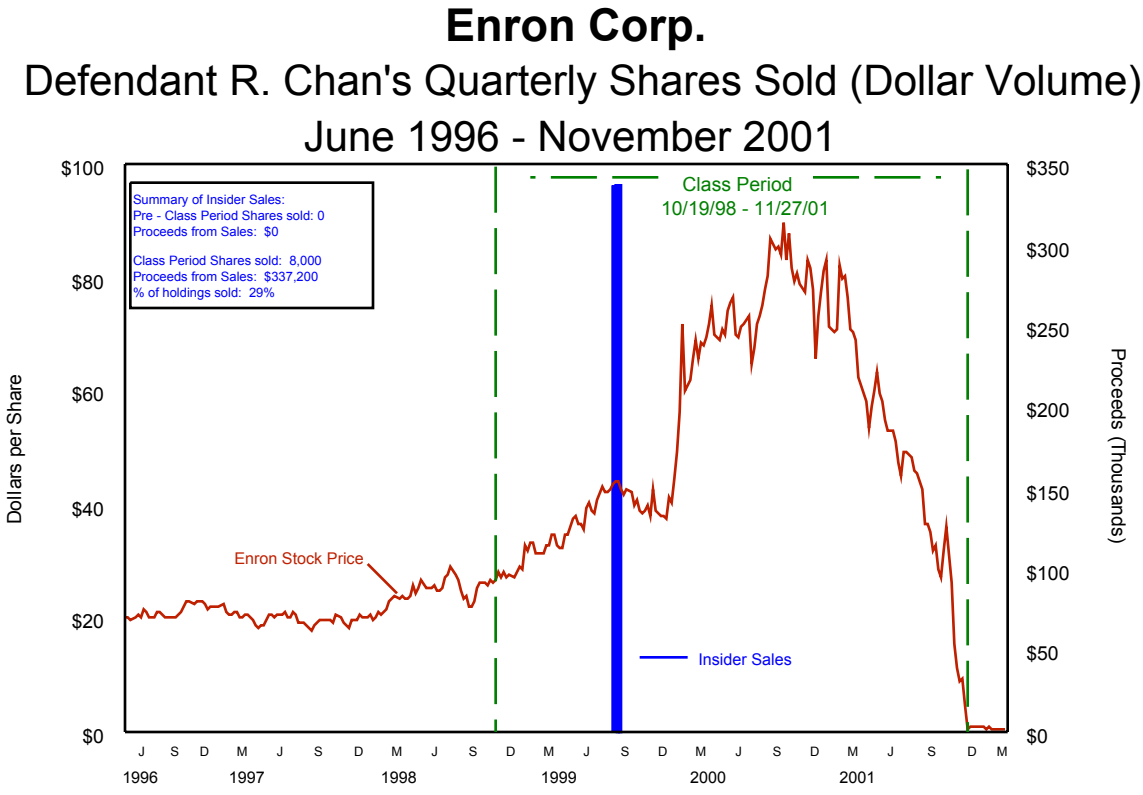
(v) Defendant Robert A. Belfer ("Belfer") was at all relevant times, a director of Enron. During the Class Period, while in possession of adverse undisclosed information about the Company, Belfer sold 2,065,137 shares of his Enron stock for $111,941,200 in illegal insider trading proceeds. This defendant's insider selling before and during the Class Period is shown below:



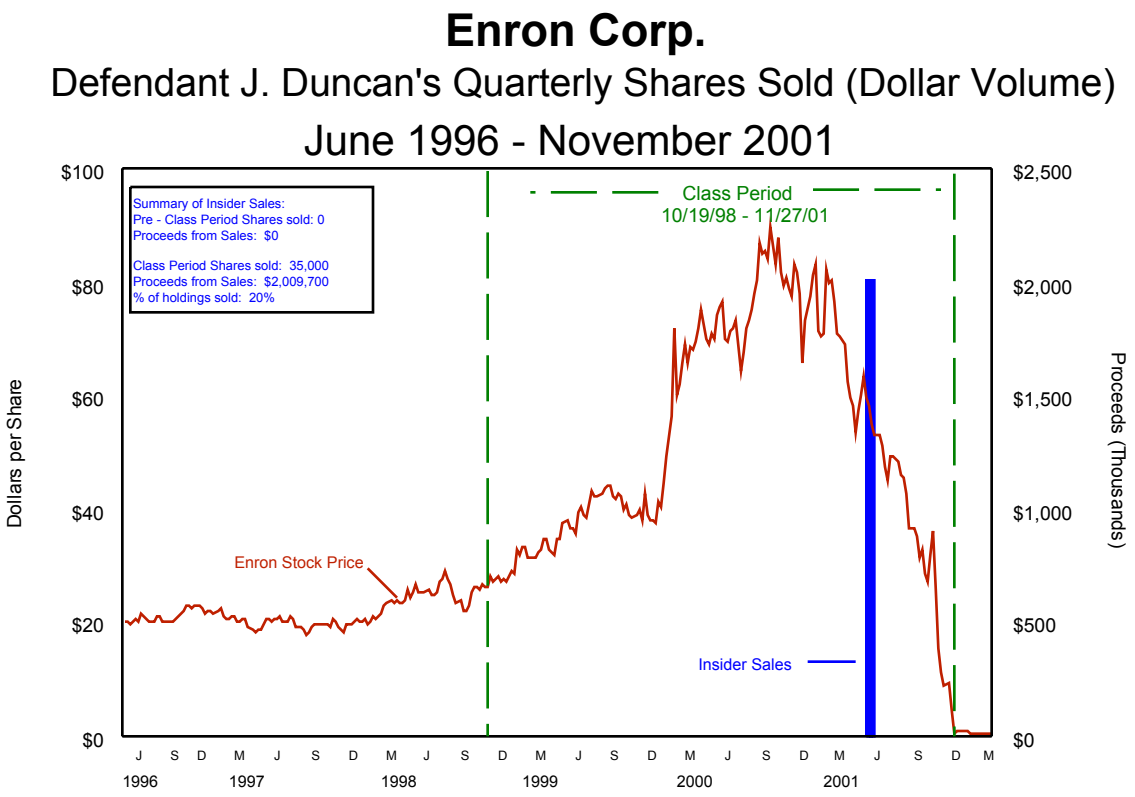
(w) Defendant Norman P. Blake, Jr. ("Blake") was, at all relevant times, a director of Enron. During the Class Period, while in possession of adverse undisclosed information about the Company, Blake sold 21,200 shares of his Enron stock for $1,705,328 in illegal insider trading proceeds. This defendant's insider selling before and during the Class Period is shown below:



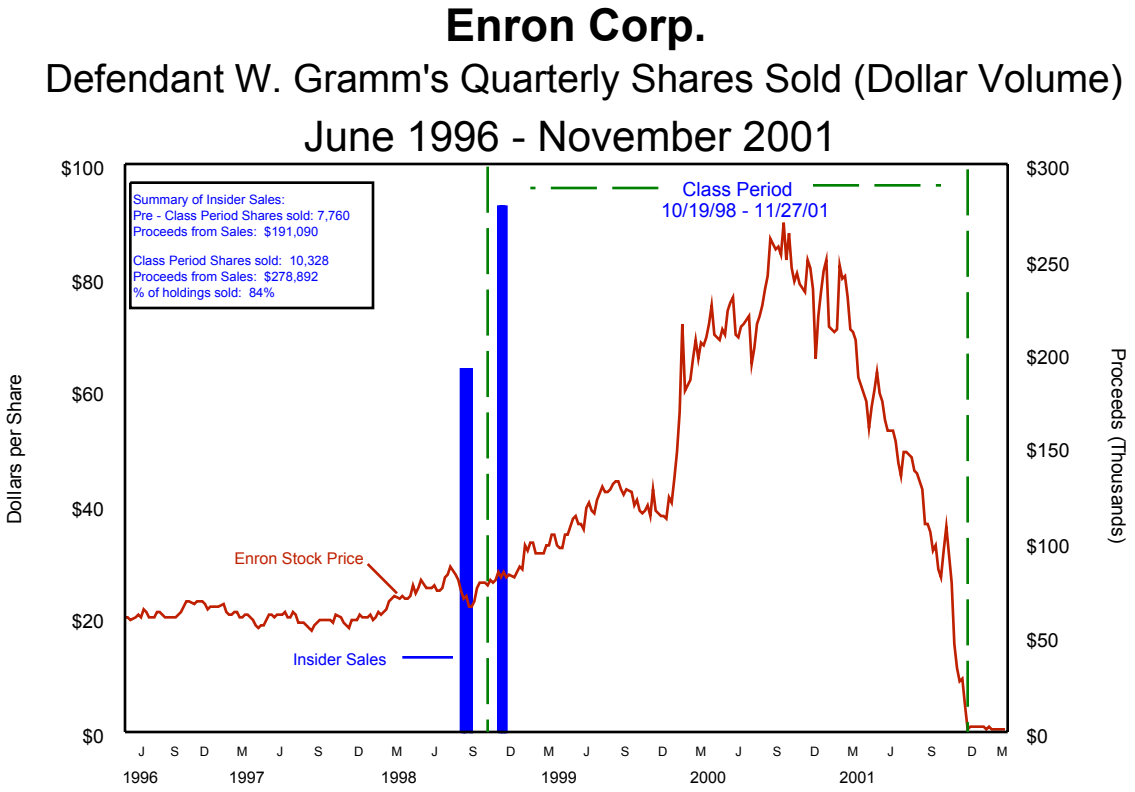
(x) Defendant Ronnie C. Chan ("Chan") was, at all relevant times, a director of Enron. During the Class Period, while in possession of adverse undisclosed information about the Company, Chan sold 8,000 shares of his Enron stock for $337,200 in illegal insider trading proceeds. This defendant's insider selling before and during the Class Period is shown below:



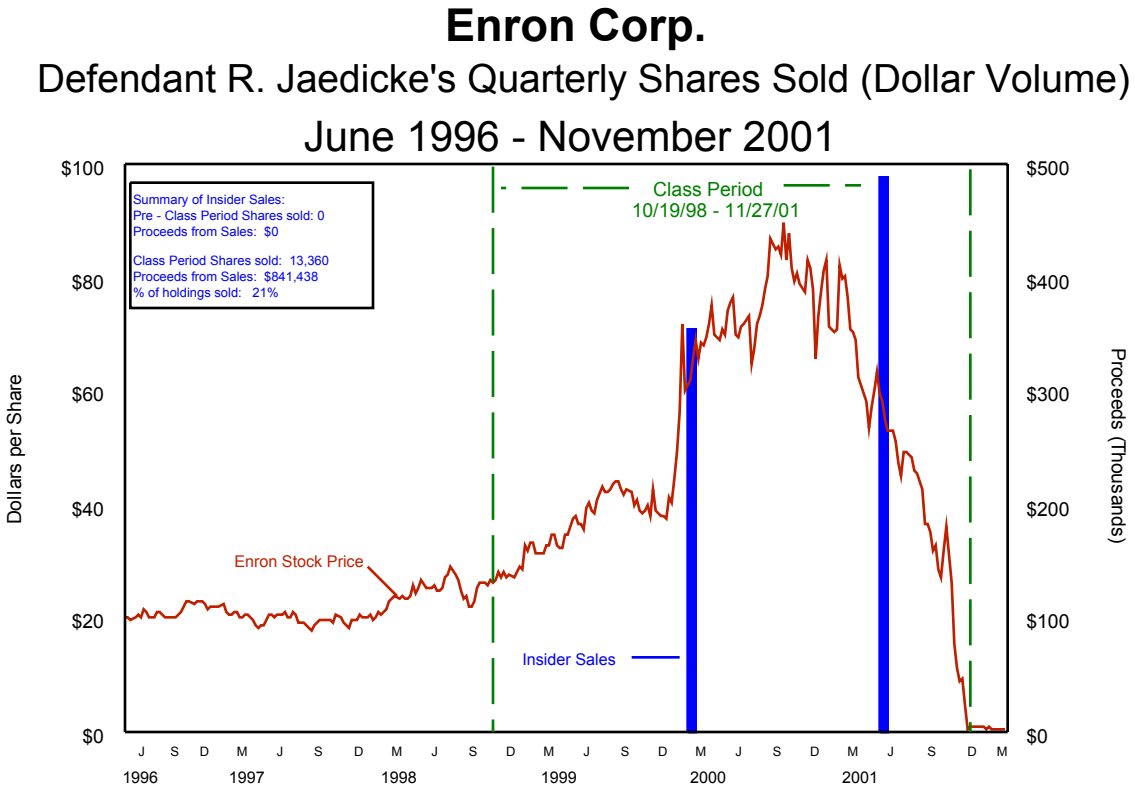
(y) Defendant John H. Duncan ("John Duncan") was, at all relevant times, a director of Enron. During the Class Period, while in possession of adverse undisclosed information about the Company, John Duncan sold 35,000 shares of his Enron stock for $2,009,700 in illegal insider trading proceeds. This defendant's insider selling before and during the Class Period is shown below:



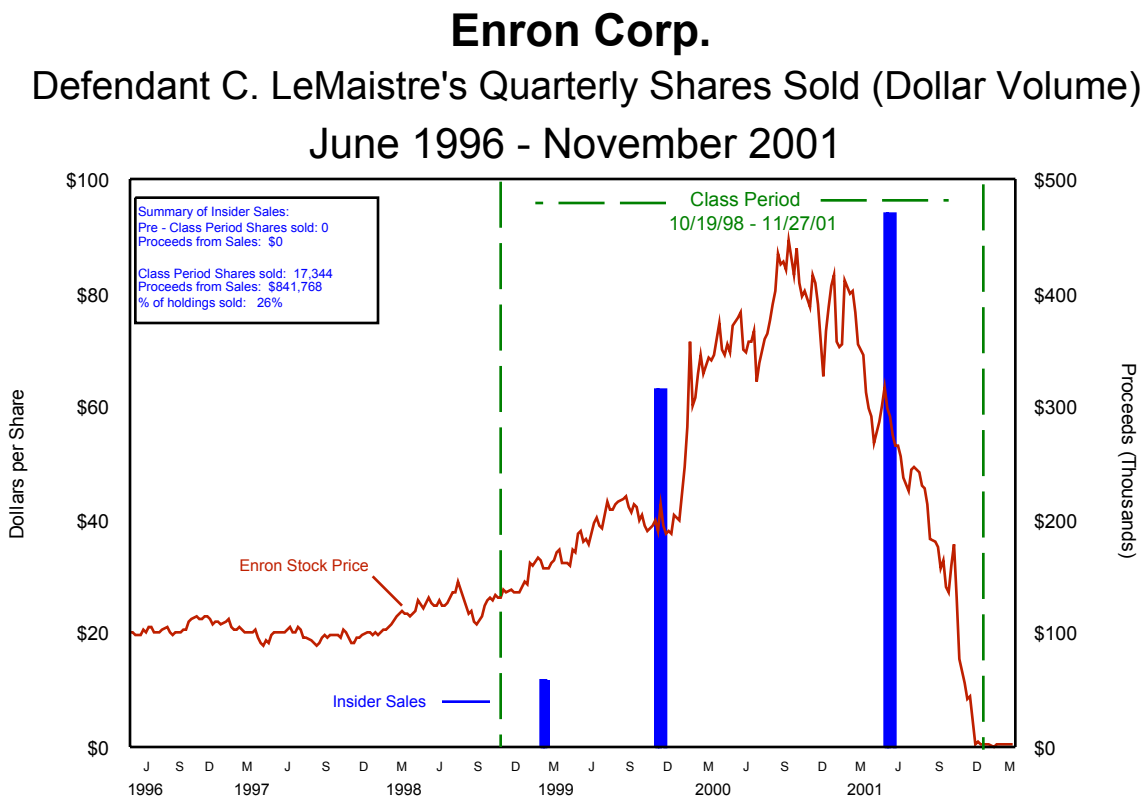
(z) Defendant Wendy L. Gramm ("Gramm") was, at all relevant times, a director of Enron. During the Class Period, while in possession of adverse undisclosed information about the Company, Gramm sold 10,328 shares of her Enron stock for $278,892 in illegal insider trading proceeds. This defendant's insider selling before and during the Class Period is shown below:



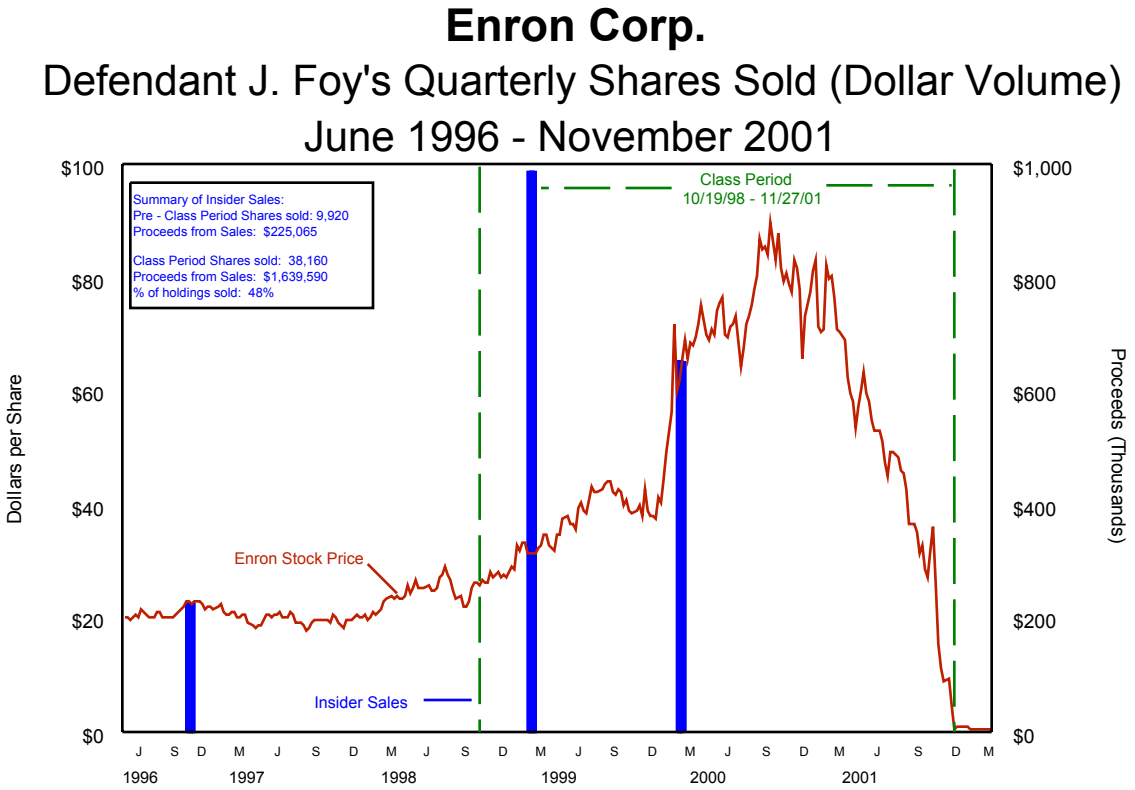
(aa) Defendant Robert K. Jaedicke ("Jaedicke") was, at all relevant times, a director of Enron. During the Class Period, while in possession of adverse undisclosed information about the Company, Jaedicke sold 13,360 shares of his Enron stock for $841,438 in illegal insider trading proceeds. This defendant's insider selling before and during the Class Period is shown below:



(bb) Defendant Charles A. LeMaistre ("LeMaistre") was, at all relevant times, a director of Enron. During the Class Period, while in possession of adverse undisclosed information about the Company, LeMaistre sold 17,344 shares of his Enron stock for $841,768 in illegal insider trading proceeds. This defendant's insider selling before and during the Class Period is shown below:



(cc) Defendant Joe H. Foy ("Foy") was, at all relevant times, a director of Enron until 6/00. During the Class Period, while in possession of adverse undisclosed information about the Company, Foy sold 38,160 shares of his Enron stock for $1,639,590 in illegal insider trading proceeds. This defendant's insider selling before and during the Class Period is shown below:



(dd) Defendants John Mendelsohn ("Mendelsohn"), Jerome J. Meyer ("Meyer"), Paulo V. Ferraz Pereira ("Pereira"), John A. Urquhart ("Urquhart"), John Wakeham ("Wakeham"), Charls E. Walker ("Walker") and Herbert S. Winokur, Jr. ("Winokur") were directors of Enron. Urquhart was also senior advisor to the Chairman in 98. These directors are defendants only as to the claims alleged under §11 of the 1933 Act. Each of these defendants signed Registration Statements issued pursuant to Enron's debt and equity offerings made during the Class Period. As described herein, such Registration Statements contained false and misleading statements as to Enron's business, liquidity and financial results.

(ee) Defendant Frank Savage ("Savage") was a director of Enron from 99 through 01, and was a member of its Finance Committee while he was on the Board. Savage signed the false

and misleading Enron Registration Statement filed and effective with the SEC on 6/1/01, which was used to sell the following Enron securities as to which §11 claims under the 1933 Act are asserted:

7/18/01 $1.9 billion Zero Coupon Convertible Senior Notes Due 2021

Since 95, Savage has been Chairman of Alliance Capital Management International (a division of defendant Alliance Capital Management L.P.). Savage was also a director of defendant Alliance Capital Management L.P. ("Alliance"), a large financial services company which provides a broad variety of financial and investment management services and owns, operates and markets a series of mutual funds known as Alliance Mutual Funds. During 00-01, Alliance was the largest single institutional shareholder of Enron owning over 43 million shares of Enron stock in Alliance mutual funds. In addition, in its investment management business, Alliance had purchased millions of shares of Enron stock for the account of several of its large institutional investor clients. Alliance (and Savage) had a huge motive to keep Enron stock trading at very high levels. Savage sat on Enron's board to protect Alliance interests and so Alliance would receive the benefits of what Savage learned as a director of Enron and a member of its Finance Committee. Alliance controlled and directed Savage in his activities as a director of Enron. A key to keeping Enron's stock high was Enron maintaining its investment grade credit rating and its apparently strong financial condition – which required Enron to constantly raise new capital – an activity which was under the Enron Board's Finance Committee's control. Savage is sued under §11 of the 1933 Act for the above-referenced securities offering. Alliance is sued as a controlling person of Savage and is liable under §§11 and 15 of the 1933 Act.

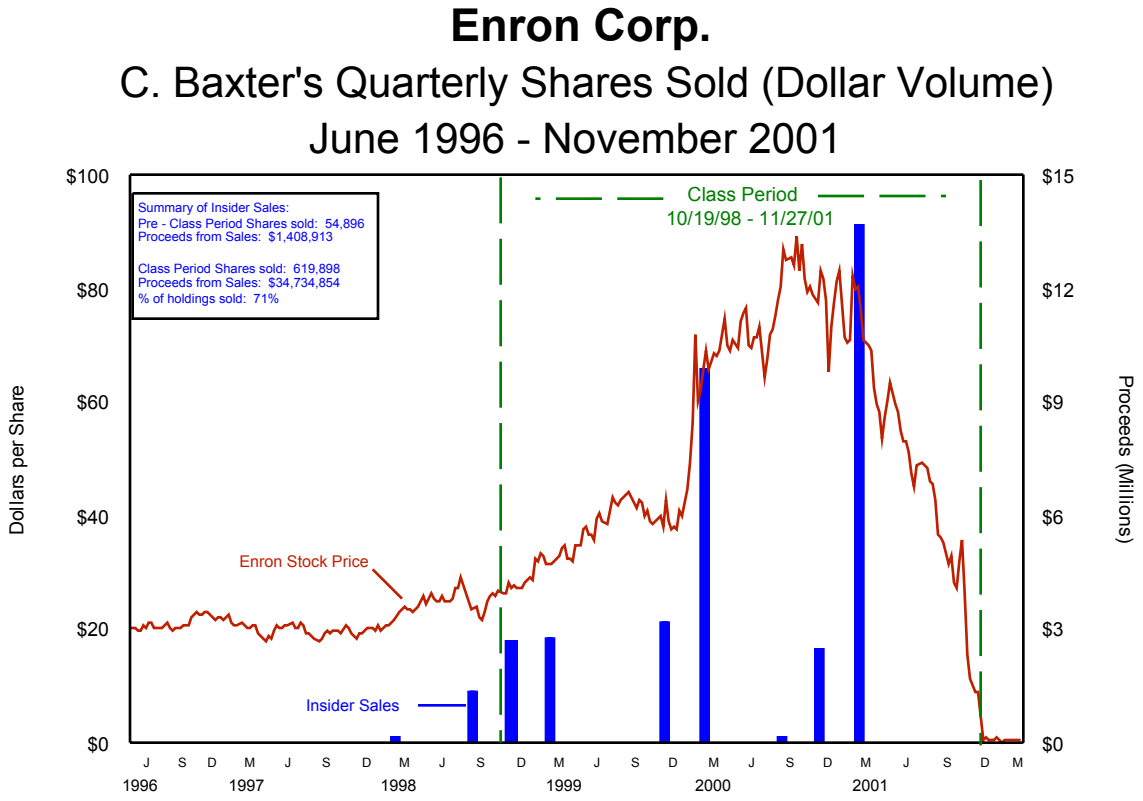
(ff) The individuals named as defendants in ¶¶83(a)-(ee) are referred to herein as the "Enron Defendants." Because of their positions with the Company, each Enron Defendant had access to the adverse non-public information about the Company's business, finances, products, markets and present and future business prospects via access to internal corporate documents (including the Company's product sales, operating plan, budget and forecast and product sales reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith.

(gg) Defendants Lay, Mark-Jusbasche and Skilling served as officers and/or directors of Azurix, a company related to Enron and which was involved in the alleged wrongdoing. These defendants, in committing the wrongs alleged herein, were acting not only in their capacity as officers and/or directors of Enron, but also in their capacities as officers or directors of Azurix.

(hh) Defendants Lay, Pai, Derrick and Causey served as officers and/or directors of New Power, a company related to Enron and which was involved in the alleged wrongdoing. These defendants, in committing the wrongs alleged herein, were acting not only in their capacity as officers and/or directors of Enron, but also in their capacities as officers or directors of New Power.

(ii) The Marlin Water and Atlantic Water Trusts, along with Osprey and Egret, were vehicles utilized by Enron and its insiders to further facilitate the fraudulent scheme and fraudulent course of business complained of. Ben Glisan and defendants Fastow and Causey served as officers and/or directors or managing agents of Atlantic Water Trust and Egret and they are sued in this action in part for their fraudulent misconduct in that capacity, as well as their capacities as Enron officers and directors.

(jj) J. Clifford Baxter ("Baxter") (not named as a defendant as he is deceased) was Vice Chairman of Enron from 10/00 and Chief Strategy Officer from 6/00. Baxter also served as Chairman and Chief Executive Officer of Enron North America Corp. from 6/99 until 6/00, and Senior Vice President, Corporate Development from 1/99-6/99. Baxter died on 1/25/02. During the Class Period, while in possession of adverse undisclosed information about the Company, Baxter sold 619,898 shares of his Enron stock for $34,734,854 in proceeds. Baxter also received bonus payments of over $2.7 million, in addition to his salary, for 97, 98, 99 and 00 based on Enron's false financial reports and because Enron stock hit certain performance targets. Baxter's insider selling before and during the Class Period is shown below:



84. As officers, directors and/or controlling persons of a publicly held company whose stock is registered with the SEC under the 1934 Act and traded on the New York Stock Exchange, the Enron Defendants had a duty to promptly disseminate accurate and truthful information with respect to the Company's operations, business, products, markets, management, earnings, and present and future business prospects, to cause Enron's financial statements to fairly present its financial condition and results from operations in conformity with GAAP, to correct any previously issued statements that had become untrue and to disclose any adverse trends that would materially affect the present and future financial operating results of the Company, so that the market price of the Company's stock would be based upon truthful and accurate information. During the Class Period, the Enron Defendants engaged in illegal insider trading, selling over 20 million shares of their Enron stock at prices inflated by their fraudulent scheme and while in possession of material adverse non-public information, pocketing over $1.1 billion in illegal insider trading proceeds. The collective insider selling by the officers and directors of Enron before and during the Class Period is shown below:

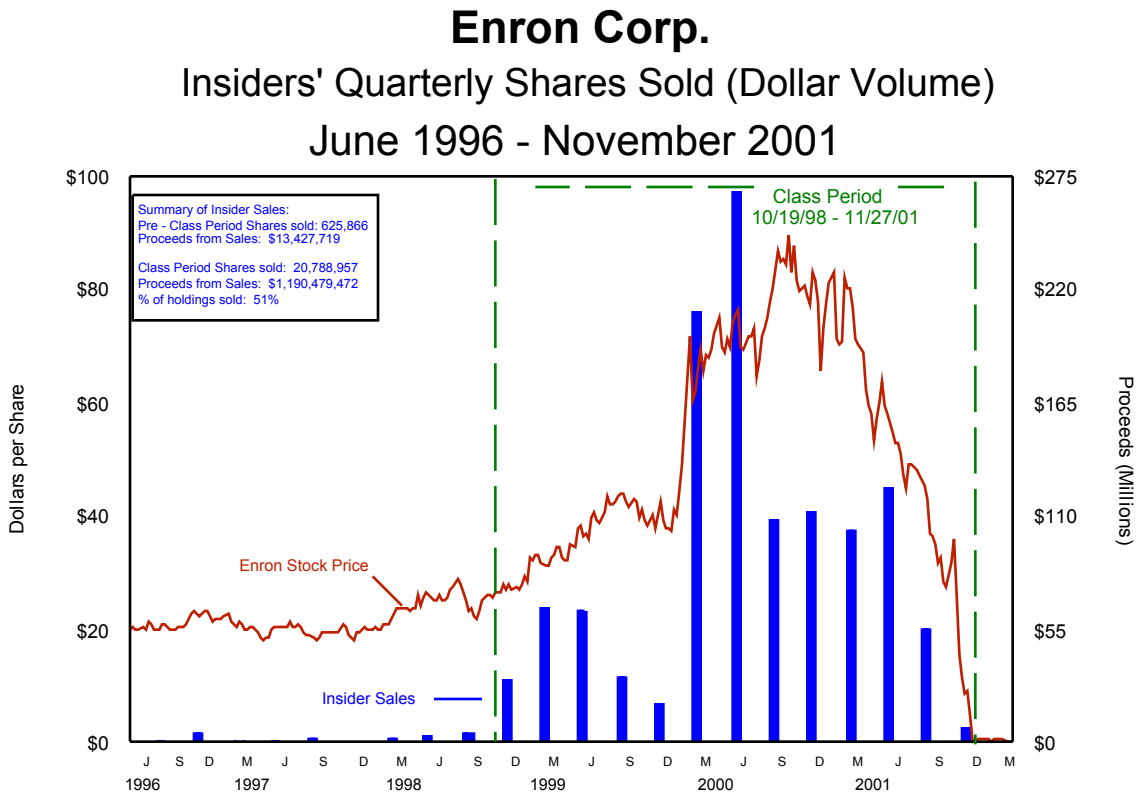
Enron Corp.
Summary of Class Period Insider Sales
(all share amounts are adjusted for the
Company's 8/13/99 2-for-1 stock split)

INSIDER	SHARES SOLD	PROCEEDS
Baxter	619,898	$ 34,734,854
Belfer *	2,065,137	$ 111,941,200
Blake	21,200	$ 1,705,328
Buy	140,234	$ 10,656,595
Causey	208,940	$ 13,386,896
Chan	8,000	$ 337,200
Derrick	230,660	$ 12,563,928
John Duncan	35,000	$ 2,009,700
Fastow	687,445	$ 33,675,004
Foy	38,160	$ 1,639,590
Frevert	986,898	$ 54,831,220
Gramm	10,328	$ 278,892
Hannon	**	**
Harrison	1,011,436	$ 75,416,636
Hirko	473,837	$ 35,168,721
Horton	830,444	$ 47,371,361
Jaedicke	13,360	$ 841,438
Kean	64,932	$ 5,166,414
Koenig	129,153	$ 9,110,466
Lay	4,002,259	$ 184,494,426
LeMaistre	17,344	$ 841,768
Mark	1,895,631	$ 82,536,737
McConnell	32,960	$ 2,506,311
McMahon	39,630	$ 2,739,226
Olson	83,183	$ 6,505,870
Pai	3,912,205	$ 270,276,065
Rice	1,234,009	$ 76,825,145

Skilling	1,307,678	$ 70,687,199
Sutton	688,996	$ 42,231,283
Whalley	**	**
TOTAL:	20,788,957	$1,190,479,472

* Belfer's stock sales consist of $294,120 shares sold for $16,436,692 on the open market; 770,927 shares, with a value of $35,378,483, transferred to an exchange fund and 1,000,000 shares, with a value of $60,126,025, hedged through costless collars. The aggregate value of these dispositions was $111,941,200.

** Unknown but substantial.



85. Enron's Board of Directors used working committees to oversee and control Enron's business. These committees met frequently and received detailed written and oral reports concerning those parts of Enron's business within their purview. They were:

(a) The Audit Committee, which worked with Enron's auditors, as well as Enron officers and employees who were responsible for legal, financial and accounting matters. It approved the appointment of Andersen as Enron's "independent" auditor and the Audit Committee reviewed

and approved the accounting policies and reporting practices, internal auditing and internal controls, and compliance with Enron's policies regarding business conduct.

(b) The Finance Committee monitored, reviewed and approved Enron's financial activities. The Finance Committee reviewed the financial plans and proposals of Enron's management.

(c) The Executive Committee met on a frequent basis to oversee and review Enron's business and had the power to exercise all of the powers of the Board of Directors.

86. The Enron directors listed below served on the Enron Board of Directors and the indicated Board Committees for the periods indicated:

Director/Period		Committees
Robert A. Belfer	1983-2001	Executive 1995-2001, Finance 1997-2001
Norman P. Blake	1993-2001	Audit 1995-1996, Finance 1995-2001
Ronnie C. Chan	1996-2001	Audit 1997-2001, Finance 1997-2001
John H. Duncan	1985-2001	Executive (chair) 1995-2001
Joe H. Foy	1985-2000	Executive 1995-2000, Audit 1997-2000
Wendy L. Gramm	1993-2001	Audit 1995-2001
Ken L. Harrison	1998-2000	None
Robert K. Jaedicke	1985-2001	Audit (chair) 1995-2001, Finance 1995-1996
Kenneth L. Lay	1985-2002	Executive 1995-2002
Charles A. LeMaistre	1985-2001	Executive 1995-2001
Rebecca Mark-Jusbasche	2000	None
John Mendelsohn	1999-2001	Audit 2000-2001
Jerome J. Meyer	1998-2001	Finance 1998-2001
Paulo V. Ferraz Pereira	2000-2001	Audit 2000-2001, Finance 2000-2001
Frank Savage	2000-2001	Finance 2000-2001
Jeffrey K. Skilling	1997-2001	Executive 1998-2001
John A. Urquhart	1990-2001	Finance 1995-2001
John Wakeham	1994-2001	Audit 1995-2001
Charls E. Walker	1985-2000	Finance 1995-1999
Bruce G. Willison	1998	Audit 1998, Finance 1998
Herbert S. Winokur, Jr.	1985-2001	Executive 1995-2001, Finance (chair) 1995-2001

87. These Board Committee memberships were as follows for 97-01:

	As of 3/97		
	Executive Committee	Audit Committee	Finance Committee
Robert A. Belfer	X		X
Norman P. Blake			X
Ronnie C. Chan		X	X
John H. Duncan	X (chair)		
Joe H. Foy	X	X	
Wendy L. Gramm		X	
Robert K. Jaedicke		X (chair)	
Kenneth L. Lay	X		

Charles A. LeMaistre	X			
John A. Urquhart			X	
John Wakeham		X		
Charls E. Walker			X	
Herbert S. Winokur, Jr.	X		X (chair)	

As of 3/98

	Executive Committee	Audit Committee	Finance Committee	Compensation Committee
Robert A. Belfer	X		X	
Norman P. Blake			X	X
Ronnie C. Chan		X	X	
John H. Duncan	X (chair)			X
Joe H. Foy	X	X		
Wendy L. Gramm		X		
Robert K. Jaedicke		X (chair)		X
Kenneth L. Lay	X			
Charles A. LeMaistre	X			X (chair)
Jerome J. Meyer			X	
Jeffrey K. Skilling	X			
John A. Urquhart			X	
John Wakeham		X		
Charls E. Walker			X	
Bruce G. Willison		X	X	
Herbert S. Winokur, Jr.	X		X (chair)	

As of 3/99

	Executive Committee	Audit Committee	Finance Committee	Compensation & Mgmt.Develop. Committee
Robert A. Belfer	X		X	
Norman P. Blake			X	X
Ronnie C. Chan		X	X	
John H. Duncan	X (chair)			X
Joe H. Foy	X	X		
Wendy L. Gramm		X		
Robert K. Jaedicke		X (chair)		X
Kenneth L. Lay	X			
Charles A. LeMaistre	X			X (chair)
Jerome J. Meyer			X	
Jeffrey K. Skilling	X			
John A. Urquhart			X	
John Wakeham		X		
Charls E. Walker			X	
Herbert S. Winokur, Jr.	X		X (chair)	

As of 3/00

	Executive Committee	Audit Committee	Finance Committee	Compensation & Mgmt.Develop. Committee
Robert A. Belfer	X		X	
Norman P. Blake			X	X
Ronnie C. Chan		X	X	
John H. Duncan	X (chair)			X
Joe H. Foy	X	X		

Wendy L. Gramm		X		
Robert K. Jaedicke		X (chair)		X
Kenneth L. Lay	X			
Charles A. LeMaistre	X			X (chair)
John Mendelsohn		X		
Jerome J. Meyer			X	
Paulo V. Ferraz Pereira		X	X	
Frank Savage			X	X
Jeffrey K. Skilling	X			
John A. Urquhart			X	
John Wakeham		X		
Herbert S. Winokur, Jr.	X		X (chair)	

As of 3/01

	Executive Committee	Audit Committee	Finance Committee	Compensation & Mgmt. Develop. Committee
Robert A. Belfer	X		X	
Norman P. Blake			X	X
Ronnie C. Chan		X	X	
John H. Duncan	X (chair)			X
Wendy L. Gramm		X		
Robert K. Jaedicke		X (chair)		X
Kenneth L. Lay	X			
Charles A. LeMaistre	X			X (chair)
John Mendelsohn		X		
Jerome J. Meyer			X	
Paulo V. Ferraz Pereira		X	X	
Frank Savage			X	X
Jeffrey K. Skilling	X			
John A. Urquhart			X	
John Wakeham		X		
Herbert S. Winokur, Jr.	X		X (chair)	

88. The day-to-day business of Enron was conducted by Enron's top executives and its "Management Committee," a collection of top officers who met regularly (weekly or bi-weekly) to oversee and review Enron's business. The Management Committee was aware of and approved all significant business transactions of Enron, including each of the partnership/SPE deals specified herein. The Enron Defendants' roles on the Enron Management Committee during 97-01 are set forth below:

Enron Management Committee - 97

J. Clifford Baxter	Senior Vice President, Corporate Development, Enron Corp.
Kenneth D. Rice	Chairman and CEO, ECT North America
Richard A. Causey	Senior Vice President and Chief Accounting and Information and Administrative Officer, Enron Corp.

Kevin P. Hannon	President and COO, ECT North America
Steven J. Kean	Senior Vice President, Government Affairs, Enron Corp.
James V. Derrick, Jr.	Senior Vice President and General Counsel, Enron Corp.
Ken L. Harrison	Vice Chairman, Enron Corp., and Chairman and CEO, Portland General Electric
Mark E. Koenig	Senior Vice President, Investor Relations, Enron Corp.
Jeffrey K. Skilling	President and COO, Enron Corp.
Andrew S. Fastow	Senior Vice President, Finance, Enron Corp.
Joseph M. Hirko	Senior Vice President, Enron Corp., and President and CEO, Enron Communications
Kenneth L. Lay	Chairman and CEO, Enron Corp.
Joseph W. Sutton	President and COO, Enron International
Rebecca P. Mark-Jusbasche	Chairman and CEO, Enron International
Mark A. Frevert	President and CEO, ECT Europe and Enron Europe Ltd.
Stanley C. Horton	Chairman and CEO, Enron Gas Pipeline Group
Lou L. Pai	Chairman and CEO, Enron Energy Services
John A. Urquhart	Vice Chairman, Enron Corp.

Enron Management Committee – 98

J. Clifford Baxter	Senior Vice President, Corporate Development, Enron Corp., and Vice Chairman, ECT North America
Mark A. Frevert	President and CEO, Enron Europe Ltd.
Richard B. Buy	Senior Vice President, Risk Assessment and Control, Enron Corp.
Steven J. Kean	Senior Vice President, Public Affairs, Enron Corp.
Kenneth D. Rice	Chairman and CEO, ECT North America
Kevin P. Hannon	President and COO, ECT North America
Mark E. Koenig	Senior Vice President, Investor Relations, Enron Corp.
Richard A. Causey	Senior Vice President, Chief Accounting, Information and Administrative Officer, Enron Corp.
Ken L. Harrison	Vice Chairman, Enron Corp., Chairman and CEO,

	Portland General Electric, and Chairman, Enron Communications
Kenneth L. Lay	Chairman and CEO, Enron Corp.
Jeffrey K. Skilling	President and COO, Enron Corp.
James V. Derrick, Jr.	Senior Vice President and General Counsel, Enron Corp.
Joseph M. Hirko	Senior Vice President, Enron Corp., and President and CEO, Enron Communications
Rebecca P. Mark-Jusbasche	Vice Chairman, Enron Corp., Chairman and CEO, Azurix and Chairman, Enron International
Joseph W. Sutton	President and CEO, Enron International
Andrew S. Fastow	Senior Vice President and CFO, Enron Corp.
Jeffrey McMahon	Senior Vice President, Finance and Treasurer, Enron Corp.
Stanley C. Horton	Chairman and CEO, Enron Gas Pipeline Group
Cindy K. Olson	Senior Vice President, Corporate Affairs and Workforce Diversity, Enron Corp.
John A. Urquhart	Senior Advisor to the Chairman, Enron Corp.
Lou L. Pai	Chairman and CEO, Enron Energy Services

Enron Executive Committee - 99

Mark A. Frevert	Chairman & Chief Executive Officer, Enron Europe, Ltd.
Steven J. Kean	Executive Vice President & Chief of Staff, Enron Corp.
Cindy K. Olson	Executive Vice President, Human Resources & Community Relations, Enron Corp.
J. Clifford Baxter	Chairman & Chief Executive Officer, Enron North America
Kevin P. Hannon	Chief Operating Officer, Enron Broadband Services
Mark E. Koenig	Executive Vice President, Investor Relations, Enron Corp.
Lou L. Pai	Chairman & Chief Executive Officer, Enron Energy Services, LLC
Ken L. Harrison	Chief Executive Officer, Portland General Electric Company
Kenneth L. Lay	Chief Executive Officer & Chairman of the Board, Enron Corp.
Kenneth D. Rice	Chief Commercial Officer, Enron Broadband Services
Richard B. Buy	Executive Vice President & Chief Risk Officer, Enron Corp.

Rebecca P. Mark-Jusbasche	Chairman and Chief Executive Officer, Azurix Corp.
Richard A. Causey	Executive Vice President & Chief Accounting Officer, Enron Corp.
Joseph M. Hirko	Chief Executive Officer, Enron Broadband Services
Michael S. McConnell	Chief Executive Officer, Global Technology, Enron Corp.
Stanley C. Horton	Chairman & Chief Executive Officer, Enron Gas Pipeline Group
Jeffrey K. Skilling	President & Chief Operating Officer, Enron Corp.
James V. Derrick, Jr.	Executive Vice President & General Counsel, Enron Corp.
Jeffrey McMahon	Executive Vice President, Finance and Treasurer, Enron Corp.
Joseph W. Sutton	Vice Chairman, Enron Corp.
Andrew S. Fastow	Executive Vice President & Chief Financial Officer, Enron Corp.
Lawrence Greg Whalley	President & Chief Operating Officer, Enron North America

Enron Corporate (Management) Committee - 00

Kenneth L. Lay	Chairman, Enron
J. Clifford Baxter	Vice Chairman and Chief Strategic Officer, Enron
Stanley C. Horton	Chairman & CEO, Enron Transportation Services
Jeffrey K. Skilling	President and Chief Executive Officer, Enron
Richard A. Causey	Executive Vice President & Chief Accounting Officer, Enron
Steven J. Kean	Executive Vice President & Chief of Staff, Enron
Lou L. Pai	Chairman & CEO, Enron Xcelerator
James V. Derrick, Jr.	Executive Vice President & General Counsel, Enron
Kenneth D. Rice	Chairman & CEO, Enron Broadband Services
Andrew S. Fastow	Executive Vice President & Chief Financial Officer, Enron
Mark A. Frevert	Chairman & CEO, Enron Wholesale Services
Lawrence Greg Whalley	President & COO, Enron Wholesale Services
Kevin P. Hannon	Chief Operating Officer, Enron Broadband Services

89. It is appropriate to treat the Enron Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company's public filings, press releases and other publications, as alleged herein, are the collective actions of the Enron Defendants identified above. Each of the above officers and directors of Enron, by virtue of their high-level positions with the Company, participated in the management of the Company and its business, operations, financial statements, and financial condition, as alleged herein. Each of the Enron Defendants is responsible for the accuracy of the public reports and releases detailed herein and is therefore primarily liable for the representations contained therein.

90. The Enron Defendants, because of their positions of authority as officers and/or directors of the Company, were able to and did control the content of various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Each Enron Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Enron's press releases, reports to shareholders, SEC filings and the like are "group published" materials of the Enron Defendants.

(2) Andersen

91. The various offices of Arthur Andersen LLP and Andersen Worldwide S.C. described below in ¶¶92(a)-(g) and the Andersen partners and employees described below in ¶¶93(a)-(w) are collectively referred to as "Andersen."

92. (a) Defendant Andersen Worldwide S.C. ("Andersen-Worldwide" or "AWO") is comprised of Société Coopérative, Switzerland, a partnership organized under the Swiss Federal Code of Obligations ("AWSC"), the AWO member firms and the partners of AWSC. Andersen-Worldwide partners include more than 4,800 individuals from 390 offices in 84 countries. Various individuals who are partners of Andersen-Worldwide participated in the 97-00 audits of Enron. Andersen-Worldwide and Arthur Andersen LLP dictate the policies and procedures to be used within Andersen throughout the world.

(b) Defendant Andersen Co. ("Andersen-India") is part of Andersen-Worldwide. Andersen-India participated in the 97-00 audits of Enron.

(c) Defendant Arthur Andersen-Puerto Rico ("Andersen-Puerto Rico") is part of Andersen-Worldwide. Andersen-Puerto Rico participated in the 97-00 audits of Enron.

(d) Defendant Andersen LLP ("Andersen-Cayman Islands") is part of Andersen-Worldwide. Andersen-Cayman Islands participated in the 97-00 audits of Enron.

(e) Defendant Arthur Andersen-Brazil ("Andersen-Brazil") is part of Andersen-Worldwide. Andersen-Brazil participated in the 97-00 audits of Enron.

(f) Defendant Arthur Andersen ("Andersen-United Kingdom") is part of Andersen-Worldwide. Andersen-United Kingdom participated in the 97-00 audits of Enron. Andersen-United Kingdom has been implicated in the document shredding indictment, indicating an awareness of possible wrongdoing in connection with work for Enron.

(g) Defendant Arthur Andersen LLP ("Andersen-US") is part of Andersen-Worldwide. Andersen-US is a partnership formed under the laws of the State of Illinois. The partners of Andersen-US are residents of numerous states. Andersen-US participated in and coordinated the 97-00 audits of Enron. In addition, Andersen-US partners and employees provided consulting services to Enron.

93. (a) Defendant Joseph F. Berardino ("Berardino") was the Chief Executive Officer and managing partner of Andersen-Worldwide until his resignation on 3/26/02. Berardino was involved in Andersen's firm-wide policy and procedures. As such, he reviewed and approved Andersen's destruction policy that was the justification for the destruction of massive amounts of documents between 10/23/01 and 11/9/01. Berardino had regular contact with several senior level partners on the Enron engagement and had regular contact with David B. Duncan, through, among other things, his involvement on the Chairman's Advisory Counsel. Berardino met with Enron's Chief Accounting Officer, defendant Causey, who objected to Carl Bass's legitimate concerns about Enron's inappropriate accounting practices.[5] Berardino was instrumental in removing Bass from the Enron engagement at Enron's request. Andersen's headquarters in Chicago regularly reviewed and approved Enron's off balance sheet transactions that are the subject of this litigation. Berardino kept

[5] Bass was a top partner in Andersen's Professional Standards Group ("PSG") and reviewed the accounting propriety of Enron's transactions.

apprised of Enron – the firm's second largest client – on a regular basis. Berardino was a partner in both Andersen-Worldwide and Andersen-US.

(b) Defendant Thomas H. Bauer ("Bauer) was an Andersen partner on the Enron engagement. Bauer was responsible for auditing the commodity trading activities at Enron, and worked solely on Enron. Bauer was also in the Audit-Energy practice of the Houston office and was an integral part of the Enron auditing and consulting engagements. Andersen placed Bauer on administrative leave on 1/15/02. Bauer was a partner in both Andersen-Worldwide and Andersen-US.

(c) Defendant David B. Duncan ("David Duncan") was the lead Andersen partner since 97 on the Enron engagement – David Duncan's only client. David Duncan's compensation was directly tied to the fees generated on the Enron engagement which was personally and professionally beneficial to David Duncan. Because of his relationship with Enron, David Duncan became one of the highest paid partners at Andersen – earning up to $2 million in good years. In 99 and 00, David Duncan was a member of the worldwide Strategy Advisory Counsel and defendant Berardino personally asked David Duncan to be on the Chairman's Advisory Counsel, an elite group of 21 worldwide partners. David Duncan was a partner in both Andersen-Worldwide and Andersen-US. Andersen fired David Duncan on or about 1/15/02.

(d) Defendant Debra A. Cash ("Cash"), a partner of Andersen, is head of the lucrative energy unit in the Houston office and was an integral part of the Enron audit and consulting engagements.

(e) Defendant Donald Dreyfuss ("Dreyfuss") is a partner at Andersen-Worldwide's headquarters in Chicago. Dreyfuss was an integral part of the destruction of Andersen's documents relating to Enron.

(f) Defendant James A. Friedlieb ("Friedlieb") is a partner in Andersen-Worldwide's headquarters in Chicago. Friedlieb was an integral part of the destruction of Andersen's documents relating to Enron. Friedlieb is a partner in both Andersen-Worldwide and Andersen-US.

(g) Defendant David Stephen Goddard, Jr. ("Goddard") is the managing partner for the Houston office since 97 and was in charge of Andersen's Audit & Business Advisory and

Energy practice for the Houston office. Goddard was an integral part of the Enron audit and consulting engagements. Goddard is also the managing partner for the Gulf Coast Market Circle. Goddard is a partner in both Andersen-Worldwide and Andersen-US.

(h) Defendant Gary B. Goolsby ("Goolsby") was Andersen's partner in charge of Global Risk Management and Consulting Practice Director of the Houston office. Goolsby was an integral part of the Enron audit and consulting engagements. Goolsby was relieved of his management responsibilities on 1/15/02.

(i) Defendant Michael M. Lowther ("Lowther") was Andersen's concurring partner on the Enron audit since 97. Lowther was an integral part of the Enron audit and consulting engagements. Lowther was a partner in both Andersen-Worldwide and Andersen-US. Lowther was relieved of his management responsibilities on 1/15/02.

(j) Defendant Benjamin S. Neuhausen ("Neuhausen") is an Andersen partner in the Chicago Business Unit Management office. Neuhausen was an integral part of the Enron audit and consulting engagement. Neuhausen was a party to and involved in internal Andersen discussions regarding Enron's inappropriate accounting practices. Neuhausen was also involved in internal Andersen discussions and correspondence relating to Carl Bass's legitimate concerns regarding Enron's improper accounting practices.

(k) Defendant Michael C. Odom ("Odom") was Andersen's Audit Practice Director for the Gulf Coast Market Circle. Odom was an integral part of the Enron audit and consulting engagements and the destruction of Andersen's documents relating to Enron. Odom was instrumental in removing Carl Bass from his oversight responsibilities after Bass raised legitimate concerns about Enron's accounting. Odom was a partner in both Andersen-Worldwide and Andersen-US. Andersen relieved Odom of his management responsibilities on 1/15/02.

(l) Defendant Richard R. Petersen ("Petersen") is partner in Andersen's Professional Service Group. Petersen was an integral part of the Enron audit and consulting engagement. Petersen was a party to and involved in internal Andersen communications regarding Enron's inappropriate accounting practices. Petersen was also involved in internal Andersen

discussions and correspondence relating to Carl Bass's legitimate concerns regarding Enron's improper accounting procedures.

(m) Defendant John E. Stewart ("Stewart") is an Andersen partner and one of the firm's top audit specialists at Andersen's headquarters in Chicago. Stewart was an integral part of the Enron audit and consulting engagements. Stewart is a partner in both Andersen-Worldwide and Andersen-US.

(n) Defendant Michael L. Bennett ("Bennett") is an Andersen partner in the Houston office. Bennett was an integral part of the Enron audit and consulting engagements.

(o) Defendant William E. Swanson ("Swanson") is the Audit Division Head ("ADH") for the Gulf Coast Market Circle. Swanson was an integral part of the Enron audit and consulting engagements. Swanson was a partner in both Andersen-Worldwide and Andersen-US.

(p) Defendant Roger D. Willard ("Willard") was an Andersen partner on the Enron engagement and was part of Andersen's Audit and Business Advisory practice in Houston. Willard was an integral part of the Enron audit and consulting engagements. Willard was relieved of his management responsibilities on 1/15/02.

(q) Defendant Michael D. Jones ("Jones") was an Andersen partner in the Houston office. Jones transferred to the London office in mid-2001. In 10/01, David Duncan and Bauer had a telephone conference with Jones giving instructions to destroy documents. Jones caused Enron-related documents to be destroyed in Andersen's London office.

(r) Defendant Gregory W. Hale ("Hale") is a partner of Andersen based in the Houston office and was an integral part of the Enron audit and consulting engagements.

(s) Defendant John E. Sorrells ("Sorrells") is a partner of Andersen based in the Houston office and was an integral part of the Enron audit and consulting engagements.

(t) Defendant Danny D. Rudloff ("Rudloff") is a partner of Andersen based in the Houston office and was an integral part of the Enron audit and consulting engagements.

(u) Defendant Philip A. Randall ("Randall") was Andersen's Country Managing Partner for Andersen-United Kingdom throughout the Class Period until 1/10/01, when he became Managing Partner-Global Operations.

(v) Defendant Roman W. McAlindon ("McAlindon") was Andersen's Regional Managing Partner for the Nordic Countries, Southern and Western Africa, Ireland, India and Israel until 3/15/01, when he was appointed to the CEEMEIA Region - ("Central and Eastern Europe, Middle East, India and Africa") on 3/01.

(w) Defendant C.E. Andrews ("Andrews"), a U.S.-based partner, is Andersen's Global Finance Director and Managing Partner.

94. Each defendant listed in ¶¶93(a)-(w) was a partner and/or employee of Andersen. They were involved in the audits and consultations of Enron and had knowledge of the adverse facts as pleaded at ¶¶897-982.

95. Defendant Nancy Temple ("Temple") was a high ranking in-house lawyer for Andersen in Andersen-Worldwide's headquarters in Chicago. Temple was aware of the imminent litigation surrounding Andersen's work for Enron and Temple was aware of the improper accounting allegations Sherron Watkins had made in 8/01. After a meeting with senior partners at Andersen's headquarters in 10/01, Temple authored an e-mail instructing Andersen partners and staff to "comply" with the firm's document destruction policy. Temple instructed lead partner David Duncan to delete her name from memos because it might lead to her being called as a witness. Temple also instructed that language explaining Andersen's conclusion that Enron's pending financial statement release was misleading be deleted from documents.

96. Defendants Berardino, Randall, McAlindon and Andrews are named herein as control persons of Andersen pursuant to §20(a) of the 1934 Act and §15 of the 1933 Act.

97. A more detailed description of Andersen's involvement and its failure to comply with Generally Accepted Auditing Standards ("GAAS") is found in ¶¶897-982.

(3) The Law Firms

98. Defendant Vinson & Elkins L.L.P. ("Vinson & Elkins") was Enron's outside general counsel during the Class Period. Enron was Vinson & Elkins's largest client. Vinson & Elkins participated in structuring Enron's illicit partnerships (Chewco/JEDI and the LJMs) and the bogus SPEs (Raptors/Condor, etc.) knowing these were manipulative devices being used to falsify Enron's reported financial results and financial condition. Vinson & Elkins repeatedly issued false opinions

on these transactions – that they were "true sales" or otherwise legitimate business transactions – when they were, in fact, manipulative contrivances designed to artificially boost Enron's reported profits and hide billions of dollars of debt that belonged on Enron's balance sheet.

99. Defendant Kirkland & Ellis ("Kirkland & Ellis") was picked by Enron's insiders to purportedly provide independent representation to the partnerships and SPEs Enron was doing business with. In fact, Kirkland & Ellis was beholden to and in truth working for Enron. Kirkland & Ellis participated in structuring Enron's illicit partnerships (Chewco/JEDI and the LJMs) and the bogus SPEs (Raptors/Condor, etc.) knowing these were manipulative devices to falsify Enron's reported financial results and financial condition. Kirkland & Ellis repeatedly issued false opinions on these transactions to the effect that they were legitimate business transactions, when they were, in fact, manipulative contrivances designed to artificially boost Enron's reported profits and hide billions of dollars of debt that belonged on Enron's balance sheet.

(4) Investment Banks

100. Defendant J.P. Morgan Chase & Co. is an integrated financial services institution that through subsidiaries and divisions (such as J.P. Morgan Securities and Chase Securities (collectively "JP Morgan")) provides commercial and investment banking services and advisory services, including acting as underwriter in the sale of corporate securities and providing investment analysis and opinions on public companies. JP Morgan engaged and participated in the scheme to defraud purchasers of Enron securities and Enron's course of business which operated as a fraud and deceit on purchasers of Enron's securities by rendering all of the above services to Enron as described in greater detail in the section of this complaint entitled "Involvement of JP Morgan."

101. Defendant CitiGroup, Inc. is a large integrated financial services institution that through subsidiaries and divisions (such as Salomon Smith Barney (collectively "CitiGroup")) provides commercial and investment banking services, commercial loans to corporate entities, and advisory services regarding the structuring of financial transactions, including engaging in or helping to structure derivatives and hedging financial transactions, acting as underwriter in the sale of corporate securities to the public and providing investment analysis and opinions on public companies, including its clients, via reports issued by securities analysts. CitiGroup engaged and

participated in the scheme to defraud purchasers of Enron securities and Enron's course of business which operated as a fraud and deceit on purchasers of Enron's securities by rendering all of the above services to Enron as described in greater detail in the section of this complaint entitled "Involvement of CitiGroup." CitiGroup is also liable under §11 of the 1933 Act in connection with Enron securities offerings.

102. Defendant Credit Suisse First Boston is a large integrated financial services institution that through its controlled subsidiaries and divisions (such as Credit Suisse First Boston (USA), Inc. (collectively "CS First Boston")) provides commercial and investment banking services, commercial loans to corporate entities, and advisory services regarding the structuring of financial transactions, including engaging in or helping to structure derivatives and hedging financial transactions, acting as underwriter in the sale of corporate securities to the public and providing investment analysis and opinions on public companies, including its clients, via reports issued by securities analysts. CS First Boston engaged and participated in the scheme to defraud purchasers of Enron securities and Enron's course of business which operated as a fraud and deceit on purchasers of Enron's securities by rendering all of the above services to Enron as described in greater detail in the section of this complaint entitled "Involvement of CS First Boston."

103. Defendant Canadian Imperial Bank of Commerce is a large integrated financial services institution that through its controlled subsidiaries and divisions (such as CIBC Oppenheimer or CIBC World Markets (collectively "CIBC")) provides commercial and investment banking services, commercial loans to corporate entities, and advisory services regarding the structuring of financial transactions, including engaging in or helping to structure derivatives and hedging financial transactions, acting as underwriter in the sale of corporate securities to the public and providing investment analysis and opinions on public companies, including its clients, via reports issued by securities analysts. CIBC engaged and participated in the scheme to defraud purchasers of Enron securities and Enron's course of business which operated as a fraud and deceit on purchasers of Enron's securities by rendering all of the above services to Enron as described in greater detail in the section of this complaint entitled "Involvement of CIBC." CIBC is also liable under §11 of the 1933 Act in connection with Enron securities offerings.

104. Defendant Bank of America Corp. is a large integrated financial services institution that through its controlled subsidiaries and divisions (such as Banc of America Securities (collectively "Bank America")) provides commercial and investment banking services, commercial loans to corporate entities, and advisory services regarding the structuring of financial transactions, including engaging in or helping to structure derivatives and hedging financial transactions, acting as underwriter in the sale of corporate securities to the public and providing investment analysis and opinions on public companies, including its clients, via reports issued by securities analysts. Bank America engaged and participated in the scheme to defraud purchasers of Enron securities and Enron's course of business which operated as a fraud and deceit on purchasers of Enron's securities by rendering all of the above services to Enron as described in greater detail in the section of this complaint entitled "Involvement of Bank America." Bank America is also liable under §11 of the 1933 Act in connection with Enron securities offerings.

105. Defendant Merrill Lynch & Co. is a large integrated financial services institution that through its controlled subsidiaries and divisions (such as Merrill Lynch (collectively "Merrill Lynch")) provides commercial and investment banking services, commercial loans to corporate entities, and advisory services regarding the structuring of financial transactions, including engaging in or helping to structure derivatives and hedging financial transactions, acting as underwriter in the sale of corporate securities to the public and providing investment analysis and opinions on public companies, including its clients, via reports issued by securities analysts. Merrill Lynch engaged and participated in the scheme to defraud purchasers of Enron securities and Enron's course of business which operated as a fraud and deceit on purchasers of Enron's securities by rendering all of the above services to Enron as described in greater detail in the section of this complaint entitled "Involvement of Merrill Lynch."

106. Defendant Barclays PLC is a large integrated financial services institution that through its controlled subsidiaries and divisions (such as Barclays Capital (collectively "Barclays")) provides commercial and investment banking services, commercial loans to corporate entities, and advisory services regarding the structuring of financial transactions, including engaging in or helping to structure derivatives and hedging financial transactions, acting as underwriter in the sale of corporate

securities to the public and providing investment analysis and opinions on public companies, including its clients, via reports issued by securities analysts. Barclays engaged and participated in the scheme to defraud purchasers of Enron securities and Enron's course of business which operated as a fraud and deceit on purchasers of Enron's securities by rendering all of the above services to Enron as described in greater detail in the section of this complaint entitled "Involvement of Barclays."

107. Defendant Deutsche Bank AG is a large integrated financial services institution that through its controlled subsidiaries and divisions (such as Deutsche Bank Alex. Brown (collectively "Deutsche Bank")) provides commercial and investment banking services, commercial loans to corporate entities, and advisory services regarding the structuring of financial transactions, including engaging in or helping to structure derivatives and hedging financial transactions, acting as underwriter in the sale of corporate securities to the public and providing investment analysis and opinions on public companies, including its clients, via reports issued by securities analysts. Deutsche Bank engaged and participated in the scheme to defraud purchasers of Enron securities and Enron's course of business which operated as a fraud and deceit on purchasers of Enron's securities by rendering all of the above services to Enron as described in greater detail in the section of this complaint entitled "Involvement of Deutsche Bank."

108. Defendant Lehman Brothers Holding, Inc. is a large integrated financial services institution that through its controlled subsidiaries and divisions (such as Lehman Brothers (collectively "Lehman Brothers")) provides commercial and investment banking services, commercial loans to corporate entities, and advisory services regarding the structuring of financial transactions, including engaging in or helping to structure derivatives and hedging financial transactions, acting as underwriter in the sale of corporate securities to the public and providing investment analysis and opinions on public companies, including its clients, via reports issued by securities analysts. Lehman Brothers engaged and participated in the scheme to defraud purchasers of Enron securities and Enron's course of business which operated as a fraud and deceit on purchasers of Enron's securities by rendering all of the above services to Enron as described in greater detail in the section

of this complaint entitled "Involvement of Lehman Brothers." Lehman Brothers is also liable under §11 of the 1933 Act in connection with Enron securities offerings.

BACKGROUND TO THE CLASS PERIOD

109. In 3/98, Enron filed its 97 Report on Form 10-K with the SEC, which was signed by Lay, Causey, Fastow, Belfer, Blake, Chan, John Duncan, Foy, Gramm, Harrison, Jaedicke, LeMaistre, Meyer, Skilling, Urquhart, Wakeham, Walker, Willison and Winokur.

110. On 4/21/98, Enron filed a Registration Statement with the SEC pursuant to registering shares of its common stock. It incorporated by reference Enron's 97 Form 10-K, Enron's financial statements for 97 and included Enron's results for the 1stQ 98. The Prospectus included Enron's results for the 1stQ 98, including revenues of $5.7 billion and net income of $214 million. These financial results were materially false and misleading in violation of GAAP as described herein. The Registration Statement was signed by Lay, Causey, Fastow, Belfer, Blake, Chan, John Duncan, Foy, Gramm, Harrison, Jaedicke, LeMaistre, Meyer, Skilling, Urquhart, Wakeham, Walker, Willison and Winokur. A Prospectus to sell 37.5 million of these shares at $25 was dated 5/5/98. The underwriters to the offering were CS First Boston, Lehman Brothers and Merrill Lynch. Enron used the proceeds of this securities issuance to pay down its short-term debt – either commercial paper or bank debt to JP Morgan and CitiGroup.

111. On 7/7/98, Enron sold $250 million of 6.40% Notes due 7/15/06 and $250 million of 6.95% Notes due 7/15/2028, with JP Morgan and Lehman Brothers acting as underwriters, via a Prospectus. Enron used the proceeds of this securities issuance to pay down its short-term debt – commercial paper and/or bank debt to JP Morgan and CitiGroup.

112. On 7/14/98, Enron announced its ***better-than-expected*** 2ndQ 98 results, stating:

> Enron Corp. announced today 1998 second quarter earnings of $[0.21] per diluted share, compared to $[0.19] ... in the second quarter of 1997. ***The strong results were led by growth in Enron's largest business, Wholesale Energy Operations and Services .... In addition, Enron Energy Services, the company's new retail business, continued to progress, executing a number of significant contracts with end-use customers for delivery of energy commodities and a full range of energy management services.***
>
> ***"We are pleased to report another quarter of very solid earnings growth. These results confirm the operating strength of each Enron business unit and our ability to produce consistent, predictable earnings in spite of rapidly changing, highly volatile energy markets," said Kenneth L. Lay, Enron Corp. chairman and chief executive officer.... "[O]ur newer activities are firmly established, particularly the U.S. wholesale power marketing business and Enron Energy Services.***

Combined with a very substantial backlog of projects and opportunities, our business outlook is the strongest in the company's history."

Enron also reported that all nine of its major international power plant and pipeline projects ***continued to progress on schedule***, including its 826-MW power project in Dabhol, India, which was on schedule, 90% completed and would be in full commercial operation in 12/98.

113. On 7/15/98, CIBC issued a report on Enron which stated, "***we believe Enron's longer term growth prospects remain strong***."

114. On 7/24/98, Enron announced the formation of a "***New Global Water Company***" and that it would purchase Wessex Water for $2.8 billion:

> Enron Corp. announced today the formation of a new company to pursue opportunities in the global water business. The new water company will own and operate strategic water and wastewater assets, such as local distribution systems and treatment facilities, and develop related infrastructure.
>
> * * *
>
> "The development, ownership and operation of water infrastructure is a logical extension of Enron's expertise developed in the worldwide energy business," said Kenneth L. Lay, Enron chairman and CEO. "***The proposed acquisition of Wessex represents an outstanding opportunity to build an international water business through a separate subsidiary. Wessex has a superior operational track record and a high-quality core management team that has been in place since the privatization of the industry in England and Wales in 1989. Those attributes, combined with our expertise in energy infrastructure project development, asset management, regulatory, finance and risk management services, will enable the new company to become a strong competitor in the global water industry***.
>
> * * *
>
> "***Enron's water subsidiary initially will pursue the development of water projects in Europe, Latin America and Asia – markets in which privatization is occurring and in which Enron already has gained significant international experience and has established a substantial operating presence***," said Rebecca P. Mark, newly appointed chairman and CEO of the water subsidiary and vice chairman of Enron Corp., where she focuses on the development of new businesses....
>
> "***The new company is expected to be accretive to Enron's financial results in the first full year of operations, and we intend to pursue a strategy such that the new water company will be accretive in the future***," Lay said.
>
> * * *
>
> "***Wessex will be the flagship of the new water company***," Lay said. "***As such, Wessex will be the center of excellence for the new international water business*** ...."

115. On 7/24/98, Lay was interviewed by *Bloomberg News*, which reported:

Ken Lay, Enron's chairman, said in an interview he expects the new company to become "***the leading global water company." He expects the water business to be of comparable size to Enron's multibillion dollar electricity and gas businesses "within five years or so***."

116. On 9/25/98, Enron, with Merrill Lynch and CitiGroup acting as underwriters, sold $250 million of floating rate notes due 3/30/00 via a Prospectus. Enron used the proceeds of that securities issuance to pay down its short-term debt – either commercial paper or bank debt to JP Morgan and CitiGroup.

117. On 9/25/98, Enron issued a release regarding its new global water business named "Azurix," which stated:

> Enron Corp. announced today the executive management team that will lead Azurix, the company's new global water business.
>
> "***We have gathered top players from the water, gas and power industries who have proven track records in developing new businesses and growing existing businesses domestically and abroad," said Rebecca P. Mark, chairman and CEO of Azurix. "All of these executives have exhibited strong leadership skills and have an unparalleled commitment to develop our international water business***."

118. On 10/13/98, Enron reported ***better-than-expected*** 3rdQ 98 results:

> Enron Corp. announced today 1998 third quarter earnings of $[0.235] per diluted share compared to $[0.23] ... in the third quarter of 1997. ***The results were led by continued growth in Wholesale Energy Operations and Services*** ....
>
> "We are very pleased to report another quarter of strong results, generating $168 million of net income compared to $134 million a year ago. In a period of financial market uncertainty and commodity price volatility, ***Enron has demonstrated its ability to consistently generate solid and predictable earnings, as evidenced by the 60 percent increase in earnings in our Wholesale business***," said Kenneth L. Lay, Enron Corp. chairman and chief executive officer.
>
> ... "[***P]rospects for future earnings growth continue to strengthen with the excellent progress of our new retail energy business," Lay said. "This quarter, Enron Energy Services signed contracts representing over $850 million of value, 70 percent over our plan***."

119. On 10/13/98, Enron held a conference call for analysts and investors to discuss Enron's 3rdQ 98 results and its business. During the call, Skilling, Koenig, Causey and Fastow stated:

- ***Enron's news was extremely good. Enron had another excellent quarter***.
- ***Everything was going great with Enron. On a very positive note, Enron hedged its investment portfolio and its hedges in the investment portfolio performed extremely well even in uncertain financial markets. Really good news in the finance and***

investing component. Enron could not state how strong the wholesale business was.

- ***Enron had a great quarter in the wholesale business. Enron was setting up for a great fourth quarter and a great 99 in the wholesale business.***

- ***Throughout 98, Enron's management disciplines were effective. This clearly differentiates Enron from its competitors.***

- ***Enron made significant strides in building both the skills and execution capabilities of EES, its new retail business. EES is very well positioned to capitalize on the unique opportunity in the retail commodity and services market. Enron was poised for long-term success in this business. Everything was on track in retail energy services. EES was looking very, very strong.***

- ***EES also continued to significantly expand its contracting activities. It was a very, very strong quarter for EES. EES would be profitable by the 4thQ 99.***

- ***Enron just had a great, great quarter in this segment. Over all, the third quarter was a very strong quarter for Enron. Strong earnings, very clean earnings for the quarter and Enron was feeling really good about how the year is coming and how 99 is setting up.***

120. On 10/14/98, CIBC issued a report on Enron. The report forecast 99 and 00 EPS of $1.15 and $1.35 for Enron and stated:

> Enron reported third quarter net income of $[0.235] per share ... better than our estimate of $[0.22]. [G]rowth has been spearheaded by sharp gains in Wholesale Energy Operations and Services ....
>
> * * *
>
> Enron Energy Services provides comprehensive energy solutions to U.S. commercial and light industrial end-users. ***Future retail contracts growing; future undiscounted revenues should exceed $3 billion by year-end. Management continues to build its retail business under Enron Energy Services.... The division is expected to turn profitable during the second half of 1999. During the third quarter the company signed contracts representing $850 million of total future energy expenditures, taking the total under contract to $2.3 billion. EES's backlog of retail contracts the division is now pursuing approximates $12 billion with average contract life of 5 years. Contracts under negotiation ... outsourcing income which should carry higher margins.***

CLASS PERIOD EVENTS AND FALSE STATEMENTS

121. On 10/19/98 (the beginning of the Federal Class Period), the statements pleaded in ¶¶109-120 were alive, impacting and inflating the market price of Enron's publicly traded securities. Each of the statements made between 7/14/98-10/14/98 were false or misleading when issued. The true but concealed facts were:

(a) Enron's financial statements and results issued during this period were false and misleading as they inflated Enron's revenues and earnings to conceal billions of dollars of debt that should have been shown on Enron's balance sheet, as described in ¶¶418-611.

(b) Contrary to the representations that Enron's transactions with its related parties were fair to Enron and on terms representative of those that could be obtained in arm's-length transactions with independent third parties, in fact, the transactions with Enron's related parties were grossly unfair to Enron and set up in a manner to permit Enron to pay off key Enron insiders, including Fastow, for their participation in the scheme, which included arranging the illicit and illegal financial transactions with those related parties on terms that no independent third party would ever have agreed to, as detailed herein.

(c) Enron's financial condition, including its liquidity and credit standing, was not nearly as strong as represented, as Enron was concealing billions of dollars of debt that should have been reported on its balance sheet – and which would have very negatively affected its credit rating, financial condition and liquidity – by improperly transferring that debt to the balance sheets of various non-qualifying SPEs and partnerships it secretly controlled, as detailed herein.

(d) Enron generated hundreds of millions of dollars of profits and transferred billions of dollars of debt off its balance sheet by entering into non-arm's-length transactions with SPEs and partnerships Enron controlled, including Chewco/JEDI, for which Enron had guaranteed loans to the SPEs and Barclays had provided a phony equity portion, to avoid improper consolidation.

(e) The results of Enron's wholesale (WEOS) business – its largest business unit – were manipulated and falsified to boost its reported profitability in various ways. ***First***, by phony or illusory hedging transactions with entities that were not independent of Enron. ***Second***, by the

abuse of mark-to-market accounting by adopting unreasonable contract valuations and economic assumptions when contracts were initially entered into. And ***third***, by arbitrarily adjusting those values upward at quarter's end to boost the wholesale operation's profits for that period – a practice known inside Enron as "moving the curve." And Enron had not effectively hedged its WEOS merchant investment portfolio as most of the purported hedges were with non-independent parties in transactions structured such that the hedge depended on Enron stock and thus Enron was still at risk.

(f) Under Mark-Jusbasche, Enron International repeatedly deferred capital expenditures, including developer, financing and promotional fees, that were incurred on failed project proposals. For more than five years – between 93 and 97 – these deferred expenses were accumulated – a practice known inside Enron as "***snowballing***" – and very few write-offs were taken. Costs for South African projects involving oil and gas reserves, pipelines, and a plant designed to convert ore into another form of energy, and projects in China, among others, were "***snowballing***" quickly – the cash burn rate was as much as ***one million dollars a month*** – but not being expensed. As former executives explained, quarter after quarter, year after year, Enron International "***got pressure from corporate about meeting earnings***," which prohibited write-offs – even when it was clear that the proposed project would never go forward. Consequently, the "***snowball***" grew exponentially – so large that an international accounting officer repeatedly told Enron's CAO Causey that a writedown ***had to be taken because so many proposals were no longer even arguably viable***. But this ran counter to corporate directives. Causey, at ***Skilling's direction, routinely responded that "corporate didn't have room" to take a write-off because doing so would bring Enron's earnings below expectations***. By 97, years past when start-up and proposal costs should have been written off, ***Enron had deferred a $100-million "snowball***" on some 75 projects, including those in Central and South America and the Dabhol power plant in India, while the cash-burn rate – virtually all deferred – dwarfed the revenue return.

(g) It was impossible for EES to enter into contracts that extended beyond three years and accurately forecast energy costs or savings because of the variables related to these contracts. Enron misused these variables in long-term contracts to manipulate its assumptions –

"moving the curve" to create higher values and thus record higher revenues using mark-to-market accounting.

(h) The $2.8 billion Wessex Water purchase and the establishment of Enron's international water business were not the result of careful analysis but rather were arranged to settle a dispute between two top Enron executives, Skilling and Mark-Jusbasche, who had a years-long and extraordinarily bitter struggle to be designated to succeed Lay as Enron's CEO. Skilling prevailed, and Mark-Jusbasche was in effect "paid off" and given the opportunity to fulfill her ambition to be CEO of a public company, which would follow with Azurix's 99 IPO. This was also done to silence Mark-Jusbasche, who possessed extraordinarily dangerous and damaging information about the wrongdoing that had gone on at Enron. In truth, Enron grossly overpaid for Wessex Water – hundreds of millions of dollars more than the company was really worth. The business would hurt, not help, Enron's earnings, would result in a later writedown of that overvalued asset, and would not become a $20 billion business in five years. Enron created the purported worldwide-water business without any adequate feasibility study or the creation of any detailed business plan, thus rendering the venture one of extraordinarily high risk that defendants knew was unlikely to generate profits or adequate returns going forward.

(i) In fact, Enron did not deserve an investment-grade credit rating and did not have a solid or substantial financial structure because it was inflating the value of its assets by billions of dollars while concealing billions of dollars of debt that should have been on its balance sheet. As a result, Enron's true financial structure was extremely fragile.

(j) The forecasts for strong continued revenue and earnings growth for Enron's WEOS and for continued growth and future profitability of the EES operations were false, in part, because the historical financial performance and condition of those operations had been materially falsified – thus there was no real basis upon which to forecast such further growth – and because neither of those businesses had the current strengths or success to justify the forecasts and claims for future growth that were being made.

(k) As a result of the foregoing, the revenue and EPS forecasts being made by and for Enron going forward were also false because historical earnings, upon which those forecasts were

based, were falsified and the result of improper accounting manipulations. In truth, Enron's various business operations not only had overvalued assets and huge concealed losses, which would have to be recognized and would very adversely impact Enron's financial results, but those core business operations did not have the strength or success necessary for them to generate anywhere near the kind of revenue and profit growth being forecast for them.

122. On 10/21/98, Enron issued a release concerning its broadband fiber optic buildout:

> Enron Corp., announced today that it has begun construction on a long-haul fiber-optic route that will span from Salt Lake City to Houston.
>
> The route will add 2,300 route miles to Enron Communications' existing 3,400-mile backbone network and will connect through Denver, Dallas/Fort Worth and San Antonio....
>
> ..."***Through a combination of construction and fiber sales and exchanges, we will be able to move quickly and economically to complete our national network***."

123. On 10/22/98, CitiGroup issued a report on Enron, which rated Enron a "***Buy***" and stated:

> Wholesale energy operations ... continued to be the largest contributor to earnings. IBIT was $277 million versus $173 million in last year's third quarter. ***The strength of the wholesale energy commodity and asset portfolios resulted in excellent earnings***.
>
> * * *
>
> ... The third quarter was an excellent period for ... [a] new [Enron Energy Services (EES)] business. EES contracts for customers ... of $850 million in the third quarter, including several large contracts ....

124. On 11/24/98, Enron sold $250 million of 6.95% Notes due 7/15/28, with CS First Boston acting as underwriter. Enron used the proceeds to pay down its short-term debt – commercial paper and/or bank debt to JP Morgan and CitiGroup.

125. On 12/9/98, Lehman Brothers issued a report on Enron, rating Enron a "***Buy***" and stating:

> We are raising our full ***year 1999 estimate to $[1.15]*** ... mainly as a function of ***continued strong growth in Wholesale ... as well as the expectation that Enron Energy Services will swing to EBIT positive by the fourth quarter***. In addition, we are initiating a year 2000 estimate of $[1.30].

126. On 1/12/99, Enron filed a Registration Statement written by Enron, its insiders and Vinson & Elkins with the SEC for $1 billion in Enron securities. It incorporated Enron's 97 10-K. As described elsewhere, Enron's 97 and interim 98 financial results were false and misleading. The Registration Statement was signed by Lay, Causey, Fastow, Belfer, Blake, Chan, John Duncan, Foy, Gramm, Harrison, Jaedicke, LeMaistre, Meyer, Skilling, Urquhart, Wakeham, Walker and Winokur.

127. On 1/13/99, Deutsche Bank issued a report on Enron, which rated Enron a "***Buy***," forecast 99 EPS of $1.10 and a 17% three-year EPS growth rate for Enron and stated:

Initiating Research Coverage With A "Buy" Investment Rating

* * *

Enron has a leading position in each of its core businesses.

* * *

Company has a good balance of operating income by business segment.

Strong balance sheet ....

Enron is a well-managed ... company ....

Enron Energy Services

... Enron Energy Services continued to significantly expand its contracting activities .... The company expects this business to break-even in the 4Q99 and projects positive earnings for the full year 2000.

* * *

... Enron announced the formation of a new company to pursue opportunities in the global water business.... ***The new company is expected to be accretive to Enron's financial results in the first full year of operations***.

128. On 1/19/99, Enron reported ***better-than-expected*** 4thQ 98 and 98 results:

Enron Corp. announced today a 16 percent increase in 1998 earnings per ... share ***to $[1.005] from $[.87] in 1997***.... [N]et income increased 36 percent to $698 million from $515 million during the year.... [F]ourth quarter 1998 earnings of $[0.24] per ... share, which compares to $[0.17] in the 1997 period ....

"***Across Enron, 1998 was an excellent year***," said Kenneth L. Lay, Enron Corp. chairman and chief executive officer. "***Our Wholesale Energy Operations and Services business led the company's growth during the year, achieving record levels ... in earnings***."

... "***Enron Energy Services*** has advanced to a fully developed business ..." Lay said. "***We have experienced a strong market reception and very successful***

contracting results, and we are very pleased about the prospects for this dynamic business."

* * *

During the year, Enron Energy Services significantly ***exceeded its stated contracting objectives and signed contracts representing $3.8 billion of customers' future energy expenditures***.... Enron Energy Services expects to double the level of new contracts to be added in 1999. ***In addition, earnings for the business are expected to be positive in the fourth quarter of 1999***.

129. On 1/19/99, Skilling was interviewed by *Bloomberg*. He stated:

[W]e had a really a strong year. Our quarter and virtually all of our businesses, if we look at it on a recurring earnings per share basis, diluted share basis ... we show ... earnings in fourth quarter this year of [24] cents versus [17] cents a year ago, the key contributor, as has been the case for the last couple of years has been ***our wholesale energy operations and services. Real strong quarter in wholesale***....

130. On 1/20/99, Merrill Lynch issued a report on Enron, rating Enron a "***Long-Term Buy***," forecasting 99 and 00 EPS of $1.15 and $1.325 and an 18% five-year EPS growth rate for Enron. It also stated:

ENE's diversified strategy is clearly paying handsome dividends. Despite a very difficult 4Q'98 operating environment for energy, ENE posted very respectable results.

* * *

... ***Over the next several years we expect annual IBIT growth of nearly 20% in the WEOS business segment alone***....

... Enron Energy Services, should begin to provide more tangible value in 1999.... ***[T]he sky seems to be the limit for this group. Enron Energy Services is well on its way, as signed contracts of "customers' future expenditures" are now in place for $3.8 billion***.

131. On 1/20/99, Deutsche Bank issued a report on Enron, rating Enron a "***Buy***." It forecast 99 EPS of $1.20 and a 17% three-year EPS growth rate for Enron and stated:

- Overall, 1998 was an excellent year ....
- Wholesale Energy Operations and Services business led the company's growth, achieving record levels ... in earnings.

* * *

- ***Core businesses reported very strong recurring earnings*** ....
- ***Company very optimistic for 1999***.

* * *

Management is very pleased with the excellent year and is looking forward to another strong performance in 1999....

* * *

Enron Energy Services ... ***matured to an established business with a full complement of people, systems and skills to successfully market, contract and deliver energy commodities and services***....

During the year, Enron Energy services significantly exceeded its stated contracting objectives and signed contracts representing $3.8 billion of customer's future energy expenditures. Based on both the current backlog of contracts and contracting activity, ***Enron Energy Services expects to double the level of new contracts to be added in 1999 and earnings for the business are expected to be positive in the fourth quarter of 1999***.

* * *

... [W]e believe that the company will be producing above average earnings growth that could exceed our 3-year estimated growth rate of 17% annually.... ***Thus, we reiterate our "buy"*** ....

132. On 1/25/99, CIBC issued a report on Enron, forecasting 99 and 00 EPS of $1.15 and $1.33 and stating:

[W]e believe longer term earnings power should build at attractive rates .... ***Following operating setbacks 1995-1997, Enron has re-emerged as a sector favorite***....

At last week's analyst conference ... management provided significant details on its long-range plans to build market share and earnings power along several higher growth fronts.

* * *

...***Future retail contracts are growing; future undiscounted revenues should exceed $3 billion by year-end***.... ***The division is expected to turn profitable during the second half of 1999. During the fourth quarter, the company signed contracts representing $1.8 billion of total future energy expenditures, taking the total under contract to $3.8 billion***....

133. On 1/27/99, CitiGroup issued a report on Enron, stating:

EES .... Outsourcing is experiencing a strong market reception, ***much stronger than ENE had anticipated. Contracting results were strong***. During 1998, ENE entered into $3.8 billion of new contracts. Now, ENE is convinced that EES will be profitable by the fourth quarter of 1999. ***EES has a product to sell and is selling extremely well***.

134. On 2/3/99, Enron filed a Registration Statement, signed by Lay, Causey, Fastow, Belfer, Blake, Chan, John Duncan, Foy, Gramm, Harrison, Jaedicke, LeMaistre, Meyer, Skilling,

Urquhart, Wakeham, Walker and Winokur, which included a "Recent Developments" section which reported Enron's financial results for 98. These results were false and misleading.

135. On 2/11/99, Enron sold 27.6 million shares of common stock in a public offering by CS First Boston, Lehman Brothers, Merrill Lynch, CitiGroup, Deutsche Bank and JP Morgan at $31.34 per share raising $861 million. The proceeds were used to repay Enron's short-term commercial paper and/or bank debt to JP Morgan and CitiGroup.

136. In 3/99, Enron issued its 98 Annual Report, reviewed and approved by Vinson & Elkins, Andersen and all the Enron Defendants who were then with Enron, stating:

> We believe our unparalleled ability to deliver on these three words will propel Enron to become ***THE "blue-chip" electricity and natural gas company of the 21st century***.
>
> In 1998, the business platform we have built to achieve that status ***delivered record earnings*** ....
>
> ***We are very pleased with these results. But it is the future that excites us the most***.
>
> * * *
>
> ... ***Together, our business units represent the comprehensive and strong competitive advantage that sets Enron apart*** ....
>
> * * *
>
> Enron Energy Services is uniquely positioned to provide nationwide energy outsourcing services to our industrial and commercial customers – and our success shows that customers value these services. ***In 1998, we signed energy services contracts representing $3.8 billion in total contract value, and we expect to sign contracts worth $8 billion or more in total value in 1999.... [W]e expect to begin generating positive earnings in late 1999 and to have strong growth in earnings in 2000 and beyond***.
>
> New Businesses
>
> ***Enron has a long history of starting and successfully building new businesses***.
>
> In 1998, we established a new global water business, Azurix, through the acquisition of U.K.-based Wessex Water....
>
> Through Enron Communications, we are establishing the first nationwide, Internet protocol fiber optic intelligent network in the U.S. ***and are uniquely positioned to develop and deliver high quality, high speed business applications and information to the enterprise desktop. We think both of these businesses have tremendous potential and could be significant contributors to the value of our stock in the next couple of years***.

* * *

Enron is becoming the "blue chip" of the electricity and natural gas industry worldwide. We have the people and the skills in place to widen our strong competitive advantage, and we think it would be very difficult, if not impossible, for any other company to replicate our overall capabilities in the foreseeable future.

Our core businesses are positioned for very solid growth in 1999 and beyond. We have an extremely strong franchise position, and we have platforms in place in our core businesses and new businesses or significant expansion and earnings growth.

137. Enron's 98 Annual Report also discussed Enron's Dabhol power plant:

The Dabhol power project ... ***is expected to be a strong contributor to Enron's earnings in 1999 and beyond***.

138. Enron's 98 Annual Report also discussed EES:

[EES] significantly exceeded its contracting objectives and signed contracts representing $3.8 billion of customers' future energy expenditures. Based on both the current backlog of prospects and contracting activity, Enron expects to double the level of new contracts to be added in 1999.... [R]esults for this business ... are expected to reflect positive earnings in late 1999.

139. With respect to Azurix – Enron's water business – Enron's 98 Annual Report stated:

Azurix is poised to become a major global water company in a $300 billion market that is ripe for third-party investment and the modernization of water and wastewater infrastructure.... Azurix's participation in the full spectrum of these areas will allow it to create enhanced value for shareholders.

140. Enron's 98 Annual Report contained Enron's 97 and 98 financial statements ***certified by Andersen***, which reported $31.2 billion revenues with net income of $703 million and EPS of $1.01 for 98 – ***huge increases over 97***. Enron's 98 Annual Report statements also reported the following balance sheet information (in millions) at 12/31/98 and 12/31/97:

	December 31,	
ASSETS	1998	1997
Total Current Assets	$ 5,933	$4,113
Total Investments and Other Assets	12,760	9,269
Property, Plant and Equipment, net	10,657	9,170
Total Assets	$29,350	22,552
LIABILITIES & SHAREHOLDERS' EQUITY		
Total Current Liabilities	$6,107	3,856
Long-Term Debt	7,357	6,254
Total Shareholders' Equity	$7,048	5,618

141. In 3/99, Enron filed its 98 Report on Form 10-K with the SEC which was signed by Lay, Causey, Fastow, Foy, Gramm, Harrison, Jaedicke, LeMaistre, Meyer, Skilling, Urquhart, Wakeham, Walker and Winokur. Vinson & Elkins reviewed and collaborated in writing the Form 10-K report. The Form 10-K contained Enron's 97 and 98 annual financial statements as certified by Andersen and an unqualified report thereon.

142. On 3/31/99, Merrill Lynch issued a report on Enron, rating Enron a "***Long-Term Buy***":

> • Enron's diversified strategy appears to be paying off as the company announced favorable earnings in 4Q98 despite the generally difficult energy environment. The core businesses reported a 23% increase in earnings per share, while the company's Energy Services and New Business segments continued to improve.
>
> • Management is committed to maintaining or improving its current credit ratings by actively managing the balance sheet, as it views this as critical to effectively executing ENE's growth strategy.... ***[M]anagement has ... effectively utilized off-balance sheet, non-recourse financings to fund its expansion efforts***.
>
> • ... This report contains a summary of the information presented at [an Enron] conference.
>
> * * *
>
> Enron International's (EI) operations are widespread and growing quickly, and, today, its operations contribute approximately 25% of consolidated IBIT (based on 1998 results).... Phase I of the Dabhol project ... ***should be a strong contributor to earnings*** ....
>
> * * *

Enron Energy Services (EES) ... has grown dramatically over the last year, tripling the value of contracts originated to $3.8 billion as of year end 1998.... The company has targeted a revenue goal of $4-$5 billion in the year 2000 .... EES is projected to turn earnings positive by 4Q99.

* * *

... ***Enron has developed the first nationwide IP-only fiber optic communications network. The unit is focused on delivering high quality, high bandwidth applications to businesses (e.g., video)***. The network ... is fully capable of delivering these business applications today.... ***Due to proper cost controls, the unit is already profitable***.... ***The company currently estimates the unit ... will turn cash flow positive by the year 2001, generating an estimated $110 million of free cash flow***.

* * *

... ***Management has also effectively utilized off-balance sheet, non-recourse financings to fund its expansion efforts while maintaining an appropriate capital structure***.

143. On 4/7/99, Lehman Brothers issued a report on Enron, rating Enron a "***Buy***," forecasting 00 EPS of $1.30 for Enron and stating:

Pullback In Stock Creates Buying Opportunity

Enron has pulled back roughly 12% ... ***we conclude that the pullback is an opportune time to buy the stock***.

* * *

As investors continue to see rapid growth in wholesale earnings, increased globalization of commercial products and services and we get confirmation of the crossover to profits at EES we expect multiple expansion.

144. On 4/13/99, Enron reported ***better-than-expected*** 1stQ 99 results:

Enron Corp. announced ... 99 first quarter net income increased 18 percent to $253 million compared to $214 million in the first quarter of 98. Enron also reported earnings per ... share of $0.34 ... compared to $0.325 ....

* * *

"***Our first quarter results reflect the continued strength of our worldwide energy businesses. Each region of our wholesale business continued to grow during the quarter in terms of ... profitability.... Enron Energy Services added $1.7 billion of retail contracts, including several large, multi-location energy outsourcing agreements," said Kenneth L. Lay, Enron chairman and chief executive officer. "We expect 1999 to be another excellent year at Enron for both earnings growth and return to our shareholders***."

145. On 4/13/99, Enron held a conference call for analysts and investors to discuss Enron's business. During the call, Lay, Skilling, Koenig and Causey stated:

- ***Enron was very pleased with its 1stQ results reflecting the continued strength of our worldwide energy operations which Enron expected to continue through 99.*** Enron had a very good quarter across the Company.

- ***All four of Enron's main businesses experienced significant growth and were all significantly profitable. Commodity sales and services put in a stunning performance and all of the indications are that that sort of performance will continue***.

- ***Enron was on track in its pipeline of new projects. They were coming along exactly as expected, Enron was going great on that side of the business***.

- ***A good quarter for EES. EES added $1.7 billion of retail contracts to its growing contract portfolio, including several large multi-location energy outsourcing agreements, compared to $800 million in the 1stQ of last year reflecting the very significant growth being realized in this business. EES was on track for at least $8 billion of new contracts during 99***.

- ***Enron was very confident that with contracts at late stages of negotiation it was in good shape for announcing a number of very large national contracts in 99. EES was on track to be earnings positive in the 4thQ 99***.

- ***Enron was very pleased with the results for the 1stQ. Enron had established a continuing strong track record of growth. Enron expected to see its growth and strong results to continue***.

146. On 4/13/99, Deutsche Bank issued a report on Enron, rating Enron a "***Buy***," forecasting 99 and 00 EPS of $1.17 and $1.375 and a 17% EPS growth rate for Enron and stating:

ENRON CORPORATION "BUY"
Reports Strong 1Q Earnings – Predicts Strong 1999 Results

* * *

- ENE reported strong 1Q earnings ....

- EPS of $[0.34] vs. $[0.325] in 1Q98 ....

- Enron had an excellent quarter.

- Management was optimistic about earnings performance ....

* * *

Enron is expected to have another excellent year in 1999 ... ENE should produce above average earnings growth that could exceed our 3-year estimated growth rate of 17% annually.... ***[W]e reiterate our "buy" recommendation on the stock***.

Enron is a well-managed ... company …. An aggressive and innovative management team has grown an interstate pipeline company into a diversified, global energy powerhouse engaged in all facets of the energy business.... Enron is the premium global diversified energy company ....

147. On 4/13/99, Merrill Lynch issued a report on Enron, rating Enron a "***Long-Term Buy***," forecasting 00 EPS of $1.365, an 18% five-year EPS growth rate for Enron and stating:

> • [Q]uarter-over-quarter operating earnings were up by 5%. The driving force behind this growth was the continued strength of Wholesale Energy Operations and Services.
>
> • ... [W]e consider [Enron] one of the blue chip companies in our universe .... Its plate of opportunities is as full as it has ever been, ***and we do not see ENE's growth rate slowing any time soon***.
>
> • ... We continue to recommend investors accumulate ENE.

148. On 4/14/99, CIBC issued a report on Enron, rating forecasting 99, 00 and 01 EPS of $1.15, $1.325 and $1.475 for Enron, and stating:

> Enron reported 1999 Q-1 income of $253 MM or $[0.34] per share ... above our ... estimate .... ***Improved performance was driven by continued momentum at Enron Wholesale Services.... Accordingly, we believe longer term earning power should build at attractive rates*** ....
>
> * * *
>
> In recent months the relative strength in ENE shares can be attributed to three factors. 1) continued momentum at Enron Wholesale Services 2) rising expectations and valuations for Enron Energy Services (EES), Enron's retail marketing arm, following management's increased expectations for the potential size of the higher margin energy management/outsourcing business, and 3) clarification of the company's strategy and potential in communication and water businesses. ***As management continues to build on core strengths in these areas we would expect the share price premium to hold***.

149. On 4/15/99, Merrill Lynch issued a report on Enron, rating Enron a "***Long-Term Buy***," forecasting 00 EPS of $1.36 and an 18% five-year EPS growth rate for Enron, and stating:

> • [W]e consider [Enron] one of the blue chip companies in our universe of natural gas stocks.... [W]e do not see ENE's growth rate slowing any time soon.
>
> • Year-to-date, ENE's stock price is up 14%, reflecting its growth prospects. We continue to recommend investors accumulate ENE.

150. On 5/7/99, Lehman Brothers issued a report on Enron. It increased the rating on Enron to a "***Buy***," increased Enron's forecasted 00 and 01 EPS to $1.325 and $1.525, forecasted a 15% five-year EPS growth rate for Enron, and stated:

> Over the last 2-3 years Enron has deftly positioned itself to exploit the emergence of three high growth, long-duration trends.... The payoff from this positioning is just beginning. ***The 1995-97 slowdown hurt investor confidence in this complicated story. The market has only partially restored the stock's premium valuation and is still withholding full judgment on the profitability of energy***

services, wholesale products and international development.... The key to multiple expansion from present levels is the perception that we are at the inflection point in all three catalysts.

151. On 5/19/99, Enron sold $500 million of 7.375% Notes due 5/15/2019 via a Prospectus with Lehman Brothers, Bank America and CIBC acting as underwriters. Enron used the proceeds of this securities issuance to pay down its short-term debt – commercial paper and/or bank debt to JP Morgan and CitiGroup.

152. On 5/25/99, Deutsche Bank issued a report on Enron, rating Enron a "***Buy***" and forecasting 00 EPS of $1.375 and a 17% three-year EPS growth rate for Enron. It also stated:

- We are raising our 6-12 month target price on ENE shares ....

* * *

- In our view, Enron's preeminent market position, substantial investment catalysts, including the highly anticipated Azurix IPO, and strong EPS growth prospects in 1999-2000 support our valuation parameters.

* * *

Enron is expected to have another excellent year in 1999 ... we believe ENE should produce above average earnings growth that could exceed our 3-year estimated growth rate of 17% annually. ***Thus, we reiterate our "buy" recommendation on the stock.***

Enron is a well-managed ... company .... An aggressive and innovative management team has grown an interstate pipeline company into a diversified, global energy powerhouse ....

153. On 6/9/99, JP Morgan issued a report on Enron, rating Enron a "***Buy***," and forecasting 00 and 01 EPS of $1.40 and $1.60 for Enron with a 17% three-year EPS growth rate. It also stated:

We see no other company in our universe that offers such impressive, sustainable, and controlled growth as Enron. Enron's core strengths include ... ***financial expertise, technological know-how .... In short, the company has the necessary skillset to compete and win in the global marketplace.... Its portfolio offers global exposure that is almost entirely in lower-risk energy and infrastructure projects and is managed for superior risk adjusted returns. And, most important, it boasts a management team that is capable, deep, and supported by an enviable pool of talent.***

* * *

Enron has transcended its energy heritage to become a premiere global infrastructure company. Its core competencies have allowed it to expand into new businesses, such as water and telecommunications. To ensure success in these new ventures, ENE reinforced its expertise with top managerial and technical talent from within the industry. ***These new businesses offer numerous operating and financial synergies***

and showcase Enron's culture – a culture that is aggressive and opportunistic, yet knows how to manage and mitigate risk.

154. On 7/6/99, CS First Boston issued a report on Enron, rating Enron a "***Buy***," forecasting 00 EPS of $1.35 and a 15% five-year EPS growth rate for Enron, and stating:

ENRON – A Real (and Valuable)
Option in Communications
Business Development Is Occurring Faster than Expected

* * *

• ***High acceptance of Enron's network and bandwidth trading strategies is evident as Communication makes major headway in network rollout, forming alliances, and privately negotiating a bandwidth trade***.

* * *

Enron's physical network presence is necessary to create a bandwidth trading market – a market that we believe is inevitable given the vast capacity inefficiencies that currently exist. The network provides access to key markets, a pooling point for networks, asset flexibility, the ability to swap into a broader network reach, and telecommunications credibility. ***Finally, Enron's network strategy is very much a viable business on its own***.

* * *

Communications Is Running Faster and Momentum Is Building

• The network build is much accelerated from initial conversations we had with management just three months ago. We believe that Enron is on pace to build, swap into, or acquire at least 18,000 route miles by year-end 2000. More important, the network should reach 15 cities by year-end 1999 and 45 cities by year-end 2000.

* * *

• Enron's bandwidth trading business, which focuses on pairing parties that have excess lit network capacity with parties that have a shortage (or temporary shortage) of lit network capacity, ***is developing at a much faster pace than expected***....

There Are Several Implications from the Above Discussion

• ... Enron's efforts in telecom should be considered by investors to have large potential.... ***If Enron has proven anything during the past decade, it is that it is the master of risk management, capturing inefficiencies in volatile and developing markets by identifying arbitrage opportunities, and being first-to-market at just about everything it does***.

155. Each of the statements made between 10/21/98-7/6/99, were false or misleading when issued. The true but concealed facts were:

(a) Enron's financial statements and results issued during this period were false and misleading as they inflated Enron's revenues, earnings, assets, and equity and concealed billions of dollars of debt that should have been shown on Enron's balance sheet, as described in ¶¶418-611.

(b) Contrary to the representations that Enron's transactions with its related parties were fair to Enron and on terms representative of those that could be obtained in arm's-length transactions with third parties, in fact, the transactions with Enron's related parties were unfair to Enron and set up in a manner to permit Enron to pay off key Enron insiders, including Fastow, for their participation in the scheme, which included arranging the illicit and illegal financial transactions with those related parties on terms that no independent third party would ever have agreed to, as detailed herein.

(c) Enron's financial condition, including its liquidity and credit standing, was not nearly as strong as represented, as Enron was concealing billions of dollars of debt that should have been reported on its balance sheet – and which would have very negatively affected its credit rating, financial condition and liquidity – by improperly transferring that debt to the balance sheets of various non-qualifying SPEs and partnerships it controlled, as detailed herein.

(d) Enron generated hundreds of millions of dollars of profits and transferred billions of dollars of debt off its balance sheet by entering into non-arm's-length transactions with SPEs and partnerships Enron controlled, including Chewco/JEDI, for which Enron had guaranteed loans to the SPEs and Barclays had provided a phony equity portion, to avoid improper consolidation.

(e) The results of Enron's WEOS business – its largest business unit – were manipulated and falsified to boost its reported profitability in various ways. ***First***, by phony or illusory hedging transactions with entities that were not independent of Enron. ***Second***, by the abuse of mark-to-market accounting by adopting unreasonable contract valuations and economic assumptions when contracts were initially entered into. And ***third***, by arbitrarily adjusting those values upward at quarter's end to boost the wholesale operation's profits for that period – a practice known inside Enron as "moving the curve." For instance, prospective international deals were prepared by internal Enron "developers," who created the deal structure. The developers then

presented the materials to Enron's Risk Analysis & Control ("RAC") department with an estimated net present value ("NPV"), calculated over 20 years, and Enron's return on investment ("ROI") over the life of the deal. The calculation of NPV and ROI required the use of numerous assumptions – such as foreign-exchange rates, revenue growth, inflation rates, cost escalation, economic growth and demand. Enron manipulated the assumptions to inflate projected revenues and deflate projected costs. For example, Enron picked the lowest possible consumer-price-index figure from all available world markets and the highest possible revenue-stream escalator figures, which in contrast would boost a project's profit by many millions of dollars. Moreover, EES had entered into many contracts on which it would lose hundreds of millions of dollars. To induce customers to enter into these agreements – so that Enron could claim its EES business was growing and succeeding – Enron had, in effect, "purchased" their participation by promising them unrealistic savings and charging low prices Enron knew would likely result in a loss.

(f) The value of contracts entered into by EES was grossly overstated by the misuse and abuse of mark-to-market accounting to create huge current-period values on what were, in fact, highly speculative long-term contracts on which Enron was almost certain to lose money. This resulted in EES improperly and prematurely recognizing hundreds of millions of dollars of revenue that not only boosted its financial results, but allowed top EES managers and executives to collect huge bonuses based on these improperly inflated contract valuations.

(g) It was impossible for EES to enter into energy contracts that extended beyond three years and accurately account for energy costs or savings because of the variables related to these contracts. Enron misused these variables in long-term contracts to manipulate its assumptions – moving the earnings curve to create larger contract values and record higher revenues abusing mark-to-market accounting.

(h) Enron's Dabhol power plant in India was a financial disaster, the completion of which had resulted in huge cost overruns such that to ever recover its investment, Enron would be required to charge electricity rates so much in excess of existing rates in that region that Enron's rates could never be collected. Consequently, the purported valuation of Dabhol on Enron's balance sheet was grossly inflated, which, in turn, inflated Enron's assets and distorted its apparent

creditworthiness. In addition, Enron knew from discussions with government officials in India that they would oppose paying Enron for power from Dabhol at anywhere near the rates Enron intended to charge and, in fact, was charging after the plant began commercial operations. Dabhol would not be a strong contributor to earnings and profit.

(i) Other Enron international operations were financial disasters and were not "high return projects" that "would lead to major earnings gains for years." For instance, Enron's Dominican Republic power plant project was a disaster before ground was broken. Enron paid to build a power plant in a country where existing plants were not being paid for. Enron went ahead, because internal developers got the majority of their bonuses before construction ever began. Likewise, at Batangas in the Philippines, developers promised – and were paid for – a water-cooled power plant on flat ground, but engineers faced the all but impossible task of building the plant on the side of a hill, using one road, and no access to water. Enron overpaid for each of its Central American projects, all of which proved to be operational nightmares, unprofitable and virtually impossible to unload, but Enron's internal developers always received their bonuses because they were not awarded based on actual project earnings or results or even the ability to turn the key and start the project, but on flawed and false projections of future profits.

(j) Enron was further falsifying its financial condition, especially its international operations, through a technique known inside the Company as "***snowballing***." That is, Enron took the escalating costs of bidding on large projects that it lost and, instead of expensing those costs in the current period as required, rolled those costs over into some other unrelated international project that Enron was bidding on or actually performing – in either event, avoiding recognizing those costs in the current period.

(k) Under Mark-Jusbasche, Enron International repeatedly deferred capital expenditures, including developer, financing and promotional fees, that were incurred on failed project proposals. For more than five years – between 93 and 97 – these deferred expenses were accumulated – a practice known inside Enron as "***snowballing***" – and very few write-offs were taken. Costs for South African projects involving oil and gas reserves, pipelines, and a plant designed to convert ore into another form of energy, and projects in China, among others, were "***snowballing***"

quickly – the cash burn rate was as much as ***one million dollars a month*** – but not being expensed. As former executives explained, quarter after quarter, year after year, Enron International "***got pressure from corporate about meeting earnings***," which prohibited write-offs – even when it was clear that the proposed project would never go forward. Consequently, the "***snowball***" grew exponentially – so large that an international accounting officer repeatedly told Enron's CAO Causey that a writedown ***had to be taken because so many proposals were no longer even arguably viable***. But this ran counter to corporate directives. Causey, at ***Skilling's direction, routinely responded that "corporate didn't have room" to take a write-off because doing so would bring Enron's earnings below expectations***. By 97, years past when start-up and proposal costs should have been written off, ***Enron had deferred a $100-million "snowball***" on some 75 projects, including those in Central and South America, and the Dabhol power plant in India, while the cash-burn rate – virtually all deferred – dwarfed the revenue return.

(l) Enron represented that its capable, impressive and top-notch management team successfully managed its balance sheet and financial risk by effectively hedging its merchant investments and placing billions of dollars of non-recourse debt in related but independent parties. In fact, the hedges were illusory, not real, and were largely dependent on the value of Enron's own stock where Enron still was exposed to the risk of its merchant investments. In fact, that debt was ***not*** non-recourse because if Enron's credit rating was downgraded that debt would become recourse as to Enron. This was an extraordinarily dangerous situation for Enron because, in fact, based upon its true financial condition, which was known to its insiders, Enron did not deserve the investment-grade credit rating it was carrying and it was in constant and precarious danger of losing that rating when the true structure of its off-balance-sheet partnerships and SPEs became known and its true financial condition was revealed.

(m) In fact, Enron did not deserve an investment-grade credit rating and did not have a solid or substantial financial structure because it was inflating the value of its assets by billions of dollars while concealing billions of dollars of debt that should have been on its balance sheet. As a result, Enron's true financial structure was extremely fragile.

(n) Azurix was not becoming a major global water company nor was it accretive to Enron's earnings. Enron had grossly overpaid for Wessex Water – hundreds of millions of dollars more than the English company was really worth – which Enron knew meant it would not be accretive to Enron but, in fact, would result in a later writedown of that overvalued asset. And Enron created the purported worldwide-water business without any adequate feasibility study or the creation of any detailed business plan, thus rendering the venture one of extraordinarily high risk that defendants knew was unlikely to generate profits or adequate returns going forward.

(o) As a result of the foregoing, the forecasts for strong continued revenue and earnings growth for Enron's WEOS and EES operations were completely false, in part, because the historical financial performance and condition of those operations had been materially falsified – thus there was no real basis upon which to forecast such further growth – and because neither of those businesses had the current strengths or success to justify the forecasts and claims for future growth that were being made.

(p) As a result of the foregoing, the revenue and EPS forecasts being made by and for Enron going forward were also grossly false because historical earnings, upon which those forecasts were based, were falsified and the result of improper accounting manipulation. In truth, Enron's various business operations not only had huge concealed losses, which would have to be recognized and would very adversely impact Enron's financial results, but those core business operations simply did not have the strength or success necessary for them to generate anywhere near the kind of revenue and profit growth being forecast for them.

156. On 7/13/99, Enron announced ***better-than-expected*** 2ndQ 99 results:

> Enron Corp. announced today a 29 percent increase in earnings for the second quarter of 1999 to $[0.27] per share .... Net income ... increased 53 percent to $222 million ....
>
> * * *
>
> "***Enron's consistent earnings growth reflects the very strong market positions in all of our businesses.... [W]e are positioned to be the leading player in the largest and fastest growing markets in the world," said Kenneth L. Lay, Enron chairman and chief executive officer. "The outlook for the company is excellent***
> ...."

157. On 7/13/99, Enron held a conference call for analysts and investors to discuss Enron's 2ndQ 99 results and its business. On 7/14-16/99, Enron executives Skilling, Sutton, Koenig and Causey also appeared at Enron's 2ndQ analyst meetings in New York, Boston and Houston. In the conference call and in follow-up conversations with analysts and in formal presentations and break-out sessions at the analyst meetings, they stated:

- ***EPS in the 2ndQ increased 29% to $.27 per share compared to $.21 in the 2ndQ of last year. Net income in the 2ndQ increased 53% to $222 million up from $145 million last year.***

- ***Enron had a great quarter. Enron was hitting on all eight cylinders. Enron was very pleased with these results for the quarter and very optimistic about the outlook for the future. Enron was very optimistic about how the business was playing out.***

- ***Overall, Enron's businesses had been performing well. Enron was well positioned for significant continued growth.***

158. On 7/13/99, CS First Boston issued a report on Enron, rating Enron a "***Buy***" and forecasting 00 EPS of $1.35 and a 15% five-year EPS growth rate for Enron. It also stated:

ENRON – EARNINGS GROWTH CONTINUES

2Q EPS of $[0.27] exceeds our EPS estimate of $[0.25] ....

Wholesale energy marketing remains strong.... ***We expect continued operating profit growth in the upper end of the 15-20% range.***

Retail energy marketing is on pace for a profitable fourth quarter ... as Enron continues to sign ... outsourcing contracts.

* * *

There exists substantial upside to our EPS estimates in the out-years (2001 and beyond).

159. On 7/13/99, Deutsche Bank issued a report on Enron, rating Enron a "***Buy***," forecasting 00 EPS of $1.375 and a 17% three-year EPS growth rate for Enron. It also stated:

- Enron reported operating EPS of $[0.27] ....

* * *

- Enron's 2Q results beat our ... expectations ....

- ***Impressive gains in the wholesale energy segment and reduced losses in the retail energy segment offset reduced earnings in the transportation and distribution and E&P segments.***

* * *

- ***As a result of strong 2Q results, we are ... maintaining our BUY recommendation***.

* * *

... We remain impressed with Enron's continued ability to produce strong earnings growth in its core wholesale energy businesses. ***We fully anticipate that the company will be capable of producing EPS growth in excess of 15%*** ....

160. On 7/14/99, *The Houston Chronicle* reported:

These lines of business are some of the fastest-growing segments of Enron's business, said Jeffrey Skilling, Enron's president. "***It is growing very fast and it will continue to show strong growth***," Skilling said.

* * *

The wholesale energy operations and services group includes the company's expanding communications business, which Skilling sees as one of the best growth opportunities among Enron's various divisions. "***To date, we have just gotten our toes in the water, but we really like what we see in this business***," Skilling said.

161. On 7/14/99, CIBC issued a report on Enron, increasing Enron's forecasted 00 EPS to $1.35 and stating:

Enron reported 1999 Q-2 income of $222 MM or $[0.27] per share ... above our $[0.24] estimate .... ***[W]e believe longer term earning power should build at attractive rates*** ....

We are raising our 1999 and 2000 EPS estimates to $[1.175] and $[1.35] to reflect the stronger quarter and improved prospects across wholesale energy and retail markets.

* * *

... ***[E]arnings power should continue to build over the next five years***.

162. On 7/14/99, Merrill Lynch issued a report on Enron. The report rated Enron a "***Long-Term Buy***" and forecast 00 EPS of $1.35 and an 18% five-year EPS growth rate. It also stated:

- ***ENE is very well managed***, in our opinion, with very high ... growth rates and near-term EPS growth in the 15% to 17% area.

163. On 7/20/99, CitiGroup issued a report rating Enron a "***Buy***," forecasting 00 EPS of $1.30 for Enron and stating:

Enron reported a significant increase in second quarter earnings. Earnings rose 29.6% to $[0.27] per diluted share versus $[0.21] the second quarter of 1998. Net income increased 53.1% to $222 million up from $145 million.

* * *

> Relative to retail energy services, it was a good quarter.... [It] is on track to break-even in the fourth quarter of 1999.

164. On 7/23/99, Enron filed a Form S-3 with the SEC to the register 10 million exchangeable notes which contained Enron's 2ndQ 99 results and incorporated Enron's Form 10-K for 98. As described in ¶¶418-611, these financial results were false. The Registration Statement was signed by Lay, Causey, Fastow, Belfer, Blake, Chan, John Duncan, Foy, Gramm, Harrison, Jaedicke, LeMaistre, Mark-Jusbasche, Mendelsohn, Meyer, Skilling, Urquhart, Wakeham and Winokur.

165. On 8/10/99, Enron sold $222 million of 7% Exchangeable Notes due 7/31/02, with Bank America and CitiGroup acting as underwriters. The Prospectus also included Enron's 2ndQ 99 results. In fact, these financial results were false. Enron used the proceeds of this securities issuance to pay down its short-term debt – commercial paper and/or bank debt to JP Morgan and CitiGroup.

166. On 8/20/99, CitiGroup issued a report on Enron, rating Enron a "***Buy***." It increased Enron's forecasted 00 EPS to $1.20 and stated:

> [W]e increased our 1999 earnings estimate to $1.20 from $1.15 per share to reflect the strength of Enron's growing communications business.... [W]e are increasing our 12-month price target.

167. On 9/2/99, CS First Boston issued a report on Enron, rating Enron a "***Buy***," forecasting 00 EPS of $1.35 for Enron and stating:

> ***Meeting with management highlights a strong EDSing of Energy ... and reaffirms earnings***.
>
> ***Wholesale energy marketing remains strong .... We expect continued operating profit growth in the upper end of the 15-20% range***.
>
> ***Retail energy marketing is on pace for a profitable fourth quarter ....***
>
> * * *
>
> ***In discussing the most recent decline in "bandwidth" values across the telecom industry with Mr. Skilling, two points we have made previously were reinforced. First, ENE Communications is not in the bandwidth business, it provides a bundled service ... linking application providers with end users. Second, ENE clearly views bandwidth as a commodity.... Skilling's enthusiasm for the potential of ENE Communications as a whole and bandwidth trading specifically could not be contained*** ....

... Enron Energy Services CEO, Lou Pai, ***noted that EES ... has proven through contracts signed to date that EDSing absolutely works***....

... ***More importantly, EES ... continues to sign high quality full EDSing contracts.***

168. On 9/14/99, *Dow Jones Energy Service* reported on Lay's appearance at a Dain Rauscher Energy Conference:

> ***Continued growth in Enron Corp.'s core businesses will help the company maintain strong earnings growth in the coming years, the company's chairman and chief executive said Tuesday***.... ***The company will get an added kick in earnings from another rapidly growing market – fiber optic bandwidth trading, he added***.
>
> * * *
>
> Enron now owns 9,500 miles of Internet Protocol fiber-optic in its U.S. network, Lay said.... ***All of it should be operational by next year***.

169. On 9/20/99, CitiGroup issued a report on Enron, rating Enron a "***Buy***," increasing Enron's forecasted 00 EPS to $1.40 and stating:

> [T]here is ... ***is a high probability that Enron can be a solid double-digit grower***....
>
> … Enron is the majority owner of Dabhol Power Co.... Maharashtra Pradesh Congress Committee has indicated that it wants to ... re-negotiate Phase I because it is affecting Maharashtra's industrial growth. ***However, Enron is confident that it might work with any political party to apply the project***.... Enron has established optimistic relationships in the country and is convinced that it can work with several political parties in power.

170. On 9/21/99, Lehman Brothers issued a report on Enron which rated Enron a "***Buy***," forecasted 00 EPS to $1.30 and a 15% five-year EPS growth rate for Enron and stated:

> We are raising our full year 1999 estimate to $[1.15] ... as a function of continued strong growth in Wholesale ... as well as the expectation that Enron Energy Services will swing to EBIT positive by the fourth quarter.
>
> * * *
>
> Over the last month Enron has pulled back roughly 12% … the pullback is an opportune time to buy the stock.

171. On 9/22/99, CS First Boston issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 EPS of $1.33 and a 15% five-year EPS growth rate for Enron. It also stated:

> Enron announced today that its retail energy marketing subsidiary, Enron Energy Services, has signed a $1.1 billion ten year total energy management outsourcing contract with Owens Corning ....
>
> This is a very positive, "Showcase" contract for Enron ....

... ***Owens' willingness to outsource these functions to Enron clearly endorses Enron's strong price risk management skills***.

172. On 9/23/99, JP Morgan issued a report on Enron, rating Enron a "***Buy***" and forecasting 00 EPS of $1.41 for Enron. It also stated:

ENRON DELIVERS CATALYST WITH $1.3 BILLION
OWENS CORNING ENERGY SERVICES PACT

Enron announced that it had reached agreement with Owens Corning on a 10-year, $1.3 billion total energy services outsourcing contract .... This is the first of ENE's proposed billion dollar energy services contracts and certainly not the last.... ***We are reiterating our Buy recommendation*** ....

173. On or about 9/29/99, Enron executive Rice appeared at the Bank of America Investment Conference. On 9/30/99, Bank America issued a report on Enron, rating Enron a "***Buy***" and forecasting 00 EPS of $1.38 and a 15% secular EPS growth rate for Enron. It also stated:

- Mr. Rice detailed Enron's rapidly evolving strategy to capitalize on the explodingdemand for high-bandwidth products and services.... Enron is approaching this business in a unique and innovative manner ....

* * *

- Enron expects this sector ... to grow 100%+ per year over the foreseeable future.

* * *

- Other important comments included management's conviction in Enron Energy Services' ability to turn profitable in 4Q99 and increase its contribution going forward.

174. On 10/1/99, *Bloomberg News* reported:

Enron Corp. ... is negotiating energy-service contracts valued at about $22 billion, and may top its goal of signing $8 billion in agreements this year, Chairman Kenneth Lay said.

"***We fully expect to hit the $8 billion number and possibly exceed it," Lay said in an interview*** ....

175. On 10/1/99, *CFO Magazine* ran an article on Enron stating:

How Enron financed its amazing transformation from pipelines to piping hot.

When Andrew S. Fastow, the 37-year-old CFO of Enron Corp., boasts that "our story is one of a kind," he's not kidding. In just 14 years, Enron has grown from a heavily regulated domestic natural-gas pipeline business to a fully integrated global energy company ... much of that growth has been fueled by unique financing techniques pioneered by Fastow.

"When I came here in 1990, Enron was a company with a $3.5 billion market capitalization," says Fastow. "Today, we're around $35 billion, and that's without issuing a whole lot of equity. ***We've increased shareholder value, grown the balance sheet, maintained a stable outlook from the rating agencies, and achieved a low cost of capital***."

... [W]hen energy stock analysts ... seek how to explain how Enron has remade itself so completely, they emphasize the "remarkably innovative financing." Says ***Ted A. Izatt, senior vice president at Lehman Brothers Inc. in New York: "Thanks to Andy Fastow, Enron has been able to develop all these difference businesses, which require huge amounts of capital, without diluting its stock price or deteriorating its credit quality-both of which actually have gone up. He has invented a groundbreaking strategy***."

"Fastow's expert balancing act, in fact, ***has earned him the 1999 CFO Excellence Award for Capital Structure Management***" ... says Jeffrey K. Skilling, Enron president and chief operating officer. "[Fastow] deserves every accolade tossed his way."

176. On 10/7/99, CIBC issued a report on Enron which upgraded Enron stock to "***Buy***" and forecast 00 and 01 EPS of $1.35 and $1.53 for Enron and stated:

With the stock correcting 14% ...we are upgrading Enron ... to BUY ....

* * *

... ***As management continues to build on core strengths in these areas, we expect the share price premium to hold***.

* * *

Enron Energy Services

Enron Energy Services provides comprehensive solutions to U.S. commercial and light industrial end-users. Retail contracts are growing, and future undiscounted revenue should approximate $12 billion by year-end. Management continues to build its retail business under EES; notable customers include Lockheed Martin, Lucent, Applied Materials, TRW, PacTel, General Cable and a number of educational institutions.

177. On 10/12/99, Enron reported better-than-expected 3rdQ 99 results:

Enron Corp. announced ... a 33 percent increase in net income to $223 million for the third quarter of 1999, compared to $168 million in the third quarter of 1998. Enron also announced a 13 percent increase in earnings per diluted share to $0.27 for the most recent quarter, compared to $0.24 a year ago....

"***The scale and scope of Enron's wholesale businesses provide tremendous competitive advantages in the rapidly growing, deregulating energy markets, enabling Enron to consistently achieve strong earnings growth. Our new retail energy network has similar operating advantages and continues to exceed our own expectations both for signing long-term outsourcing contracts and for profitability***," said Kenneth L. Lay, Enron chairman and chief executive officer.

* * *

... Enron Energy Services is expected to meet or exceed its target of signing $8 billion of contracts in 1999 ....

Enron Energy Services has been building a strong sales and execution team to capture a lead position in the U.S. retail energy market.... Enron Energy Services' business plan is firmly on track to make a positive contribution to Enron's earnings during the fourth quarter of 1999.

178. On 10/12/99, *Bloomberg* reported:

"***A lot of projects are going cash-flow positive in India, Turkey and South America***," Skilling said. ***Specifically, Skilling credited power plants in India and Turkey, and a gas pipeline that runs from Bolivia to Brazil, with adding to cash flow***.

179. On 10/12/99, Enron held a conference call for analysts and investors to discuss Enron's 3rdQ 99 results and its business. On 10/13/99, Enron executives Skilling, Koenig, Causey and Fastow also appeared at Enron's quarterly analyst conference in Houston. In the conference call and in follow-up conversations with analysts and in formal presentations and break-out sessions at the analyst conference, they stated:

- ***Enron had a very strong third quarter***.
- ***Enron's wholesale business continued to evidence the tremendous competitive advantages that are the major factor in Enron consistently achieving strong earnings growth. Enron continued to be very confident in the prospects for its wholesale businesses. Enron's new communications business was pursuing a business plan modeled after its successful wholesale energy networks. Enron was rapidly developing a presence in major global markets and making large fibre investments. Enron expected this business to continue solid progress***.
- ***The 3rdQ results Enron announced were reflective of the strong earnings power and the momentum at Enron***.
- ***Wholesale business was very, very strong and had a good quarter. All the fundamentals in that business were looking very positive***.
- ***Enron remained firmly on track for a profitable 4thQ in the retail business. In terms of contracting activity, EES's contract activity was also very successful in the 3rdQ***.
- ***Enron was very pleased with its 3rdQ results. Enron remained convinced that it had developed unique network businesses and would continue to gain market share and grow profitability***.
- ***Enron had strong production coming from India***.

- ***Enron was very optimistic about bandwidth trading. The more Enron saw of that market, it was absolutely ripe for opening to competitive markets. Investors would start seeing those showing up in the first and second quarters of next year***.

180. On 10/12/99, CS First Boston issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 EPS of $1.33 and a 15% five-year EPS growth rate for Enron. It also stated:

> Enron reported 3Q EPS from continuing operations of $0.27 versus $0.24 a year ago. The quarter was lead by strong growth in Wholesale Energy Marketing, up 36% to $378 million versus $277 million in the year ago period....
>
> Retail energy marketing demonstrated further improvement, ***and we continue to expect a profitable ... fourth quarter, as Enron continues to sign total outsourcing contracts***.

181. On 10/12/99, Merrill Lynch issued a report on Enron. It rated Enron a "***Long Term Buy***" and forecast 00 EPS of $1.37 and an 18% five-year EPS growth rate for Enron. It also stated:

> We continue to recommend that investors ... Buy for the long-term as ENE continues to demonstrate its dexterity ***in delivering solid earnings growth even in challenging energy markets***.
>
> * * *
>
> Importantly, the retail segment continues to show improvement as ... the backlog of total energy expenditures (TEEs) has grown to $2.5 billion from $850 mm last year at this time.

182. On 10/12/99, Bank America issued a report on Enron. It rated Enron a "***Buy***," forecast 00 EPS of $1.38 and a 15% secular EPS growth rate for Enron. It also stated:

> ENE reported solid 3Q99 EPS results of $0.27 ... compares to our estimate of $0.26. Greater year over year earnings were primarily a result of continued ***strong performance from its wholesale businesses as well as better than expected results from its retail energy services operations*** .... We are maintaining our ***Buy*** rating ....
>
> More significantly, 3Q99 results demonstrate that ENE has positioned itself in the sweet spot of the evolving energy and communications businesses both domestically and internationally.... ***The company's retail energy services segment is outperforming our expectations and holds the potential to be a major business in the next year***.
>
> * * *
>
> Retail Energy Services produced the best quarterly results since the inception of the business .... During the quarter, Enron Energy Services entered into contracts representing $2.5 billion of future customers expenditures for energy services, or three times the $850 million contracted in the third quarter a year ago. In a significant development during the quarter, Enron Energy Services entered into a contract with Owens Corning, representing the largest contract signed to date involving a major industrial company. The contract calls for Owens Corning to buy $1.1 billion worth of electricity and energy-management services for 20 domestic manufacturing plants from Enron over the next ten years. With the addition of the Owens Corning contract

and others expected to follow ***shortly, Enron is confident that it will meet or beat its target of $8 billion in contracts for 1999, which will be more than double the value of contracts signed during 1998***.... Given this tremendous growth, we have a high degree of confidence that the Retail Energy Services business will generate positive cash flow and earnings by 4Q99.

183. On 10/13/99, CIBC issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 and 01 EPS of $1.35 and $1.53 for Enron. It also stated:

> [M]anagement aggressively targets higher growth businesses.... [T]o concentrate on the wholesale and retail delivery of energy and communications products and services.
>
> * * *
>
> Retail Energy Services.... During Q3-99 EES entered into contracts representing $2.5 billion of customers' future expenditures for energy services, or three times the $850 million contracted in Q3-98. The Q3-99 results include the largest contract signed to date – a more than $1 billion ten-year outsourcing agreement with Owens Corning.... Importantly, EES is expected to meet or exceed its target of signing $8 billion of contracts in 1999, representing more than double the value of contracts signed during 1998. ***EES business plan is firmly on track to make a positive contribution to Enron's earnings during the fourth quarter of 1999***.

184. On 10/13/99, Deutsche Bank issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 EPS of $1.35 and a 14% three-year EPS growth rate for Enron. It also stated:

> ***We reiterate our BUY recommendation on ENE shares.***
>
> * * *
>
> ... This morning, Enron management held one of their traditional quarterly meetings in New York. ***We were impressed, as usual, by the Enron's growth prospects in domestic energy markets, international ... markets, and the fledgling communications segment. The wholesale segment continues to be a powerhouse domestically.... The growth potential for Enron is obvious*** ....
>
> * * *
>
> ***Jeff Skilling was enthusiastic about the Indian market. Despite political chest thumping in India, he suggested that Enron is in very solid political stead in India***.
>
> ***Retail Energy Services appears to be making significant progress towards profitability. Management expects to sign almost $2 billion worth of contracts shortly to push the annual contract origination total to over $8 billion as promised***.... Management reiterated its expectation that strong growth in this developing segment will allow better than break-even cash flow and EPS results in 4Q99, perhaps years ahead of most competitors.
>
> * * *

In our view, Enron's 3Q results clearly demonstrate its best-in-class ... power marketing and energy services skills. We remain impressed with Enron's continued ability to produce strong earnings growth in its core wholesale energy businesses. While Enron's quarterly results were slightly below the 15% long-term growth rate estimate we have established for Enron, we believe long-term annual earnings will have less variance than quarterly results. ***We fully anticipate that the company will be capable of producing EPS growth in excess of 15%*** ....

185. On 10/15/99, Bank America issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 EPS of $1.38 and a 15% secular EPS growth rate for Enron. It also stated:

ENE: EES Announces $1.5 Billion Contract with REIT, Total Backlog in '99 Now $7.4 B

(EES) ... announced a $1.5 billion contract with Simon Brand Ventures to manage the energy needs of all of Simon's real estate properties over a ten year period....

The Simon contract brings EES' total announced backlog in 1999 to $7.4 billion. EES signed $3.8 billion of contracts in 1998 and $1.2 billion in 1997.

* * *

EES has now announced $3 billion of long term outsourcing contracts within the last few weeks. ***We believe the momentum and quality of contracts fully validate Enron's strategy and dominant presence in this field***. EES is expected to contribute at least $50 million of ... (IBIT) in FY00 ....

186. On 10/20/99 CitiGroup issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 EPS of $1.40 and also stated:

Enron Corp. had a 12.5% increase in recurring earnings per diluted share to $0.27 versus $0.24 in 1998. [N]et income increased 73% ... to $290 million, up from $168 million the previous year....

Wholesale Energy Operations and Services are continuing to be the most principal contributor of earnings, a quickly growing element of the company. During the third quarter, the Wholesale Group produced IBIT of $378 million – a 36.5% increase over the $277 million last year.

* * *

Enron Energy Services (EES) reported the best quarterly results since the beginning of the business.... ENE contracted $2.5 billion of customer's future expenditures for energy and services compared to $850 million a year ago. This quarter's results included the largest outsourced contract signed to date, a 10-year outsource agreement with Owens Corning ....

187. On 11/2/99, *Dow Jones Energy Service* ran the following statement on Enron:

Enron Taking Step Toward Bandwidth Commodity Market

Enron Corp. is currently testing hardware and software in order to start trading telecommunications bandwidth capacity early next month.

> The installations, in New York City and Los Angeles, are key steps in a pioneering proposal that could create a market worth "***hundreds of billions of dollars a year." Tom Gros, Enron Communications vice president of global bandwidth trading, told Dow Jones Newswires***.

188. As a result of Enron's strong 98, 1stQ, 2ndQ and 3rdQ 99 results and the extremely positive statements about Enron's business made by Enron, the Enron Defendants and Enron's banks, Enron stock was a strong performer during 99 advancing from $27 per share in 12/98 to $43-$44 by 8/99. In 11/99, Enron's stock traded as high as $43 per share. As Enron's stock increased in price due to these very positive statements about Enron's business, Enron insiders took advantage of this artificial inflation of Enron stock by selling off approximately six million shares of their Enron stock during 10/98-12/99 at as high as $43.40 per share, pocketing $208 million in illegal insider trading proceeds.

189. In 11/99, rumors circulated that Enron was having difficulties making its 4thQ 99 "numbers" due to problems with Enron's EES and Indian operations. As a result, Enron's stock began to weaken and fell to as low as $34-7/8 on 11/23/99. To help support Enron's stock price, Enron's bankers, at Enron's behest, issued a series of extremely positive reports on Enron assuring investors that Enron's business fundamentals were strong, that Enron was on track to meet or exceed forecasted levels of earnings and that any price weakness in Enron stock should be viewed as a buying opportunity.

190. On 11/26/99, JP Morgan issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 EPS of $1.41, and stated:

> ON SALE FOR NO REASON; BRICKS TO BRAINS STRATEGY INTACT
>
> We are reiterating our BUY recommendation.... ***In our opinion the recent price weakness is unwarranted and presents a superb opportunity to get into one of our top growth names***. Enron has done a fantastic job of exiting slow growth, asset-intensive commodity businesses (bricks) and refocusing on intellectual capital-based, higher growth opportunities (brains).
>
> * * *
>
> ***Enron has a virtually unassailable lead in the domestic wholesale energy markets***.
>
> * * *
>
> ***Retail business continues to thrive*** ....

Enron Energy Services (EES, the retail business) should be one of the primary earnings drivers over the next 12 to 18 months. EES is on track to turn profitable on an EBIT basis in this quarter.... It should easily sign the $8 billion in contracts in 1999 that Enron committed to at the beginning of the year. Marquee deals have been struck with:

Simon Properties, announced $1.5 billion+
Owen Corning, announced $1.1 billion+
Suiza Foods, estimated $400 to $500 million

The speculation continues to be wrong and Enron continues to be right. The stock has been plagued by a litany of unsubstantiated reports. Just over the past few months there was speculation of a crisis at Enron India, ... and most recently of Enron Energy Services losing money and facing deteriorating margins.

* * *

Future looks bright ....

191. On 11/30/99, CS First Boston issued a report on Enron. It forecast 00 EPS of $1.35 and a 15% five-year EPS growth rate for Enron. It also stated:

- After recently visiting with EES President Lou Pai and speaking with COO Jeff Skilling, ***we remain very confident in the continued growth in the wholesale business, and we continue to expect the retail business to turn earnings positive in the fourth quarter of 1999 as Enron continues to sign total outsourcing contracts***.

- Enron continues to transform itself ... [which] should lead to accelerating earnings growth and sustainable P/E multiple expansion over the next several years.

* * *

Once again, Enron common stock has come under severe price weakness ....

We recently spoke with COO Jeff Skilling regarding the business condition. ***Mr. Skilling articulated that business across all lines is in excellent shape***....

Our conversation with Mr. Skilling, as well as a very recent visit with Enron Energy Services "Retail Energy Services/EDSing of Energy" President Lou Pai suggested ***that momentum in the retail business continues to accelerate***. Backlogs ... continue to grow, the impressive roster of Enron clients continues to expand, and Enron expects a positive fourth quarter of 1999. We expect to see earnings for full year 2000 exceeding the $50 million target that Enron has set.

Mr. Skilling also added that he believes Enron's telecommunications business has substantial upside potential both on an earnings and valuation basis relative to market expectations and/or his view of what's in the stock.

* * *

... [W]e have full confidence in Enron's ability to meet our EPS estimates ....

192. On 12/2/99, Enron issued a release stating:

Enron Communications Announces First Commodity Bandwidth Trade

Enron Communications, Inc., a wholly owned subsidiary of Enron Corp., a leader in the delivery of high-bandwidth application services, ***announced today the first forward trade of bandwidth***.

"***This is 'Day One' of a potentially enormous market***," said Jeff Skilling, Enron president and chief operating officer.... The seller in the transaction will be Global Crossing, a worldwide leader in the construction and operation of high capacity telecommunications networks.

193. On 12/16/99, Bank America issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 EPS of $1.38 and a 15% secular EPS growth rate for Enron. It also stated:

• We met with Enron management yesterday .... We believe there could be significant potential upside in Enron's stock as investors have the opportunity to understand the value of the company's communications investments and overall strategy.

* * *

• We believe that Enron Communications strategy has significant potential .... We see this as an excellent time for investors to establish or increase holdings of Enron's stock, and would use any sector wide weakness as a buying opportunity. ***We continue to rates shares of Enron Buy*** ....

194. On 1/6/00, CIBC issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 and 01 EPS of $1.35 and $1.53 for Enron. It also stated:

• Enron ... is now aggressively moving ahead with major initiatives in communications. ***Year 2000 is expected to mark a major push into broadband communications services, an enterprise offering significant value creation potential***.... Accordingly, we expect ENE shares to sustain solid momentum ....

195. On 1/12/00, Bank America issued a report on Enron. It ***increased*** the rating on Enron to a "***Strong Buy***," ***increased*** the stock target price to $75 and forecast 00 and 01 EPS of $1.35 and $1.55 and a 15% secular EPS growth rate for Enron. It also stated:

• ***We are raising our 12-month price target for Enron Corp. to $75 from $45 and our rating to Strong Buy from Buy***. We believe Enron Communications (ECI), represents significant unrecognized value in the stock.... ***We recommend investors add aggressively to current positions or establish core positions in the stock at current levels*** ....

* * *

ECI has two new and related businesses. Company is the first mover and has unique technology advantage to support the following integrated services:

1. Performance-enhancing Network for Internet Content. The company has developed a software platform that can be used to enable guaranteed high

performance Internet content delivery over its (or third parties') optical network backbone infrastructure....

2. Bandwidth Capacity Reselling – Unique in the marketplace; Enron already dominates in the same business in energy markets. ECI exploits fixed-cost pricing model of traditional long haul carriers, ***buys unused portion of ISP backbone then redistributes at profit***.

* * *

... We recommend investors add aggressively to current positions or establish core positions in the stock at current levels, ahead of the company's January 20th analyst conference. In our opinion, the company can justify a potential market value for ECI between $25 and $30 billion at the conference.

196. On 1/18/00, Enron announced ***better-than-expected*** 4thQ 99 and full year 99 results:

Enron Corp. announced today ***very strong financial and operating results for the full year 1999***, including:

- a 28 percent increase in revenues to $40 billion;
- a 37 percent increase in net income to $957 million;
- an 18 percent increase in earnings per diluted share to $1.18;

* * *

- a more than doubling of new retail energy services contracts to $8.5 billion.

* * *

"***Our strong results in both the fourth quarter and the full year 1999 reflect excellent performance in all of our operating businesses***. Our wholesale business again registered strong profitability and growth in the rapidly expanding, deregulating energy industry worldwide. ***Our retail business is now profitable. This business has reached critical mass in contracting activity and service capabilities, and profitability is expected to accelerate rapidly***," said Kenneth L. Lay, Enron chairman and chief executive officer. "***In addition, Enron continues to develop innovative, high-growth new businesses that capitalizes on our core skills, as demonstrated by the early success of our new broadband services business*** ...."

197. On 1/18/00, Enron held a conference call for analysts and investors to discuss Enron's 99 results and its business. On 1/20/99, Enron executives Skilling, Koenig, Causey and Fastow also appeared at the Enron Analyst Conference in Houston. In the conference call and in follow-up conversations with analysts and in formal presentations and break-out sessions at the analyst conference, they stated:

- ***Enron had a tremendous year in 1999. Its wholesale energy business led the strong financial results continuing high levels of both profitability and growth. A great year for the wholesale business. Enron's retail energy services business had a***

watershed year. It turned profitable on schedule in the 4thQ this year and more than doubled new outsource contracts during the year. A great quarter.

- ***In addition, Enron laid the foundation for its new broadband services business which played directly to Enron's fundamental strengths and capabilities.***
- ***EES had captured the leading position in the energy outsource market and was extremely well positioned for rapid growth moving forward. Enron was forecasting strong profits for the full year 00.***
- ***In summary, Enron was very pleased with the 4thQ and full year financial results. Enron was also very excited about the continuing positive business developments in the Company.***
- ***Enron was well positioned now in the telecommunications business to continue increasing its large share of these markets. Enron had the technology, products, services and market knowledge to further enhance these network businesses and was confident that its strong performance would continue increasing profitability and expanding returns to shareholders. Just a great year for Enron and Enron was looking forward to a replay of a great year in the year 00.***
    - ***00 would result in:***
        - ***Continued strong growth in the core WEOS business.***
        - ***Break-out performance from EES.***
        - ***Rapid development of EBS.***

198. On 1/18/00, CS First Boston issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 EPS of $1.35 and a 15%five-year growth rate for Enron. It also stated:

> ***Retail (EES) turned earnings positive with a profit of $7 million for the quarter.*** We expect 2000 to be the year that "EDSing" fully explodes ....
>
> ... Substantial potential exists for upward earnings revisions as the knowledge- and information-based Wholesale and Retail businesses have begun to fire on all cylinders. We expect earnings growth of 20% or better in Wholesale and growth in the Retail business with earnings increasing from a $68 million loss in FY99 to a $50-100 million profit in 2000.

199. On 1/18/00, CIBC issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 and 01 EPS of $1.35 and $1.53 for Enron. It also stated:

> Enron reported Q499 EPS of $0.31 ... up from $0.24 a year ago .... Full year earnings reached $1.18, up from $1.10 a year ago. Earnings advanced 29% for the quarter and 18% for the full year. ***We continue to rate ENE shares a BUY....***
>
> Improved results were driven by gains at all segments.... Enron Energy Services, the company's retail services business, turned profitable as expected.

200. On 1/18/00, Bank America issued a report on Enron. It rated Enron a "***Strong Buy***" and forecast 00 and 01 EPS of $1.35 and $1.55 and a 15% secular growth rate for Enron. It also stated:

- Enron Corp. reported fourth quarter EPS of $0.31, ahead of our $0.27 estimate and an increase of 29% year over year. For the full year 1999, ENE reported $1.18 ... an increase of 18% versus the prior year. Fourth quarter EPS was driven by continued growth in the Wholesale Energy Operations and Services (WEOS) business, which increased operating income by 31% .... Enron Energy Services (EES) also reported its first profitable quarter, generating $7 million in operating income. ***We continue to rate ENE Strong Buy*** ....

* * *

- ***As expected, Enron Energy Services reported a profit in the fourth quarter***.... ***We continue to expect EES will contribute meaningfully to EPS in 2000***.

- ***We recently raised our 12-month price target for ENE to $75 from $45 and our rating to Strong Buy from Buy***.

201. On 1/18/00, Merrill Lynch issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 EPS of $1.39 and an 18% five-year EPS growth rate for Enron. It also stated:

- ***[W]e are maintaining our Accumulate/Buy opinions, given its leading position as a merchant energy conglomerate and the potential of its telecommunications business***.

* * *

- ENE posted another solid quarter and year. EPS were up 29% for 4Q'99 from $0.24 to $0.31. Full year results were up 17%, from $1.01/share to $1.18/share.

- Strong IBIT growth in the wholesale energy services division again fueled the quarter and the year. In addition, ENE's rapidly growing Retail Energy Services business continues to improve ***and for the first time posted positive IBIT in 4Q'99***.

202. On 1/19/00, *The Wall Street Journal* reported:

The company said it booked ***a profit of $7 million on its retail-energy business for the quarter, compared with a loss of $26 million a year earlier. Enron President Jeffrey Skilling said fixed costs of $170 million a year were hard to overcome during the past three years, but "we've crossed that line now and this business will be a big factor for us in the future***."

Mr. Skilling said ***Enron marketers brought in business contracts valued at $8.5 billion during 1999 ... generating significant income for the company***.

Mr. Skilling expects profit from retail energy services to rise "significantly" from a projected $50 million for 2000.... "***As we look to 2000, we see momentum building in every one of our businesses***," Mr. Skilling said.

203. On 1/20/00, Bank America issued a report on Enron. It rated Enron a "***Strong Buy***" and forecast 00 and 01 EPS of $1.35 and $1.55 and a 15% secular EPS growth rate for Enron. It also stated:

- Enron Corp. announced at its analyst conference today that it has entered into a joint venture with Sun Microsystems to develop further Enron's Intelligent Network ....

- ***This is a huge step forward for Enron to drive broadband high content Internet traffic onto its network, and we believe will further enhance Enron's first mover advantage to deliver unique performance-enhanced services to next generation content providers and ISPs***.

* * *

- We reiterate our ***Strong Buy*** rating on shares of Enron ....

204. On 1/21/00, JP Morgan issued a report on Enron. It rated Enron a "***Buy***," ***increased*** the stock's target price to $85, forecast 00 and 01 EPS of $1.41 and $1.69 for Enron and stated:

> We are reiterating our BUY recommendation on Enron and raising our 12-month price target to $85 .... ***Our continued optimism in Enron is fueled by the tangible and exciting prospects within the Communications business that the company unveiled at its analyst meeting yesterday....***
>
> ***Enron Broadband Services is the New Jewel in Enron's Portfolio*** ....
>
> As promised, Enron unveiled its communications business at yesterday's analyst meeting.... ***Enron Broadband Services (EBS) is well underway in executing its three-prong approach***.
>
> - ***Bandwidth trading*** to facilitate the lowest cost global fiber-optic network
> - ***Network management*** to find the low cost, high quality path for data
> - Using the two components above for ***broadband content delivery***
>
> * * *
>
> ... ***Enron is unquestionably the pioneer in this market and is already executing on this strategy. Bandwidth is being traded, content is being delivered and the Enron Intelligent Network enables all of this. The market opportunity is enormous with bandwidth trading and broadband delivery estimated to reach $70 and $25 billion, respectively, by 2004***.
>
> * * *
>
> ***The retail business plans to double its contract volume in 2000 to $16 billion, delivering a $150 million swing to profitability***.

205. On 1/21/00, CS First Boston issued a report on Enron. It forecast 00 EPS of $1.35 and a 15% five-year EPS growth rate for Enron. It also stated:

> The Enron analyst meeting was positive....
>
> Enron confirmed that its wholesale energy marketing division should continue its 35% EBIT growth rate ....
>
> * * *
>
> ***ENE's long term revenue and operating income projections detailed at the meeting showed a potential discounted present value for Enron's broadband communications business approaching $30 billion***.
>
> We expect our EDSing of energy theme to become more important this year. Enron publicly raised its 2000 operating income estimate to $75 million from $50 million. ENE expects to add $16 billion of EDSing backlog in 2000, generating $650 million-$1 billion of future operating income ***at an estimated 4-6% margin***.

206. On 1/21/00, Lehman Brothers issued a report on Enron. It rated Enron a "***Buy***," ***increased*** Enron's forecasted 00 and 01 EPS to $1.38 and $1.59 and forecast a 15% five-year EPS growth rate for Enron. It also stated:

> Annual Analyst Conference In Houston A Grand Slam As Enron Wowed Analysts and Investors, Driving Stock Up Nearly 14 Points. Given Our Early Assessment Of Broadband Services And The Emergence Of Retail Energy Services As A Growth Segment, We Are Raising Our Target Price On Enron Shares To $80.
>
> * * *
>
> Enron ... Expects To Carve Out Leading Positions In Bandwidth Markets ....
>
> ***Retail Energy Services... Now EBIT Positive. EBIT Contribution For 2000 Raised 50% to 75MM from 50MM. Expect 200MM Contribution In 2001***....

207. On 1/21/00, CIBC issued a report on Enron by Hyler. It rated Enron a "***Buy***," forecast 00 and 01 EPS of $1.35 and $1.53 for Enron and stated:

> ***We are raising our 2000 price target to $80 ... in response to 1) further clarification of Enron's broadband communications strategy ... and 2) continued strong growth rates at its wholesale and retail energy businesses ... with momentum expected to continue to build through 2000*** ....

208. On 1/21/00, Merrill Lynch issued a report on Enron. It rated Enron a "***Buy***," raised the stock's price target to $95, and forecast 00 and 01 EPS of $1.37 and $1.56 and an 18% five-year EPS growth rate for Enron. It also stated:

- Enron held an all-day analyst meeting yesterday ....

- ... ***[M]anagement sees EBIT potential for Broadband of $2.3B by 2004***....

- ... Thus, we are raising our 12-month price objective to $95 ....

* * *

This is not just a concept. Enron Broadband Services (EBS) already has 12,325 fiber miles in place and will grow that to 18,000 miles by 2001. The fiber provides the guaranteed backstop for firm delivery commitments. The company installed 1,500 servers in 1999, will double that in 2000, and their agreement with Sun calls for an eventual 18,000 servers....

* * *

Over the next five years, ENE should be able to continue its track record of 35% annual EBIT growth from its WEOS segment .... Retail Energy Services, in the fourth quarter, demonstrated what mgt. has been saying for several years, that ***it will be a highly profitable business with significant growth opportunities***....

209. On 1/24/00, Merrill Lynch issued a report on Enron. It rated Enron stock a "***Long Term Buy***" and forecast 00 and 01 EPS of $1.37 and $1.56 and an 18% five-year EPS/growth rate for Enron. It also stated:

- Enron held an all-day analyst meeting on 1/20/00 .... ***Their grand finale was the announcement of a joint venture with Sun Microsystems to develop a standard protocol for accessing real-time bandwidth, and for Sun to supply an estimated 18,000 servers to ENE***.

- Bottom line on ENE's telecom strategy (Enron Broadband Services) ***is that they are the real deal .... ENE's plan will exploit all broad bandwidth opportunities. Management sees EBIT potential for Broadband of $2.3B by 2004***.

210. On 1/28/00, Deutsche Bank issued a report on Enron. It rated Enron a "***Buy***," ***raised*** the stock's target price to $90 and forecast 00 EPS of $1.35 and a 15% three-year EPS growth rate for Enron. It also stated:

All we can say is WOW!... Enron stole the show last week at its annual analyst conference in Houston.... Enron management unleashed a strategy that projects monumental earnings potential over the next 5 years.... At the conference, Enron management projected over $2.25 in operating income in 2004 from the content services and bandwidth intermediation portions of its strategy.

As such, we are raising our target price on ENE shares to $90/share.... We reiterate our BUY recommendation on ENE shares.

We believe Enron's 1999 earnings results demonstrate its best-in-class natural gas and power marketing and energy services skills.... We fully anticipate that the company will be capable of producing EPS growth in excess of 15% ....

211. On 2/9/00, JP Morgan issued a report on Enron. It rated Enron a "***Buy***," with a price target of $85, and forecast 00 and 01 EPS of $1.41 and $1.69 and a 20% five-year EPS growth rate for Enron. It also stated:

> ***Today, we believe that Enron Broadband Services (EBS) offers an opportunity that may ultimately create more value than Enron's entire energy business portfolio***.
>
> * * *
>
> ***We believe that at no point did Enron's energy business enjoy such sound prospects both domestically and international, across the retail and wholesale sectors. ... We forecast 20% EPS growth*** ....

212. On 2/16/00, Lay appeared at an Investor Conference in New York. *Bloomberg News* reported:

> ***"Bandwidth trading could provide us with our highest potential growth," said Lay, whose company had $40.1 billion in revenue last year.***
>
> * * *
>
> Enron Corp., an energy company that is building a telecommunications business, ***expects the market for trading space on fiber-optic networks to more than triple to $95 billion a year by 2004***.
>
> ***The company hopes to capture 10 percent to 20 percent of that revenue, Chief Executive Kenneth Lay told analysts in New York. Enron estimates the market this year at $30 billion***.
>
> * * *
>
> ... ***The network now covers 12,325 miles and reaches cities including New York, Houston and Los Angeles. It will expand to 18,000 miles by 2001***.

213. On 2/28/00, CS First Boston issued a report on Enron. It forecast 00 EPS of $1.35 and a 15% five-year EPS growth rate for Enron. It also stated:

> Meeting with Enron President and COO, Jeffrey Skilling reaffirms Broadband potential and values
>
> We recently met with Enron President and COO Jeffrey Skilling.... ***We continue to be very impressed by [EBS's] ability to sign contracts with established long haul telecom carriers and their ability to facilitate the rapid evolution of a bandwidth trading market***.
>
> ***... ENE's long term revenue and operating income projections detailed at its analyst meeting indicate a potential discounted present value for Enron's broadband communications business approaching $30 billion***.
>
> ***Enron Broadband has already established a superior broadband delivery network*** ....

* * *

> ***Mr. Skilling indicated the market reception to ENE's unique video streaming services continues to be outstanding***. Customer reception is strong across the board, with many customers asking, "When can we start?" The recent deal with US West exemplifies the very strong reception from "baby bells" in their race with cable companies to install high-speed residential DSL services.
>
> ***Broadband intermediation continues to progress rapidly***.

214. Each of the statements made between 7/13/99 and 2/28/00, were false or misleading when issued. The true but concealed facts were:

(a) Enron's financial statements and results issued during this period were false and misleading as they inflated Enron's revenues, earnings, assets, and equity and concealed billions of dollars of debt that should have been shown on Enron's balance sheet, as described in ¶¶418-611.

(b) Contrary to the representations that Enron's transactions with its related parties were fair to Enron and on terms representative of those that could be obtained in arm's-length transactions with third parties, in fact, the transactions with Enron's related parties were grossly unfair to Enron and set up in a manner to permit Enron to pay off key Enron insiders, including Fastow and certain favored investment banks and bankers, for their participation in the scheme, which included arranging the illicit and illegal financial transactions with those related parties on terms that no independent third party would ever have agreed to, as detailed herein.

(c) Enron's financial condition, including its liquidity and credit standing, was not nearly as strong as represented, as Enron was concealing billions of dollars of debt that should have been reported on its balance sheet – and which would have very negatively affected its credit rating, financial condition and liquidity – by improperly transferring that debt to the balance sheets of various non-qualifying SPEs and partnerships it controlled, as detailed herein.

(d) Enron generated hundreds of millions of dollars of profits and transferred billions of dollars of debt off its balance sheet by entering into non-arm's-length transactions with SPEs and partnerships Enron controlled, including Chewco/JEDI, for which Enron had guaranteed loans to the SPEs and Barclays had provided a phony equity portion, to avoid improper consolidation.

(e) The results of Enron's WEOS business – its largest business unit – were manipulated and falsified to boost its reported profitability in various ways. ***First***, by phony or illusory hedging transactions with entities that were not independent of Enron. ***Second***, by the abuse of mark-to-market accounting by adopting unreasonable contract valuations and economic assumptions when contracts were initially entered into. And ***third***, by arbitrarily adjusting those values upward at quarter's end to boost the wholesale operation's profits for that period – a practice known inside Enron as "moving the curve." For instance:

(i) Prospective international deals were prepared by internal Enron "developers," who presented the materials to Enron's RAC department with an estimated net present value ("NPV"), calculated over 20 years, and Enron's return on investment ("ROI") over the life of the deal. To determine the NPV and ROI, numerous economic assumptions – such as foreign-exchange rates, revenue growth, inflation rates, cost escalation, economic growth and demand – were used. However, Enron manipulated the assumptions to inflate projected revenues and deflate projected costs. For example, Enron picked the lowest possible consumer-price-index figure from all available world markets and the highest possible revenue-stream escalator figures, which in contrast would boost a project's profit by many millions of dollars; and

(ii) In the 4thQ 99, Enron Global Markets in London had revenues far below projection. As a result, in 1/00, several traders were told to increase their sales by $2 million each for the prior quarter by "increasing the curve on future-sales contracts" in their trading books, *i.e.*, just increasing the estimated financial profit on a long-term trade, even though the actual economics of the trade did not justify it. The traders moved their curves in 1/00 on deals already done – to make the unit's 4thQ numbers. "Moving-the-curve" was "***endemic***" inside Enron – done in all of Enron's commodity-trading activities – everything Enron traded.

(f) The financial performance and the value of contracts entered into by EES were grossly overstated through various techniques, including the misuse and abuse of mark-to-market accounting to create huge current-period values for Enron on what were, in fact, highly speculative and indeterminate outcomes of long-term contracts. This resulted in EES improperly and prematurely recognizing hundreds of millions of dollars of revenue that not only boosted its financial

results, but allowed top EES managers and executives to collect huge bonuses based on these improperly inflated contract valuations.

(g) EES was, in fact, losing hundreds of millions of dollars on many of its retail energy contracts. To induce customers to enter into these agreements – so that Enron could claim its EES business was growing and succeeding – Enron had, in effect, "purchased" their participation by promising them unrealistic savings, charging low prices Enron knew would likely result in a loss, and spending millions of dollars in the short term to purchase purportedly more energy-efficient equipment, a significant portion of which costs Enron knew it was likely never to recover and certainly never to make a profit on. Enron executives knew that Enron would lose money on the EES deals, but had to make them more and more attractive to generate new clients, while the Company utilized unrealistic projections and mark-to-market accounting to mislead investors into believing that the EES contracts were making money. For instance:

(i) EES had originally targeted residential retail customers, but this failed due to insurmountable hurdles, including the fact that Enron did not have sufficient infrastructure to bill residential customers monthly. In 97, Enron transformed EES into a ***commercial-industrial business*** and then purportedly signed up several major customers. However, EES still faced insurmountable hurdles: ***One***, because each customer's contract was individualized, there were no economies-of-scale savings and the cost of performance precluded making a profit. ***Two***, Enron still did not have sufficient infrastructure to do the monthly billing. ***Three***, a prerequisite for each contract was for Enron to upgrade the customer's facilities with huge current capital expenditures, which was uneconomical and guaranteed losses on most contracts;

(ii) EES entered into demand-side-management ("DSM") contracts, which bundled energy-related products and services for its customers, including providing power and equipment as commodities to large companies, along with long-term management and consulting services on the customer's usage of the power over the life of the contract. Enron booked 100% of the commodity portion of the contract up front, and 70% (on average) of the estimated long-term services revenue. Because the revenues from each contract were pulled into the single quarter when the contract was signed using mark-to-market accounting, EES had to close increasingly higher

revenue-producing DSM transactions to show growth in EES's revenues and profits. This was called "***continually feeding the monster***" inside EES; and

(iii) The Enron DSM contract with JC Penney had losses of $60 million,

the IBM deal was a significant loss for Enron from the outset, while the CitiGroup contract was known at its inception to cost Enron millions in losses. In the 4thQ 99 EES deal with Owens Illinois, EES recognized a multi-million dollar profit when the deal closed, even though it was known this deal would lose money for EES. When CitiGroup and other money-losing EES deals were discussed inside EES, people said "***EES always sells at a negative***."

(h) The purported prospects for, and actual success of, Enron's EBS division was grossly overstated. ***First***, Enron's broadband network – the so-called Enron Intelligent Network ("EIN") – was plagued by serious and persistent technical difficulties, which prevented it from providing the type of high-speed and high-quality transmission that was indispensable to any hope of commercial success. ***Second***, Enron was encountering significant difficulties in completing the build-out of its broadband network and, as a result, did not have currently, and would not have at any reasonable time in the foreseeable future, a functioning broadband network. For instance:

(i) The EIN – the core of the Enron Broadband Operating System – was doomed

to failure due to numerous intractable problems:

- For EIN to work, Enron had to build 20 pooling points internationally and 30 in the U.S. Measuring data flow at the pooling points required something known as inter-agent messaging and InterAgent – the software that was to make the intelligent network operational – became the core of EIN. But InterAgent had to "speak" to hardware from various different manufacturers, such as Cisco and Sun, which it could not do. Since InterAgent failed, EIN would fail as well.

- To create InterAgent, Enron had acquired a company called Modulus. From the outset there was no way Modulus could create a viable InterAgent program because it was simply too small (three employees) to undertake a project of such magnitude. By spring 99, the development of the EIN had "***deteriorated into chaos***." The problems in building the EIN did not improve during 99. By 10/99, EBS was "***in crisis mode***," and Rice, CEO of EBS, realized that EIN was a disastrous failure.

- In fact, "***EBS did not have a single real customer in 1999***."

- While Enron extolled the number of orders and users it had for its network, the truth was that "***the sales staff could not sell what the engineers could not build, and the engineers could not build what the sales staff had promised***." Consequently, a "***blend-and-extend***" trick was introduced. EBS sales representatives were told to sell anything now – get customers to place any order no matter how small (and move

delivery into next year) – and, in return, Enron would place a ***larger order*** to buy something from the customer. For instance, ***Real Networks gave Enron a $100,000 order, but Enron gave a $7 million purchase order to Real Networks for software***.

- Enron trumpeted high-profile customers, including Inktomi, Microsoft and Real Networks, as proof that EBS was a genuine broadband provider. But these small $100,000 deals represented favors by Microsoft and Real Networks to Enron in exchange for orders by Enron in 99 worth as much as $7 million (in at least one case). Enron frequently paid larger amounts to vendors in exchange for much smaller orders.

- Indeed, the 1/00 analyst presentation about EBS was a study in how to lie with Power Point slides: "Current" lines on a U.S. map purportedly showed ***actual*** fiber-optic lines, but, in truth, EIN was ***all dark***, *i.e.*, non-functional, at the end of 99; "pending" indicated lines under construction, but most were not in substantive development; and where a map purported to show the ECI South America network under development, in fact, ***there was never anything under construction in South America***. These claims were untrue – the broadband group was already in "***crisis management mode***."

(j) To inflate the purported revenues of its EBS operations, Enron was engaging in transactions involving so-called dark fiber – unlit broadband-transmission capability – recognizing significant revenue on these transactions when, in fact, they were artificial contrivances known as "dark-fiber swaps," which involved no real economic substance, but were simply a swap of Enron's dark-fiber capacity with some counterparty for its dark-fiber capacity. A dark-fiber swap involves two parties each purchasing fiber-optic capacity from the other at artificially high prices, which inflated the profits that each reported on the sales side of the transaction. Some of Enron's counterparties to these dark-fiber swaps included 360 Networks, Touch America, Qwest and Level Three, with which Enron did a huge swap code-named "Hamachi."

(k) Enron exacerbated the manipulative and deceptive financial impact of dark-fiber swaps by accounting for the revenue or payment it received from the counterparty that bought dark fiber from Enron ***as current-period revenue*** while, at the same time, Enron was ***capitalizing*** the amounts it paid to that party to buy dark fiber from it on the other side of the swap. Thus, Enron avoided recognizing the expense of that purchase in the current period and instead, amortized it over many, many years – a deliberate accounting manipulation where revenue and expense were mis-matched to inflate current-period results.

(l) The prospects for future revenue and profits from Enron's EBS operation ***and*** the purported value of that operation to Enron and to its stock price were completely false based

on arbitrary and unrealistic assertions without any basis in fact because Enron knew from ***current*** problems in that business, as well as the current state of EBS business, that such revenue and profit forecasts and valuations were unobtainable.

(m) Enron's Dabhol power plant in India was a financial disaster where Enron was losing millions. Dabhol never generated profits for Enron or benefitted its business or financial condition and resulted in a huge loss for Enron.

(n) Enron represented that it successfully managed its balance sheet by effectively hedging its merchant investments and placing billions of dollars of non-recourse debt in related but independent parties. In fact, the hedges were illusory, not real and were largely dependent on the value of Enron's own stock where Enron still was exposed to the risk of its merchant investments. In fact, that debt was ***not*** non-recourse because if Enron's credit rating was downgraded that debt would become recourse as to Enron. This was an extraordinarily dangerous situation for Enron because, in fact, based upon its true financial condition, which was known to its insiders, Enron did not deserve the investment-grade credit rating it was carrying and it was in constant and precarious danger of losing that rating when the true structure of its off-balance-sheet partnerships and SPEs became known and its true financial condition was revealed.

(o) Enron was further falsifying its financial condition, especially its international operations, through a technique known inside the Company as "***snowballing***." That is, Enron took the escalating costs of bidding on large projects that it lost and, instead of expensing those costs in the current period as required, rolled those costs over into some other unrelated international project that Enron was bidding on or actually performing – in either event, avoiding recognizing those costs in the current period.

(p) In fact, Enron did not deserve an investment-grade credit rating and did not have a solid or substantial financial structure because it was inflating the value of its assets by billions of dollars while concealing billions of dollars of debt that should have been on its balance sheet. As a result, Enron's true financial structure was extremely fragile.

(q) As a result of the foregoing, the forecasts for strong continued revenue and earnings growth for Enron's wholesale and retail energy operations were completely false, in part,

because the historical financial performance and condition of those operations had been materially falsified – thus there was no real basis upon which to forecast such further growth – and because neither of those businesses had the current strengths or success to justify the forecasts and claims of future growth that were being made.

(r) As a result of the foregoing, the revenue and EPS forecasts being made by and for Enron going forward were also grossly false because historical earnings, upon which those forecasts were based, were falsified and the result of improper accounting manipulation. In truth, Enron's various business operations not only had huge concealed losses that would have to be recognized and would very adversely impact Enron's financial results, but those core business operations simply did not have the strength or success necessary for them to generate anywhere near the kind of revenue and profit growth being forecast for them.

215. On or about 3/31/00, Enron issued its 99 Report to Shareholders. This report was reviewed and approved by Vinson & Elkins, Andersen and all the Enron Defendants then with Enron. Enron's 99 Annual Report contained a letter signed by Lay and Skilling, which stated:

> ***In 1999 we witnessed an acceleration of Enron's staggering pace of commercial innovation .... We reported another round of impressive financial and operating results. In 1999 revenue increased 28 percent to $40 billion, and net income before non-recurring items increased 37 percent to reach $957 million****....*
>
> ***We believe the future will be even more rewarding. We remain the world's leader in wholesale and retail energy services. Our new broadband subsidiary, Enron Broadband Services, is redefining Internet performance by designing and supplying a full range of premium broadband delivery services****.... We believe that our broad networks will give us unbeatable scale and scope in every business in every region in which we operate*.
>
> * * *
>
> ENRON BROADBAND SERVICES
>
> * * *
>
> ***Enron Broadband Services is off to a tremendous start: we own and operate a superior intelligent fiber optic network that is focused on delivering bandwidth-intensive content, such as TV-quality video, over the Internet****.... We are establishing benchmark bandwidth contracts and making a market in bandwidth. We initiated the first bandwidth trade in December 1999. The market for bandwidth intermediation will grow from $30 billion in 2000 to $95 billion in 2004. With our head start, we expect to become the leader in this field*.
>
> * * *

Enron Energy Services

In 1999 we proved that Enron's retail business works. ***We exceeded our goal by signing energy outsourcing contracts representing $8.5 billion in total contract value, more than double the $3.8 billion achieved in 1998. Enron Energy Services achieved positive earnings in the fourth quarter, and its profitability is expanding rapidly***.

Our persistence in the retail energy market has given us an unassailable competitive advantage.

216. Elsewhere Enron's 99 Annual Report stated:

In 1999 we started up the first phase of the Dabhol Power Project, an 826-megawatt power plant ....

217. With respect to Enron's broadband business, Enron's 99 Annual Report stated:

Enron Broadband Services is moving boldly to establish a global platform for premium broadband delivery services.

* * *

• The Enron Intelligent Network. ***A state-of-the-art high-capacity fiber optic network*** ... the Enron Intelligent Network's global fiber and satellite distribution and embedded software intelligence sets it apart from other network providers. The Enron Intelligent Network bypasses traditional fragmented and bottlenecked public Internet routes ***to deliver faster, higher-quality data***.

* * *

Bandwidth intermediation opportunities are enormous.

218. With respect to EES, Enron's 99 Annual Report stated:

Enron's retail business surpassed our goals in 1999 when we signed contracts representing $8.5 billion of customers' future energy expenditures. The unit turned profitable in the fourth quarter, marking the end of our start-up phase. With systems and people in place, ***we are set for exponential growth and sharply increased profitability. In 2000 we expect to again double our total contract volume to more than $16 billion***.

219. Enron's 99 Annual Report also contained its 99 financial statements, certified by Andersen:

FINANCIAL HIGHLIGHTS

(In millions, except per share data)	1999	1998	1997	1996	1995
Total Revenues	$ 40,112	$ 31,260	$ 20,273	$ 13,289	$ 9,189
Total Net Income	$ 893	$ 703	$ 105	$ 584	$ 520
Total Earnings Per Share	$ 1.10	$ 1.01	$ 0.16	$ 1.08	$ 0.97

(In millions, except shares)	December 31, 1999	1998	(In millions, except shares)	December 31, 1999	1998
ASSETS			**LIABILITIES AND SHAREHOLDERS' EQUITY**		
Total current assets	7,255	5,933	Total current liabilities	6,759	6,107
Total assets	$33,381	$29,350	Shareholders' Equity	9,570	7,048

220. Note 16 to Enron's 99 financial statement stated:

RELATED PARTY TRANSACTIONS

* * *

Management believes that the terms of the transactions with related parties are representative of terms that would be negotiated with unrelated third parties.

221. In 3/00, Enron filed its 99 Report on Form 10-K with the SEC which was signed by Lay, Causey, Fastow, Belfer, Blake, Chan, John Duncan, Mark-Jusbasche, Mendelsohn, Meyer, Pereira, Savage, Skilling, Urquhart, Wakeham and Winokur. Vinson & Elkins reviewed and helped write the Form 10-K report. The Form 10-K report contained Enron's 98 and 99 annual financial statements as certified by Andersen and Andersen's "clean opinion" thereon.

222. After Enron reported better-than-expected 4thQ 99 and 99 results and held its most bullish investor analyst conference ever in late 1/00 in Houston, Enron stock soared higher reaching $73 per share in late 1/00 and $78 at the end of 3/00. As Enron's stock soared higher, Enron's insiders dramatically stepped up their insider bailout and accelerated their insider selling. As Enron stock increased in price due to these very positive statements about Enron's business, Enron's insiders took advantage of this artificial inflation of Enron's stock by selling off 2.9 million shares of their stock at as high as $76.44 per share, pocketing $208 million in illegal insider trading proceeds between 1/20/00 and 3/28/00.

223. On 4/12/00 Enron reported ***better-than-expected*** 1stQ 00 results:

> Enron Corp. announced today an ***18 percent*** increase in earnings to $0.40 per diluted shares for the first quarter of 2000. Net income increased ***34 percent*** to $338 million during the quarter....
>
> "***Enron's first quarter results confirm the very positive momentum of our high growth businesses," said Kenneth L. Lay, chairman and CEO of Enron. "Wholesale volumes increased 43 percent to record levels, demonstrating the***

strength of our worldwide energy networks and the tremendous success of EnronOnline. Also reaching record levels, Enron Energy Services added $3.7 billion in new retail contracts in the quarter, and profitability continues to escalate. In our newest business, we significantly advanced deployment of our broadband network and saw strong response to our bandwidth intermediation and content delivery products."

* * *

The overall strong quarterly results also reflect increased earnings from Enron's portfolio of energy assets and other investments. In addition, Enron experienced increases in equity earnings from its energy partnerships and a large contribution from worldwide energy asset operations.

224. On 4/12/00, Enron held a conference call for analysts and investors to discuss Enron's 1stQ 00 results and its business. On 4/13/00, Enron executives Lay, Skilling, Koenig, Causey and Fastow also appeared at the Enron Analyst Meeting in Houston. During the conference call – and in follow-up conversations with analysts and in a formal presentation and break-out sessions at the analyst conference – they stated:

- ***Enron reported an 18% increase in recurring earnings to $.40 per diluted share compared to $.34 a year ago. Included in that was a 34% increase in net income to $338 million versus $253 million last year and strikingly, a 71% increase in revenues to $13.1 billion for the quarter from $7.6 billion a year ago. In addition to these record financial results, Enron had a record quarter for both wholesale volumes and retail contracting***.

- ***Enron experienced tremendous success with its new e-commerce platform that was called Enron Online, and in its newest business, EBS, Enron made significant advancements in the deployment of its network and in contracting with new customers***.

- ***The quarter's strong performance was attributable to increased earnings from Enron's portfolio of energy related and other investments. This was a good quarter for Enron's energy related investment business. At the end of the quarter, Enron had approximately $2 billion of merchant energy and energy related investments***.

- ***In addition, worldwide asset operations further contributed to strong results, including Enron's India energy networks. India particularly saw increases in the operating income as a result of bringing its 826 megawatt power plant on line. It was operating currently at full capacity and contributing to earnings***.

- ***For Enron's wholesale business – just a great, great quarter. Overall wholesale statistics were really, really strong. Enron had seen a significant increase in its activity levels and Enron expected that to be sustainable and to grow in the future***.

- ***Enron's retail energy business was now firmly established and Enron had an unassailable competitive advantage there. In the 1stQ, Enron again witnessed the strong operating leverage of this business. Very successful contracting has resulted in a significant revenue increase. That coupled with a stable cost structure led to a very high operating leverage and profits continued to escalate***.

- ***The strong financial results are attributable to a very significant scale that Enron had achieved in the U.S. and a continued shift in our contract mix, to longer term outsourced contracts. So, a great quarter for the retail business, too***.

- ***Broadband services – during the first quarter, Enron significantly advanced the development of its network. It closed numerous important transactions and reported progress against every operating metric set forth earlier this year. A great quarter***.

- ***Enron was very pleased with its first quarter results. Enron was excited about the continuing positive business developments across all of Enron for 00. Enron's 1stQ earnings confirmed the strength of its operations and the excellent momentum it had in its high growth businesses. Enron had established networks worldwide to provide continued strong performance and expansion opportunities for all of its businesses***.

- ***A great quarter for Enron. Enron looked forward to further growth in earnings and an increased market cap in the future***.

- ***Enron was forecasting 00 and 01 EPS of $1.37 and $1.56+***.

225. On 4/12/00, *Bloomberg News* reported on Enron's 1stQ 00 results:

> Enron ... said first-quarter earnings rose 34 percent ....
>
> Net income increased to $338 million, or 40 cents a share, from profit from operations of $253 million, or 34 cents, a year ago.... "***They have a track record that others don't," said Anatol Feygin, an analyst at J.P. Morgan Securities, who has a "buy" rating on Enron shares***....

226. On 4/12/00, Merrill Lynch issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 and 01 EPS of $1.37 and 1.56 and an 18% five-year EPS growth rate for Enron. It also stated:

- ***We are reiterating our intermediate-term and long-term Buy opinions. ENE posted very impressive 1Q'00 results, which should further strengthen momentum***.

* * *

- For 1Q'00, revenue was up 72%, operating net income was up 28% and EPS was up over 17%.

* * *

Enron also provided the first glimpse of Enron Broadband Services. ***For the quarter, the segment was breakeven due to fiber and software sales.... In addition, EBS is well ahead of goals set in January in terms of bandwidth intermediation volumes. EBS has already delivered or committed to deliver 85% of its targeted intermediation volumes for the full year***.

227. On 4/12/00, CitiGroup issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 and 01 EPS of $1.43 and $1.70 and a 20% five-year EPS growth rate for Enron. It also stated:

THE BANDWIDTH OPPORTUNITY

ENE has already done about a dozen trades since announcing its first trade with Global Crossing in December 1999; we expect the further commercialization of this market should provide a visible catalyst to ENE's share price in 2000.

228. On 4/13/00, *The Houston Chronicle* reported on Enron's recent favorable results:

"***The only surprise was on the upside," said Donato Eassey, energy analyst with Merrill Lynch Global Securities in Houston. "Enron is positioned to be the GE of the new economy***."

* * *

"***We believe these new levels are sustainable and that they more than likely will accelerate***," Jeff Skilling, Enron president, said in a conference call with reporters.

229. On 04/12/00, CS First Boston issued a report on Enron. It forecast 00 EPS of $1.35 for Enron. It also stated:

Strong Q1 Underscores Increasing Momentum Across All Businesses

(EBS) ***made great progress in both the content delivery and intermediation businesses*** ....

... ***The Retail (EDSing) business far exceeded our expectations, as major long term, full outsourcing contracts continued to be signed in the US and increasingly in Europe, and ultimately Latin America***.

We take particular note of EBS ability to sign 20 content delivery contracts through the quarter .... ***These contracts are quickly validating EBS's Enron Intelligent Network. Bandwidth intermediation (trading) has become a reality. EBS realized 85% of its full year transaction targets in the first quarter alone*** ....

230. On 4/12/00, CIBC issued a report on Enron. It rated Enron a "***Buy***," forecast 00 and 01 EPS of $1.38 and $1.58 for Enron, and stated:

Enron announced an 18% increase in per share earnings to $0.40 per share, up from $0.34 per share a year ago and above the $0.37 consensus. Net income increased 34% to $338 million.

* * *

Enron Retail Services, a key company growth area, reported EBIT of $16 million on a sharp increase in revenues to $642 million, up from $370 million a year ago. $3.7 billion of new contracts were recorded, ahead of our expectations of $3 billion.

231. On 4/13/00, Lehman Brothers issued a report on Enron. It rated Enron a "***Buy***" with a $90 price target. It also forecast 00, 01 and 02 EPS of $1.41, $1.60 and $1.85 for Enron and a 15% EPS growth rate and stated:

Enron reported ... earnings of $0.40 verus $0.34, handily beating consensus expectations .... ***Broadband services broke even due to some dark fiber sales. More importantly, key metrics were met or surpassed on both bandwidth intermediation and content services.... Overall, it was a very strong quarter. The growth engine hit on all cylinders***.

* * *

Results Validate Investment Thesis, Stock Remains Strong Buy

... [O]perations are hitting on all cylinders.

232. On 4/14/00, Deutsche Bank issued reports on Enron. The reports rated Enron a "***Buy***," ***raised*** its price target to $96 and ***increased*** Enron's forecasted 00 and 01 EPS to $1.37 and $1.60 and its three-year EPS growth rate to 16% for Enron. The reports also stated:

- Management reviewed the strong Q1 operating EPS of $0.40/share that produced a 17.7% increase over 1Q99 EPS of $0.34/share.

- ***[S]trong Q1 earnings results and substantial business development in the wholesale, retail, and broadband segments bode well for continued earnings growth***.

* * *

Yesterday afternoon, Enron management held its traditional Q1 meeting in New York. ***Jeff Skilling presented another impressive picture of Enron's growth prospects in domestic energy markets, international ... markets, and the developing communications segment. The wholesale segment continues to produce amazingly strong earnings results and is gaining market share***....

The focus of yesterday's meeting was Enron Energy Services (EES) and Enron Broadband Services (EBS). ***Retail Energy Services has made a remarkable march to profitability. Management made promises and delivered right on schedule. Management expects to roughly double contract origination in 2000 to approximately $16 billion***.

* * *

Enron Broadband Services is also making significant progress. Management suggested that the wholesale strategy was developing much faster than originally anticipated.

* * *

As a result of the strong Q1 earnings results, we are adjusting our 2000 and 2001 operating EPS estimates, our long-term growth rate estimate, and our target price. We are raising our 3-5 year EPS growth rate to 16% from 14% and raising our target price.... As such, we are raising our target price on ENE shares to $96/share from $90/share.

* * *

Enron has done it again. In our view, Enron's first quarter results demonstrate its continued best-in-class natural gas and power marketing and energy services skills. We remain impressed with Enron's continued ability to produce strong earnings growth in its core wholesale energy businesses. The profitability improvement at the retail segment is also very impressive. We fully anticipate that the company will be capable of producing EPS growth in excess of 15% as U.S. and European/Latin American wholesale energy markets continue to develop.... The potential Enron is developing in communications is icing on the cake, in our view.

... We also expect Enron's communications strategy to be an exciting growth complement to its energy-related businesses.... We reiterate our BUY recommendation ....

233. On 4/17/00, Bank America issued a report on Enron. It rated Enron a "***Strong Buy***" and forecast 00 and 01 EPS of $1.35 and $1.55 and a 15% secular EPS growth rate for Enron. It also stated:

- An impressive quarter for ENE. Driven primarily by strong growth from Wholesale Energy Operations and Retail Energy Services, ENE reported an 18% increase in earnings per share to $0.40 in 1Q00 from $0.34 in 1Q99.... ***The number beat our EPS estimate*** ....

* * *

- Retail Energy Services reported healthy EBIT of $16 million in 1Q00 compared to a loss of $31 million in 1Q99. Record contracting activity, including some heavyweight contracts from the likes of IBM and Chase Manhattan, is the driver behind the YOY growth in this segment. With $3.7 billion of new energy contracts during the quarter, this was the seventh consecutive quarter of record new contracting activity....

- During the quarter, ENE Broadband achieved 85% of its year-end delivery goal.... We expect to see big things from ENE in this business ....

234. On 5/3/00 and 5/15/00, JP Morgan issued reports on Enron. The reports rated Enron a "***Buy***" and forecast 00 and 01 EPS of $1.41 and $1.69 for Enron. The 5/3/00 report also stated:

BANDWIDTH INTERMEDIATION IS AN ENRON-LED UNSTOPPABLE JUGGERNAUT; WILL REVISE TARGET PRICE UPWARD

* * *

We are confident that Bandwidth Trading will revolutionize the broadband telecommunications industry. Broadband Services (EBS) invented this market, and as the best positioned first mover, should capture significant market share, margin and economic rents. We reiterate our Buy rating on ENE, and will be raising our price target ....

* * *

Enron was up 5% yesterday ....

* * *

2. Bandwidth contracts began trading on-line on May 1st, and several transactions have already taken place.

EBS Has Already Achieved Over 80% of its Year-End Transaction Goal.

JP Morgan's 5/15/00 report stated:

REVISING PRICE TARGET TO $105 FROM $85; BANDWIDTH TRADING GROWING FASTER THAN EXPECTED

[W]e are revising our target price on Enron from $85 to $105.... [W]e now view the bandwidth trading market to be larger than originally estimated, and of more value to Enron ....

* * *

Our original estimates pegged the Bandwidth Intermediation market reaching $100 billion in 2009. We now expect it to reach that milestone in 2004.... We now see margins reaching 3-4% in 2003, whereas previously we believed that would not take place before 2005.

235. During 4/00-5/00, based on the positive earnings reports and statements, Enron stock continued to perform well, trading as high as $78-7/8 on 5/17/00. As Enron stock increased in price due to these very positive statements about Enron's business, Enron's insiders took advantage of this artificial inflation of Enron stock by selling off 3.5 million shares of their stock at as high as $78.17 per share, pocketing $266 million in illegal insider trading proceeds between 4/1/00 and 5/17/00.

236. On or about 5/00, Enron sold $175 million of 8.375% Notes due 5/23/05, with Bank America acting as underwriter via a Prospectus. On 6/1/00, Enron sold $500 million in Notes and $325 million in 7.875% Notes due 2003. The underwriter was Lehman Brothers. Enron used the proceeds of these securities issuances to pay down its short-term debt – commercial paper and/or bank debt to JP Morgan and CitiGroup.

237. On 5/26/00, Deutsche Bank issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 and 01 EPS of $1.37 and $1.60 and a 16% three- to five-year EPS growth rate for Enron. It also stated:

> Enron has been hurt ... by the recent decline in the NASDAQ. Enron's broadband telecommunications effort has attracted a keen following among the 'dot com' investors. Therefore, weakness in telecom and Internet shares has hit Enron the hardest ....

In our view, Enron's latest quarterly results demonstrate its continued best-in-class natural gas and power marketing and energy services skills. We remain impressed with Enron's continued ability to produce strong earnings growth in its core wholesale energy businesses. The profitability improvement at the retail segment was also very impressive. We fully anticipate that the company will be capable of producing EPS growth in excess of 15% .... Enron management unleashed a dramatic strategy that projects monumental earnings potential over the next 5 years*....*

... ENE shares continue to have significant upside potential.... [W]e encourage investors to add to positions in ENE shares at this time. We reiterate our BUY recommendation on ENE shares.

238. On 6/1/00, Enron sold $385 million of 7.875% Notes due 6/15/03, with Lehman Brothers acting as underwriter.

239. On 7/3/00, JP Morgan issued a report on Enron. It rated Enron a "***Buy***," with a $105 price target and forecast 00 and 01 EPS of $1.41 and $1.69 for Enron. It also stated:

Enron shares dipped 4 points for no fundamental reason – this decline was not the result of any adverse news or event.... ***We believe the fundamentals for the stock are solid*** ....

* * *

Enron continues to exceed targets for both its energy and telecommunications businesses, and we have the utmost confidence in its ability to execute on both its short- and long-term agendas*....*

We reiterate our Buy on Enron (ENE) with a target price of $105*.*

240. On 7/19/00 Enron announced a new video-on-demand ("VOD") service via EBS. Its release stated:

Enron and Blockbuster to Launch Entertainment On-Demand Service Via the Enron Intelligent Network

Enron Broadband Services, a wholly-owned subsidiary of Enron Corp., and Blockbuster Inc. ... announced today a 20-year, exclusive agreement to deliver a Blockbuster entertainment service, initially featuring movies on-demand, via the Enron Intelligent Network. ***The agreement brings together for the first time a global, end-to-end solution that can effectively deliver a wide variety of secure, on-demand entertainment****.*

* * *

Enron and Blockbuster plan to introduce the entertainment on-demand service in multiple U.S. cities by year-end.... For the first time, customers will be able to choose from a large library of movies through their TV screens and enjoy VHS-quality or better with VCR-like control (pause, rewind, stop).

* * *

"***Entertainment on-demand is perhaps the most visible example of the power of Enron's broadband applications. With Blockbuster's extensive customer base and content, and Enron's network delivery application and the capabilities of the distribution providers, we have put together the 'killer app' for the entertainment industry," said Kenneth L. Lay, chairman and CEO of Enron Corp***.

Under the agreement, Blockbuster will provide content for the entertainment service .... Enron will encode and stream the entertainment over its global broadband network infrastructure ... and provide an unparalleled quality of service.

241. On 7/19/00, Lay appeared on CNNfn and was asked about "what this [Blockbuster] announcement means?" He stated:

[I]t means that we're going to change the whole entertainment experience for the average American over the next few years....

[T]he main thing about the agreement is it's a 20-year exclusive agreement between Blockbuster and Enron, to provide entertainment on-demand.... ***[W]e bring in our technology and our broadband system, worldwide***.

242. On 7/19/00, JP Morgan issued a report on Enron. It rated Enron a "***Buy***," forecast 00 and 01 EPS of $1.41 and $1.69 for Enron and also stated:

Enron announced a major deal with Blockbuster ... that represents ... an endorsement of its content delivery business .... ***We believe that content delivery represents Enron's "killer app" in the broadband world, and in addition to growing revenues, this deal and others like it will provide more visibility to its broadband technology and capabilities***.

* * *

Enron's Intelligent Network technology makes it one of the only providers capable of providing mass-market content with speed, quality, scale and reliability. EBS will encode and stream the entertainment over its broadband network ... and deliver unparalleled quality of service. Thanks to its network architecture, software intelligence, and network control technology, Enron Broadband Services is one of the only games in town when choosing a high-quality, reliable, and scalable content provider. In our view, this deal is a great endorsement of its capabilities.

We reiterate our Buy rating on Enron with a target price of $105.

243. On 7/19/00, Deutsche Bank issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 and 01 EPS of $1.38 and $1.58 and a 16% three-year EPS growth rate for Enron. It also stated:

ENRON CORPORATION "BUY"
Another First!

- Enron and Blockbuster to launch entertainment on-demand service via Enron Intelligent Network.

* * *

Today, Enron announced that it has entered into a 20-year exclusive agreement with Blockbuster Inc.

* * *

... Beginning in 2001, Blockbuster expects to extend the service to other domestic and international markets. For the first time, customers should be able to choose from ***a large library of movies*** ... and will be able to enjoy VHS-quality or better with VCR-like control (pause, rewind, stop).

* * *

"Entertainment on-demand is perhaps the most visible example of the power of Enron's broadband applications.... ***[W]e have put together the 'killer app' for the entertainment industry***," said Enron CEO Kenneth L. Lay.

* * *

We believe that this major and unique contract for its broadband service is a most promising and potentially rewarding one for Enron, and should go a long way to increasing the recognition its for broadband services, which is well deserved.

* * *

We reiterate our "Buy" recommendation on the ENE common stock and our 12-18 month $96 target price ....

244. On 7/19/00, CitiGroup issued a report on Enron. It rated Enron a "***Buy***," with a $100 price target and forecast 00 and 01 EPS of $1.43 and $1.70 and a 20% EPS growth rate for Enron. It also stated:

Maintain ... rating on Enron following announcement of a 20-year exclusive agreement to deliver Blockbuster Video's entire movie library to customers over broadband networks.... Enron plans to roll out the service in two test medium-sized test cities around year-end, with roll out to several more cities in 2001.

... ***We consider this to be a marquis announcement by Enron***. In our view, the credibility of the partners goes a long way toward ***validating the "content delivery" part of Enron's two-part telecommunications strategy (the other part is bandwidth trading)***.

245. On 7/20/00, the *Los Angeles Times* reported on the Enron/Blockbuster deal:

"***Enron is the leader of the pack and I think this could be the beginning of streaming of content over its network," said Ron Barone, an analyst at PaineWebber Inc. who covers Enron. "Signing a company like Blockbuster is a reassuring signal of the validity of their strategy***."

246. On 7/24/00, Enron announced ***better-than-expected*** 2ndQ 00 results:

Enron Corp. announced today a 26 percent increase in earnings to $0.34 per diluted share for the second quarter of 2000. Net income increased 30 percent to $289 million during the quarter....

"***Enron has completed another excellent quarter***," said Kenneth L. Lay, chairman and CEO of Enron.... "***Profitability of Enron Energy Services continued to escalate, and new contracts totaled $3.8 billion***."

* * *

Retail Energy Services: Enron Energy Services reported IBIT of $24 million in the second quarter compared to a $26 million loss in the same period last year.... Enron Energy Services continues to sustain higher levels of contracting, as evidenced by the addition during the quarter of contracts representing 3.8 billion of customers' future energy expenditures.... Enron Energy Services is firmly on track to achieve the full year contracting target of $16 billion.

* * *

Broadband Services: ... ***During the second quarter, Enron Broadband sold a portion of its U.S. dark fiber to balance capacity in key regions. Enron's bandwidth intermediation business continues to accelerate***.... [M]ore than 50 on and off-network transactions with 17 counterparties this year.

247. On 7/24/00, Enron executives Skilling, Koenig and Fastow held a conference call for analysts and investors to discuss Enron's 2ndQ 00 results and its business. On 7/25-26/00, Enron executives Skilling, Koenig and Fastow also appeared at Enron's analyst conferences in New York and Boston. In the conference call and in follow-up conversations with analysts and in formal presentations and break-out sessions at the conferences, they stated:

- ***Enron had another outstanding quarter in each of its business units and continued to be very excited about the developments across the Company. This quarter's results clearly demonstrated Enron's leading market positions in wholesale energy marketing, retail energy services and in broadband services***.
- ***For the quarter, the numbers look great – 26% increase in earnings to $.34 per diluted share, compared to $.27 a year ago. A 30% increase in net income to $289 million versus $222 million last year.***
- ***Enron's wholesale energy business was large, extremely well established and global. Its earnings growth had been very consistent and was sustainable***.
- ***The whole commodity side of Enron's business was just stunning during the quarter. It reflected an incredibly strong market position***.
- ***At the wholesale level, Enron had just a tremendous quarter. Enron felt very good about it, very positive and was optimistic about the outlook for the future. Enron's market position had never been better***.
- ***EES continued to move forward right on track. Enron's ability to provide comprehensive energy outsourcing on a national scale continued to be a key***

competitive advantage. Profitability continued to escalate and Enron's very rapid growth in contracting resulted in a significant revenue increase. For the second quarter, retail revenues were up 147% to $840 million. The strong financial results were attributable to the significant scale achieved in the U.S. and a continued shift in the contract mix to longer term outsource contracts.

- ***During the quarter Enron made enormous advances in executing agreements with new broadband distribution partners. EBS reported revenues of $151 million for the quarter. The financial results included planned sales of dark fiber. During the quarter, Enron continued to progress on the development of its bandwidth operating system. Enron now reached end users in all U.S. markets and in major cities in Canada and the UK.***

- ***The bandwidth trading component was in operation. Broadband intermediation was ahead of where Enron expected it to be. There was a lot of interest in this. The counterparties were quickly growing and Enron was seeing very, very strong growth that, frankly, surprised it. Enron was very bullish on the growth in the intermediation side of this business and was ahead of where it expected to be.***

- ***The recently announced agreement between Enron and Blockbuster evidenced what Enron believed was a fundament shift. Enron executed an exclusive 20 year contract with Blockbuster to deliver movies on demand over the Enron intelligent network. This was a first-of-a-kind contract and, Enron believed, the largest broadband agreement ever signed.***

- ***Enron would provide all the wholesale connectivity and deliver content to last mile providers at 1.5 megabit per second, greatly exceeding the standard broadband speeds. Enron would receive a fee for each movie delivered. The potential long-term contract value or revenues over the life of the contract were expected to exceed well over $1 billion.***

- ***Enron was pleased with another very strong quarter. Enron's established networks worldwide, together with its unique strategy and broad capabilities, would provide for continued strong performance and increased shareholder value.***

- ***Skilling had been with the Company in one form or another for 18 years and he had never seen the Company in better shape. Enron's core markets moved from strength to strength. Enron had very, very good growth opportunities across the board and they were really excited about the prospects for the future.***

- ***Enron felt extremely good about its ability to sustain the performance that it had posted in the wholesale business over the last ten years. That was likely to continue.***

- ***Enron had a great quarter and was very, very pleased by what it was seeing in the marketplace and the performance of all of its businesses.***

- ***Enron was forecasting 01 and 02 EPS of $1.40+ and $1.69+.***

248. On 7/24/00, JP Morgan issued a report on Enron. It rated Enron a "***Buy***," forecast 00 and 01 EPS of $1.41 and $1.69 for Enron and stated:

> ***Yesterday's earnings and business unit performances were more convincing evidence that Enron is the "best-in-class" in this sector, and we reiterate our Buy rating with a $105 price target. All of its businesses are doing a superb job of***

maximizing market opportunities, growing market share, and maintaining very strong growth rates. Great fundamentals and competitive advantage continue to improve Enron's performance, and its superior execution should continue to differentiate the company from its peers.

Enron Broadband Services bandwidth trading and content delivery are all ahead of schedule, and should provide an excellent growth vehicle alongside its core energy businesses.... EBS is not just a high-growth earnings vehicle, but represents a paradigm shift in the way businesses will begin to outsource their telecom and risk-management needs and demand telecom pricing to properly reflect usage.

EBS's initial performance targets now seem grossly conservative, and we are confident that Enron will consistently tear through them during 2H00.... Notable is an exclusive, 20-year contract with Blockbuster to stream on-demand movies. It represents a fundamental shift in both the telecommunications and entertainment industries, and we believe more deals like it will follow.

* * *

Retail Energy Services continues hypergrowth .... Enron is on track to reach a year-end contracting target of $16B. It logged $3.8B of new contracts last quarter, and should continue to ramp up revenues throughout the rest of the year.

249. On 7/24/00, CitiGroup issued a report on Enron. It rated Enron a "***Buy***," maintained a $100 price target for the stock and forecast 00 and 01 EPS of $1.43 and $1.70 and a 20% long-term EPS growth rate for Enron. It also stated:

- ENE reported strong 2Q:00 operating EPS of $0.34 ... and above our $0.32 estimate.
- Key segment, wholesale energy up 23% .... Key driver of growth: EnronOnline, volumes up 92%, now accounting for 60% of all trades.
- ***Bandwidth beginning to show critical mass***: 50 trades with 17 counterparties. ***We expect transactions to pick up steam over the next 6-12 months.***

* * *

- Enron Energy Services (retail energy) ***profit growth continues***, $24M, compared with $16M in 1Q:00.
- ***We maintain our estimates and reiterate our "Buy" rated on ENE.***

* * *

Broadband Services

In our view, Enron Broadband Services is the key new value creation driver for the company. Management revealed that since the beginning of the year, ***EBS has made over 50 standardized transactions with 17 different counterparties*** .... [T]hese numbers are ahead of our expectations. ***In our view, these numbers validate the credibility in this important new market, whose ultimate value could exceed the***

energy commodity market within 5 years. We expect transactions to pick up steam from this level over the next 6-12 months.

* * *

On the content delivery side (the other half of Enron's bandwidth strategy), Enron executed $19 million in content delivery service contracts in the quarter, including a 20-year exclusive agreement with Blockbuster to stream on-demand movies over Enron's network.... ***[W]e consider this a marquee contract, highlighting the viability of Enron's content delivery platform, and, incidentally we think this will attract new investors to Enron's stock***. As part of the effort in content delivery, Enron continues the development of its own network. To date, 5,325 miles of Enron's fiber-optic network are complete, with another 9,175 miles expected to be finished by the end of the year.

250. On 7/24 and 7/25/00, Merrill Lynch issued reports on Enron. They rated Enron a "***Buy***" with a $95 price target and ***increased*** Enron's forecasted 00 and 01 EPS to $1.40 and $1.61 with an 18% five-year EPS growth rate for Enron. They also stated:

- We are reiterating our Buy opinions on Enron based on our $95 price objective ....

* * *

- We think ENE will continue to experience strong growth in its existing core businesses, while the seeds have been planted for potentially hyper-growth stemming from its Enron Broadband Services unit.

* * *

- ENE posted 2Q'00 operating EPS of $0.34 versus $0.27 last year .... We were looking for $0.32/sh ....

- Going forward, '00E EPS moves from $1.37 to $1.40 and '01 EPS moves from $1.55 to $1.61.

* * *

Energy Services Now Paying Dividends

The investment in retail over the last three years is now paying dividends as Enron Energy Services (EES) begins to ramp.... ***EES has continued to build momentum***. In the second quarter, revenues more than doubled to $840 million, while IBIT notched a $24 million gain ... representing $0.05 per share in increased earnings.

Building momentum can also be illustrated in EES' book of business, which achieved $3.8 billion ....

Going forward, with $40 million in IBIT year-to-date, we believe our FY2000 estimate of $75 million is likely conservative, and buttresses our '01 ramp to $145 million.

Broadband Services is Executing

Augmented by $50 million in dark fiber sales, Broadband (EBS) recorded 2Q'00 revenues of $151 million with an IBIT loss of $8 million.... EBS is on track to have lit by year end 14,500 miles of fiber .... To date, ENE has already executed more than 50 transactions in the nascent broadband trading market ....

* * *

... [W]e are modestly increasing our FY2000E EPS from $1.37 to $1.40. We are also increasing our FY2001E EPS from $1.55 to $1.61 ....

251. On 7/24/00, CIBC issued a report on Enron. The report rated Enron a "***Buy***," increased Enron's forecasted 00 and 01 EPS to $1.42 and $1.62 and stated:

We continue to rate Enron a Buy based on strong growth prospects in global wholesale/retail energy businesses, [and] the longer-term but high potential of Enron's broadband communications strategy .... Earnings Rise 26% ... increase in per share earnings to $0.34 per share ... above the $0.32 consensus.

* * *

Blockbuster Content Delivery Agreement.... ***Full scale roll-up is expected in 2001. The agreement has to be viewed as a strong endorsement of Enron's content delivery capabilities in video streaming technology***.

252. On 7/24/00, Bank America issued a report on Enron. It rated Enron a "***Strong Buy***" and forecast 00 and 01 EPS of $1.37 and $1.55 and a 15% secular EPS growth rate for Enron. It also stated:

- ENE reported 2Q00 EPS of $0.34, which was slightly above our estimate .... Net income increased 30% to $289 million ....
- Results were strong across the board.

* * *

- ... ENE announced that it had entered into a 20-year agreement with Blockbuster ... to provide video on demand through ENE's broadband delivery platform. ***The service is expected to roll out in several US cities by the end of this year with an expansion into other US cities and abroad by FY01***.

* * *

- ENE's Retail Energy Services segment reported 2Q00 EBIT of $24 million .... Significant scale was achieved during the quarter with the addition of contracts representing $3.8 billion of customer's future energy expenditures.

* * *

- Finally, ENE's Broadband Services segment reported total revenue of $151 million and a net loss of $8 million in 2Q00. ***Included in these figures was***

a $50 million non-recurring gain from the sale of dark fiber assets during the quarter.

* * *

- We maintain our ... ***Strong Buy*** rating.

253. On 7/25/00, Deutsche Bank issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 and 01 EPS of $1.38 and $1.58 and a 16% three-year EPS growth rate for Enron. It also stated:

ENRON CORPORATION (ENE) "BUY"
Business Really Booming!

* * *

- ***Enron had an outstanding second quarter, exceeding management's expectations.***

* * *

- ***Profitability of Enron Energy Services continued to escalate.***
- ***All areas of operations are gaining momentum.***
- ***Net income rose 30% in the quarter, and per share earnings of $0.34 increased 26%, and the outlook is for more of the same***.

* * *

Summary. ***Everything is going well and business is really booming*** ....

254. On 7/25/00, Lehman Brothers issued a report on Enron. It rated Enron a "***Buy***" and forecast 00, 01 and 02 EPS of $1.45, $1.65 and $1.95 and a 15% five-year EPS growth rate for Enron. It also stated:

- ***Retail EBIT Up 50% Q2/Q1 As Processing Of Rapidly Escalating Contract Base Drives Revenues. New Contracts On Schedule To Double Last Years Level***.
- ***Broadband Benchmark Metrics Ahead Of Schedule. Dramatic Growth In Trading Counterparties***....
- ... ***Better Than Expected Results. We Need To Raise Numbers: Likely 2001 $1.65, 2002 $1.95***.

255. On 8/17/00, Bank America issued a report on Enron. It rated Enron a "***Strong Buy***," with a $105 price target, and forecast 00 and 01 EPS of $1.40 and $1.60 and a 15% secular EPS growth rate for Enron. It also stated:

ENE: Outlook Increasingly Bullish; Raising Price Target

- ENE's outlook continues to be very promising ... ***we are raising our 12-month price objective to $105*** ....
- ... ENE's core growth engine, wholesale energy operations, is expected to grow ... 30-40% per annum for the foreseeable future ....
- ... [E]nergy services ... also continues to provide substantial earnings growth .... ***The growth is remarkable with total contract values now at $20 billion***....
- ... Enron Broadband Services ... ***holds potential to double the size of the company within the next few years*** .... ENE announced that it entered into a 20-year agreement to provide video on demand through ENE's broadband delivery platform.... ***This venture provides credibility to ENE's broadband technology and strategy, in our opinion***....
- ... ***We reiterate our Strong Buy opinion*** ....

256. On 9/15/00, JP Morgan issued a report on Enron. It rated Enron a "***Buy***," ***increased*** its target price to $115 and ***increased*** Enron's forecasted 00, 01 and 02 EPS of $1.41, $1.69 and $2.00. It also stated:

> ***We are raising our estimates and target price for Enron based on excellent continued fundamentals moving forward into 2001-02. A new target price of $115*** ... is the result of an increased 2002 EPS estimate of $2.00 .... ***We believe this number is still conservative*** ....
>
> * * *
>
> ***Enron's Retail business has turned the corner on profitability, and should continue to amass market share and enjoy its operating leverage. Enron has done a great job of collecting a portfolio of large, multi-year contracts*** ....

257. On 9/15/00, Deutsche Bank issued a report on Enron. It rated Enron a "***Buy***" with a $100 price target, and forecast 00 and 01 EPS of $1.39 and $1.56 and a 15% three- to five-year EPS growth rate for Enron. It also stated:

- ***We reiterate our BUY investment rating on ENE shares with a $100 target price*** based on ... our 2001 ... EPS estimate of $1.56 and Enron's internal projections for the discounted value of its broadband telecommunications business of up to $40 per share.

* * *

- We believe that Enron shares are ... uniquely positioned to benefit from strong energy market growth and the fantastic growth in information technology bandwidth.

* * *

Enron is a ***well-managed*** diversified energy company that has been very successful .... Lay and ... Skilling lead a ***dynamic and innovative management team that has grown an interstate pipeline company into a premier global energy company***.

* * *

We remain impressed with Enron's continued ability to produce strong earnings growth in its core wholesale energy businesses. The swift rise of the retail segment to profitability has also been very impressive. Enron management has made very aggressive moves into several new businesses with great success and delivered on or exceeded nearly every promise made on schedule.

We fully anticipate that the company will be capable of producing EPS growth in excess of 15% ....

* * *

We modestly raised our 3- to 5-year EPS growth rate to 15.1% from 14% based on the continuing strength in Enron's core energy businesses.

258. On 9/19/00, Bank America issued a report on Enron. It rated Enron a "***Strong Buy***" and forecast 00 and 01 EPS of $1.40 and $1.60 and a 15% secular EPS growth rate for Enron. It also stated:

- Vice Chairman Lou Pai's presentation at our annual investment conference was very well attended. ***The key message in the presentation is that Enron is at the cusp of reaping rewards from businesses that they have created and built up over the past few years, namely Enron Energy Services ... and Enron Broadband Services***.

* * *

- ***Enron Energy Services continues to capitalize on the energy-outsourcing trend. The growth is remarkable as Enron more than doubled its contract value to $7.5 billion in 1H00. We believe Enron is on track to achieve its $16 billion target and will likely hit a new plateau of growth by the end of this year***.

- ***On the Enron Intelligent Network, the fiber build out is on schedule for 14,500 miles by the end of this year***. It currently has more than 5,000 miles complete .... Enron's foray into bandwidth intermediation. ***Enron has already transacted with 17 counter parties with 60 counter parties currently reviewing contract terms***.

- ***In terms of content, Enron Broadband Services with Blockbuster are expected to be available in two U.S. cities by the end of this year with a full roll out in 2001***.

259. On 9/21/00, CitiGroup issued a report on Enron which stated:

Mark-To-Market Brouhaha; Buy Energy Marketers

- Recent press has questioned accounting practices of energy marketers. Concerns center on use of "mark-to-market" accounting

* * *

- ***View concerns as unfounded***

* * *

- ***Reiterate [Buy] rating on Enron*** ...

Concerns over accounting practices appear to have driven down the share prices of energy marketers .... ***We see these concerns as unfounded***. Mark-to-market accounting is standard industry practice that actually reduces risk and provides a more accurate earnings picture than the use of cash or accrual accounting, in our view. ***Recommend purchase on share price weakness of ENE*** ....

260. On 9/27/00, JP Morgan issued a report on Enron. It rated Enron a "***Buy***" and forecast 00 and 01 EPS of $1.41 and $1.69 for Enron. It also stated:

We reiterate our Buy on Enron with our $115 price target, as Enron continues to justify our confidence that its new businesses will mimic its track record of growth of its energy businesses....

... ***[W]e continue to see warranted upside from its current price in the mid-80s***.

261. After Enron announced the apparently fantastic Blockbuster VOD venture, reported its better-than-expected 2ndQ 00 results and held its analyst conference in 7/00, where it again stressed the enormous potential of the Blockbuster agreement and the quality of Enron's broadband content delivery system, Enron stock soared to ever higher levels, reaching its all-time high of $90-3/4 per share on 8/23/00. As the stock soared, Enron's insiders continued to unload, selling off 1.2 million shares between 7/11/00 and 9/28/00 at as high as $90 per share, pocketing $108 million in illegal insider trading proceeds.

262. On 10/17/00, Enron reported ***better-than-expected*** 3rdQ results:

Enron Corp. announced today a 26 percent increase in earnings to $0.34 per diluted share for the third quarter of 2000 compared to $0.27 of recurring earnings a year ago. Corresponding net income in the recent quarter increased 31 percent to $292 million....

"***Enron delivered very strong earnings growth again this quarter, further demonstrating the leading market positions in each of our major businesses," said Kenneth L. Lay, chairman and CEO of Enron. "Our wholesale and retail energy businesses have achieved record-setting levels of physical deliveries, contract originations and profitability. We operate in some of the largest and fastest growing markets in the world, and we are very optimistic about the continued strong outlook for our company."***

263. On 10/17/00, Enron held a conference call for analysts and investors to discuss Enron's 3rdQ 00 results and its business and its prospects. During the call, and in the follow-up conversations with analysts, Skilling, Koenig, Causey, Frevert and Fastow stated:

- ***Enron had another excellent quarter across the Company. For the 3rdQ, Enron recorded a 26% increase in earnings to $.34 per diluted share compared to $.27 a year ago***.
- ***Enron's wholesale energy business reported a 66% increase in income to $627 million in the 3rdQ versus $378 million last year. Enron had consistently increased year-over-year quarterly earnings in this business. A total of 19 consecutive quarters, or almost five years, and this was just due to the very, very strong franchise position Enron had in virtually all of the markets where it participated in the wholesale business***.
- ***Today this business also included merchant investments in the energy and communications sector, primarily the energy sector. Enron protected the value of these investments through hedging and other risk management techniques***.
- ***EES had really been running at a breakout pace this year. Third quarter IBIT was $30 million compared to a loss of $18 million a year ago which is a $48 million positive swing in earnings***.
- ***In bandwidth intermediation Enron was actively making markets and transacting in bandwidth. In the 3rd Q, it confirmed 24 transactions with nine counterparties. It also had over 10 additional transaction requests, subject to just getting some agreements in place***.
- ***Enron was deploying a first phase of its entertainment on demand product for Blockbuster's movie content. This agreement was one of the largest ever signed and represented enormous long-term value. Well over a billion dollars in revenues***.
- ***Blockbuster was going fine. The major news was that all the major technology components were in place and Enron was actively working to put that transaction in place in four major markets***.
- ***A great quarter for Enron. Enron was very excited about its performance and remained comfortable with full year earnings expectations of about a $1.40. Good quarter, good outlook for the year. The Company was well positioned in the markets***.

264. On 10/17/00, Skilling was interviewed on CNNfn and stated:

CHERNOFF: Jeff, Let's talk about the Broadband aspect, because as you say, the market is certainly giving you a lot of credit for that. But at the same time, over the past few weeks, there's been a debate on Wall Street as to whether we might actually be entering a broadband glut. Is that a fantasy?

SKILLING: ***No. I think that's a very real possibility, and in fact, we've designed our business to take advantage of that.... And we see some of the same characteristics in the broadband business, which is why we've begun building the capability to transact real-time bandwidth, so***

that when the market prices do decline - and I believe they'll decline pretty significantly – we'll be in a position to make that lower-cost capacity available to our customers.

265. On 10/17/00, Bank America issued a report on Enron. It rated Enron a "***Strong Buy***," with a $105 price target, and forecast 00 and 01 EPS of $1.43 and $1.65 and a 15% secular EPS growth rate for Enron. It also stated:

- ENE reported 3Q00 EPS of $0.34, which was above ... our estimate .... EPS grew 26% from 3Q99 EPS of $0.27.... [N]et income for the quarter totaled $292 million, a 31% increase over $223 million earned in 3Q99.

- Once again, the impressive results were driven largely by extraordinary growth from the company's wholesale energy segment. EBIT from the segment grew to $627 million during the quarter from $378 million in 3Q99, ***a 66% increase***.

* * *

- Enron Energy Services continues to capitalize on the energy-outsourcing trend. During the quarter, EBIT from the segment totaled $30 million compared to a loss of $18 million in 3Q99. We believe ENE is on track to achieve its $16 billion contract value target and will likely hit a new plateau of growth by the end of this year.

* * *

- … ENE has begun to roll out its entertainment-on-demand product with Blockbuster Inc. which will provide movies .... ***The company has already implemented it in certain areas of four U.S. markets, which is expects to complete by year-end FY00. ENE expects to roll this business out in more U.S. cities and into Europe by the beginning of FY01***.

266. On 10/17/00, Merrill Lynch issued a report on Enron. It rated Enron a "***Buy***," with a $107 price target, and forecast 00 and 01 EPS of $1.41 and $1.61, and an 18% five-year EPS growth rate for Enron. It also stated:

- ***We are reiterating our Buy/Buy opinions on Enron based on our $107 price objective***.

* * *

- ... ENE's high-growth Wholesale (WEOS) unit continues to outperform, posting staggering growth in earnings up 66% ....

- ***Energy retail is also kicking into high gear, with earnings showing a positive $48 million swing and revenues tripling to $1.5 billion***. Clearly, EES's primarily fixed-cost platform is in place, ***and margin from new contracts signed should fall quickly to the bottom line***.

- ENE posted 3Q'00 EPS of $0.34 versus $0.27 last year – up 26% and above $0.32 consensus ....

267. On 10/18/00, CitiGroup issued a report on Enron. It rated Enron a "***Buy***," with a $100 price target, and forecast 00 and 01 EPS of $1.43 and $1.70 and a 20% long-term EPS growth rate for Enron. It also stated:

- Impressive wholesale energy results dominate earnings ....

* * *

- Other segments solid: Retail Energy, $30 million in operating income, in line sequential growth from $24 million in 2Q:00. $4.1 billion in new contracts, on track to hit $16 billion full year goal.

- Bandwidth trading continues to build traction ....

- ***Reiterate our "Buy" rating on ENE; and 12-month price target of $100***.

* * *

... New contracting volumes of $4.1 billion in the quarter vs. $2.5 billion last year keep Enron on track to hit its $16 billion goal for the year in new contract volumes. ***Increasingly, we see [EES] as a significant contributor to earnings growth in the "out" years of our 2000-2005 earnings forecast .... We continue to expect significant sequential as well as year-over-year growth in Retail Energy***.

* * *

... ***[S]trong sequential ramp in transactions further validates the bandwidth commodity market .... We continue to expect transactions to pick up steam from this level over the next 6-12 months***....

Elements for continued growth in bandwidth trading are in place.

268. On 10/18/00, CS First Boston issued a report on Enron. It rated Enron a "***Strong Buy***," with a target price of $115, and forecast 00 and 01 EPS of $1.40 and $1.65 and a 15% five-year EPS growth rate for Enron. The report stated:

ENE reported 3Q EPS of $0.34 .... Compares to our estimate of $0.30.

* * *

We are increasing our '00 eps estimate to $1.40 from $1.35 based on the trends shown in Wholesale and EES. Maintaining 2001 estimate of $1.65 per share, which appears conservative.

* * *

... ***Our target price for ENE is $115 and our rating is Strong Buy***.

* * *

> ... At Enron Energy Services (EES), ENE showed EBIT of $30 million vs a loss of $18 million in 3Q'99 on revenues of $1.5 billion. ***EES reported new contracts of $4.1 billion ... in line with estimates*** ....
>
> * * *
>
> ... [The Blockbuster] deal represents a major move for EBS in its content services business .... ***The speed of the rollout and move toward revenues and profits from this deal suggest an acceleration of the valuations in our discounted cash flow modeling***....
>
> ... ***EES unit of ENE as on target for $16 billion of new contracts this year.... With profit margins rising rapidly, EES is projected to be on target for $100 million in 2000 ebit and rapid growth in '01 and beyond***.

269. On 10/19/00, CIBC issued a report on Enron. It rated Enron a "***Buy***," with a $95 price target, and forecast 00, 01, and 02 EPS of $1.42, $1.65 and $1.95 for Enron. It also stated:

> Enron delivered another strong quarter, posting strong year-over-year gains in Wholesale Energy as well as Retail Energy Services (EES). Fully diluted EPS (recurring) increased 26% to $0.34 ... ahead of our ... estimate .... ***We are maintaining our BUY rating and 12-month target of $95 per share***.
>
> * * *
>
> [EES] [r]eported IBIT of $30 million versus an $18 million loss a year ago on a 172% increase in revenues to $1.5 billion, up from $542 million a year ago. ***During the quarter $4.1 billion of new contracts were recorded, including a $1 billion, 10-year agreement with Starwood Hotels and Resorts***.

270. On 10/18/00, Lehman Brothers issued a report on Enron. It rated Enron a "***Buy***," with a $90 price target, and forecast 00 and 01 EPS of $1.44 and $1.65 for Enron, as well as a 15% five-year EPS growth rate:

> Wholesale EBIT Jumps 66% ... Market Share Gains Evident In All Areas.
>
> Retail Energy Services EBIT Increased Sequentially From 2Q By 25% .... Contracts Signed Top $4 Billion, Up 64% From 1999.
>
> ***Broadband Operations Continue To Hit Start Up Targets In Both Content Services And Intermediation Markets***.
>
> ***... Enron Just Beginning To Harvest Crop From Seeds Sown On A Global Basis***.

271. As a result of defendants' false and misleading statements about Enron, Enron's stock continued to be a strong performer, trading as high as $83-3/16 in mid-11/00. In late 11/00, rumors circulated that Enron was having difficulty making its 4thQ 00 "numbers." As a result, Enron's stock weakened and fell as low as $75-9/16 per share on 11/22/00, below the highest of Enron's equity

issuance trigger prices. Because of the tremendous danger any substantial decline in Enron stock posed to defendants, Enron with Andersen, Vinson & Elkins, Kirkland & Ellis and certain of Enron's banks were working feverishly behind the scenes to restructure several transactions with its secretly controlled SPEs to avoid the recognition of hundreds of millions of dollars of losses in the 4thQ 00, the reporting of which would have crushed Enron's stock, likely triggered the stock issuance "triggers," and exposed the Enron Ponzi scheme. In order to support Enron's stock price, Skilling assured the markets that Enron's business fundamentals were strong and that Enron was on track to achieve or exceed its forecasted levels of results while enlisting the help of Enron's banks to flood the marketplace with extremely positive and reassuring analyst reports stressing the same theme.

272. On 11/24/00, Enron issued a release saying:

> Enron Corp. President and COO Jeff Skilling stated today that rumors of a potential profit warning are not true. "***All of our businesses are performing extremely well and we are very comfortable with consensus analyst earnings estimates of $0.35 per share in the fourth quarter of 2000, and $1.65 for the full year 2001***," said Skilling.

273. On 12/6/00, *Bloomberg News* reported: "The energy minister of India's biggest state, Maharashtra, said a contract to buy electricity from Enron Corp. should be renegotiated ...."

274. On 12/13/00, Skilling appeared on CNBC and stated:

> BARTIROMO: ... ***Why would any investor want to buy your stock right now***?
>
> SKILLING: ... We had a pretty tough week a couple of weeks ago, but have come back very strong. I think the reason investors like Enron is ... ***[w]e have had a very strong growth rate and we expect that to continue***.... ***So growth and strong earnings are why our investors want to buy Enron***.

275. On 12/13/00, Skilling was named Enron's CEO to succeed Lay. Lay was quoted as saying:

> "***The best time for the succession to occur is when the company is doing well," said Lay, who said revenue could top $90 billion this year, up from about $40 billion in 1999. "Enron is doing extremely well now***."

276. On 12/18/00, Enron issued a release stating:

> **Enron and Blockbuster Launch Entertainment On-Demand Service**
>
> * * *

> Enron Broadband Services, a wholly-owned subsidiary of Enron Corp. and Blockbuster Inc. announced today they have begun delivering movies via the Blockbuster Entertainment On-Demand service over Enron's broadband network in Seattle, Portland, Ore. and Salt Lake City. ***The initial launch fulfills the goal set forth by the companies to deliver the entertainment on-demand service to consumers' televisions by the end of this year***.
>
> * * *
>
> "As this market launch demonstrates, ***we have the infrastructure in place through our alliance with Enron and our other partners to deliver a quality entertainment on-demand service .... [W]e believe that we are clearly positioned to accelerate the roll out of this service as content providers release more films for broadband use***."
>
> ***Enron is delivering Blockbuster entertainment over its global broadband network ... providing an unparalleled quality of service***....
>
> "Much has been achieved as we launch this service – ***the successful development and execution of a solid technical and commercial foundation for delivering entertainment on-demand," said Ken Rice, chairman and CEO of Enron Broadband Services. "Customers have been extremely receptive to our offering, and the solution we have created will serve as the basis for delivering a wide range of valuable content globally***."

277. As year-end 00 approached, certain of Enron's SPEs (Raptors I and III) were in danger of coming unwound as they lacked any sufficient credit capacity to support their existing obligations, let alone continue to engage in similar transactions with Enron. Since Enron had recorded over $500 million in profits on deals with these entities, if something were not done to prevent the unwinding of these SPEs, Enron would have to take a multi-hundred million dollar charge against earnings and the prior falsification of Enron's financial results would become apparent with disastrous results for all concerned. Raptors I and III developed significant credit capacity problems near the end of 00. For Raptor I, the problem was that many of the derivative transactions with Enron resulted in losses to Talon, but the price of Enron stock had not appreciated significantly. The collar that Enron applied to the shares in Raptor I in 10/00 provided some credit support to Talon as Enron's share price dipped below $81 per share, but by mid-12/00, the derivative losses surpassed the value of Talon's assets, creating a negative capacity. Raptor III was faring no better. The price of New Power stock had fallen dramatically from its IPO price and was trading below $10 per share. Raptor III's assets had therefore diluted substantially in value, and its obligation to Enron had increased. As a result, Raptor III also had negative credit capacity.

278. Therefore, with the help of Andersen, Vinson & Elkins and Kirkland & Ellis, Enron restructured the capitalization of several SPEs at year-end 00 via artificial transactions which did nothing of economic substance other than transfer rights to ***more shares of Enron stock to these entities***. Of course, this only created ever-increasing pressure on the participants in the scheme to support Enron's stock price. But the participants in the scheme had avoided a disastrous year-end 00 writedown – so the Enron Ponzi scheme could continue. Enron concealed this manipulation by recording the additional shares issued as an increase to equity and as a note receivable. This violated a basic accounting principle which requires such notes receivable to be accounted for as a reduction to shareholders' equity.

279. On 1/9/01, *Dow Jones Energy Service* reported:

Enron India Expects State Power Board to Meet Debt Payments

> U.S. power major Enron Corp.'s India unit said Wednesday that it expects the Maharashtra State Electricity Board to meet outstanding payments for electricity generated by Enron-controlled Dabhol Power Corp.... "We expect that the existing contractual obligations will be honored and are hopeful that the MSEB will clear DPC's outstanding payments shortly," a spokesman for Enron India told Dow Jones Newswires in an e-mailed response to questions.

280. Due to defendants' positive statements and reassurances, Enron stock recovered to $84-1/16 per share by 01/02/01. However, as rumors continued to circulate regarding Enron's business and accounting, the stock fell sharply to $66-1/16 on 1/17/01, dangerously near an equity issue trigger of about $60. Thus, when Enron announced its 00 results, it was determined to present them and its business in an exceptionally favorable light to boost the stock price.

281. On 1/22/01, Enron reported better-than-expected "record" 4thQ 00 and full year 00 results:

> ***Enron Corp. announced today record financial and operating results for the full year 2000, including***:
>
> - a 25 percent increase in earnings per diluted share to $1.47;
> - a 32 percent increase in net income to $1.3 billion;
>
> * * *
>
> - an almost doubling of new retail energy services contracts to $16.1 billion.

"***Our strong results reflect breakout performance in all of our operations***," said Kenneth L. Lay, Enron's chairman and CEO. "***Our wholesale services, retail energy and broadband businesses further expanded their leading market positions, as reflected in record levels of ... profitability***...."

Enron also announced a very successful fourth quarter of 2000, generating recurring earnings of $0.41 per diluted share, an increase of 32 percent from $0.31 a year ago.

* * *

Retail Energy Services: ... Enron Energy Services reported $103 million of recurring IBIT during 2000 compared to a loss of $68 million in 1999. Revenues increased 155 percent to $4.6 billion in 2000. Enron Energy Services executed $16.1 billion of new contracts during 2000, representing customers' future expenditures for natural gas, power and energy services, which is almost double the $8.5 billion contracting level in 1999.... ***Major long-term energy management agreements announced during 2000 include new contracts with Chase, IBM, Quebecor, Starwood Hotels and Sonoco and expanded contracts with Compaq and Simon Properties***.

* * *

Broadband: ... ***Other positive developments included the sale of excess dark fiber to balance capacity in key regions, increases in the value of Enron's broadband investments and successful monetization of a portion of Enron's broadband delivery platform***.

... Enron significantly advanced its broadband intermediation activities during the year, executing over 320 transactions .... ***Also during 2000, Enron completed initial rollout in select areas of four U.S. markets of its content-on-demand product, which delivers TV-quality video for mass market viewing of premium broadband content***.

282. On 1/21/01, Enron held a conference call for analysts and investors to discuss Enron's 00 results and its business. On 1/25/01, Enron executives Skilling, Koenig, Causey, Kean and Fastow appeared at the Enron Annual Investors Conference in Houston. During the conference call – and in follow-up conversations with analysts and formal presentations and break-out sessions at the Investors Conference – they stated:

- ***For the full year 00, Enron reported total revenues of $101 billion. It broke the $100 billion mark, a 25% increase in earnings per share to $1.47 compared to $1.18 a year ago. Enron reported a 32% increase in net income to $1.3 billion up from $957 million in 99***.

- ***For the 4thQ numbers, Enron reported excellent results, including revenues of $41 billion, a 32% increase in earnings to $.41 per diluted share compared to $.31 a year ago, and a 34% increase in net income to $347 million versus $259 million a year ago***.

- ***Enron had a tremendous year. The strong results reflected what Enron believed was its breakout performance in all of its operations. The results also further demonstrated its leading market position in each of its major businesses.***

- ***Enron's wholesale business led its strong financial results, achieving a record level of profitability. Enron's retail energy services group also had an outstanding year. The business showed increasing profitability in each quarter during the year 00 and almost doubled its new outsourcing contracts. Enron broadband services substantially completed its flexible, scalable broadband network. The business also gained traction in both of its major businesses, bandwidth intermediation and content services.***

- ***Enron's wholesale business – its largest operation – continued to grow at a very, very strong rate. Earnings in this business had grown at a 48% average annual rate for the past five years and included a 72% increase in year 00. Enron built a tremendous market franchise that had significant sustainable competitive advantage.***

- ***The wholesale business had just done great. Enron's wholesale had just a fantastic quarter and a fantastic year and was looking forward to a great 01.***

- ***Enron was actively transacting in bandwidth intermediation. In the year 00, Enron completed over 320 bandwidth transactions, including 236 in the 4thQ, up from 59 transactions in the 3rdQ.***

- ***Enron's other major broadband business was content services. Enron also had a successful 4thQ where it successfully launched the first phase of its content on demand product. Enron was delivering movies on demand in select areas of Seattle, Portland, Salt Lake City and New York. Enron believed that it had a very unique and powerful commercial proposition with proven technology that created an enormous opportunity in one of the world's fastest growing markets.***

- ***Enron was pleased with its 4thQ and full year results. Enron had just an absolutely outstanding year. And an outstanding quarter. Enron was very excited about the continuing positive business developments across the Company and remained confident that its strong performance would continue increasing profitability and expanding returns to shareholders.***

- ***As Enron looked forward to the year 01, the environment looked great. Enron was feeling very good about things.***

- ***Enron stock was worth at least $126 per share. Enron was forecasting 01 EPS of $1.70-$1.80 with further growth in 02 to $2.10-$2.20.***

283. On 1/22/01, Skilling appeared on CNNfn, was interviewed and stated:

> ***We had a strong quarter*** .... [I]t was across the board.... It was pretty much everything.

When asked about the performance of Enron stock, Skilling replied:

> Well, we were up, 1998, we were up, I think, about 50 percent. Nineteen ninety-nine we were up about 60 percent. And last year we were up 88 percent total return to shareholders. ***So we've had a long run of very, very strong performance for our shareholders. So I think they can expect the same as time goes on.***

284. On 1/26/01, JP Morgan issued a report on Enron. It rated Enron a "***Buy***," increased Enron's forecasted 00 EPS to $1.77 and stated:

> ***The main take-away from its 2001 Investor Meeting yesterday was the expectation of another year of 15-20% EPS growth. Management believes the company will continue to remain in the "sweet spot" of its growing wholesale and retail energy businesses, and its developing businesses will continue to gain critical mass and momentum***.
>
> * * *
>
> ***Other positive data points were*** ... :
>
> Content Delivery. ***The results of its beta test for the Blockbuster/VOD product have been very positive. The systems, hardware and software for the product have been fully developed, and operationally the product performs well***.
>
> * * *
>
> ***Bandwidth Intermediation. Enron had successfully delivered on its promise to ink 5,000 DS3 months worth of contracts in 2000. In 2001, the company believes it can deliver nearly three times this number***.
>
> * * *
>
> Retail Energy Services. Retail Energy Services enjoyed its first full year of profitability .... ***Enron expects the unit to be able to double its current contract portfolio size (from $16.1 billion today to over $30 billion in 2001)***.

285. On 1/26/01, CS First Boston issued a report on Enron. It rated Enron a "***Strong Buy***," ***increased*** the target price to $128, ***increased*** Enron's forecasted 01 and 02 EPS to $1.80 and $2.20 and maintained a 15% five-year EPS growth rate for Enron. It also stated:

> Analyst Meeting Shows Power of ENE Platforms For Growth. Raising '01 Estimate to $1.80. Introducing '02 Estimate of $2.20. Target Price $128 ....
>
> * * *
>
> ***Compelling growth and rising return platforms across all business units showcased at analyst meeting***.
>
> With this report we are increasing our 01 estimate from $1.65 to $1.80. We are introducing a 2002 estimate of $2.20 per share.
>
> ***Estimate increase due to strength at Energy Services and Wholesale units. Broadband growth acceleration another plus***.
>
> * * *
>
> ... ***EBS has achieved its goal of worldwide connectivity and contracting with metro-fiber providers in major cities***.

* * *

With its Network complete, EBS has begun to move ahead into Intermediation and Content Services. ***EBS has done over 300 transactions in traded bandwidth with a total of over 5,000 DS3 months of service delivered***.

* * *

... ***The Blockbuster deal is up and running in four markets on a test basis with 12 more markets scheduled for this year***.

286. On 1/31/01, Skilling appeared on NPR, was interviewed and stated:

In summary, we had a tremendous year in the year 2000. ***Strong results reflect what we believe is breakout performance in all of our operations. The results also further demonstrate our leading market positions in each of our major businesses***.

287. On 2/1/01, Lehman Brothers issued a report on Enron. It rated Enron a "***Strong Buy***," ***increased*** Enron's forecasted 01 and 02 EPS to $1.75 and $2.05 and maintained a 20% five-year EPS growth rate for Enron. It also stated:

- ***Conference Served To Highlight Superior Franchise. Earnings Targets Lifted Given Leading Market Positions, Entry Into High-Growth Markets And Redeployment Of Capital. Raising Our Estimates And Target Price***.

* * *

- ***2001 Earnings Target Materially Ahead Of Historical Guidance Of 15%***.
- ***Growth Targets Lifted*** ....

* * *

- ***EES Outlook Robust.... Bandwidth Intermediation Has Transformed From Conceptual To Concrete Providing New Platform For Future Growth***.

Analyst Conference Gives Broad Overview Of Business Franchise: At a well received presentation, management presented a detailed overview of each segments business model and future growth potential. ***Growth targets were lifted*** .... [N]ew earnings target for 01 was materially ahead of historical guidance of 15% growth. ***Accordingly, we are raising our earnings estimates to $1.75 in 2001 and $2.05 in 2002***.

288. As a result of Enron's better-than-expected 4thQ 00 and 00 results and the very positive statements and assurances about Enron's financial results, financial condition, business and prospects, Enron stock recovered from its $66-1/16 low on 1/17/01, soaring to as high as $82-3/32 on 2/5/01, a 25% increase in just a few trading sessions. This huge surge in Enron stock enabled Enron to sell a huge amount of equity securities to raise desperately needed cash in early 2/01 via a

$1.9 billion zero coupon convertible note placement to CitiGroup, Deutsche Bank, JP Morgan, Bank America and Barclays, who then resold the notes or hedged their risk of loss on the zero coupon convertible notes by shorting Enron common stock. A zero coupon note offering of this size – where the issuer promised to pay all accrued interest years later – ***was extraordinary and was made possible only by the surge in Enron's stock price and its apparently very strong financial condition and investment-grade credit rating***. Enron committed to register these zero coupon convertible notes in six months with the SEC so the purchasers could resell the notes. The proceeds were used to reduce Enron's short-term debt – commercial paper and/or bank debt to JP Morgan or CitiGroup. This huge offering was critical to keeping Enron afloat – to keep the Enron Ponzi scheme going.

289. On 2/20/01, *Fortune* published an article on Enron, questioning the quality of its reported earnings:

> By almost every measure, the company turned in a virtuoso performance: Earnings increased 25%, and revenues more than doubled, to over $100 billion. Not surprisingly, the critics are gushing. "***Enron has built unique and, in our view, extraordinary franchises in several business units in very large markets," says Goldman Sachs analyst David Fleishcher***.
>
> ... At a late-January meeting with analysts in Houston, the company declared that it should be valued at $126 a share, more than 50% above current levels.
>
> * * *
>
> ***Enron vehemently disagrees with any characterization of its business as black box-like.... "We are not a trading company***," CFO Andrew Fastow emphatically declares.... ***Both Skilling, who describes Enron's wholesale business as "very simple to model," and Fastow note that the growth in Enron's profitability tracks the growth in its volumes almost perfectly. "People who raise questions are people who have not gone through [our business] in detail and who want to throw rocks at us," says Skilling. Indeed, Enron dismisses criticism as ignorance or as sour grapes on the part of analysts who failed to win its investment-banking business***. The company also blames short-sellers for talking down Enron. As for the details about how it makes money, Enron says that's proprietary information, sort of like Coca-Cola's secret formula. Fastow, who points out that Enron has 1,217 trading "books" for different commodities, says, "We don't want anyone to know what's on those books. We don't want to tell anyone where we're making money."
>
> * * *
>
> ... "***Enron is no black box," says Goldman's Fleischer. "That's like calling Michael Jordan a black box just because you don't know what he's going to score every quarter***."

290. On 2/20/01, CS First Boston issued a report on Enron. It rated Enron a "***Strong Buy***" and forecast 01 and 02 EPS of $1.80 and $2.20 for Enron and stated:

> ***"Fortune" Article Very Negative; Focuses On Valuation and Complexity; Nothing Really New, Just Negative "Spin" on Co.***
>
> Magazine calls ENE "black box" with "impenetrable financial statements" .... Our work has dealt with each of these issues analytically, ***showing repeatability and acceleration of growth and creation of new businesses with clear performance metrics***.

291. On 2/26/01, Enron announced a long-term energy management agreement with Eli Lilly & Co., stating:

> Enron Energy Services, a subsidiary of Enron Corp. and Eli Lilly and ***Company announced today a $1.3 billion, 15-year energy management agreement***.

292. In or about 3/01, Enron filed its 00 Report on Form 10-K with the SEC, which was signed by Skilling, Causey, Fastow, Belfer, Blake, Chan, Duncan, Gramm, Harrison, Jaedicke, Lay, LeMaistre, Mendelsohn, Meyer, Pereira, Savage, Urquhart, Wakeham and Winokur. Vinson & Elkins reviewed and participated in writing the Form 10-K report. The Form 10-K report contained Enron's 99 and 00 annual financial statements as certified by Andersen and Andersen's "clean opinion" thereon.

293. In early 3/01, Enron issued its Annual Report to Shareholders, which report was reviewed and approved by Vinson & Elkins, Andersen and all the Enron Defendants then with the Company. The 00 Annual Report contained a letter from Lay and Skilling stating:

> ***Enron's performance in 2000 was a success by any measure .... In our largest business, wholesale services, we experienced an enormous increase of 59 percent in physical energy deliveries. Our retail energy business achieved its highest level ever of total contact value. Our newest business, broadband services, significantly accelerated transaction activity .... The company's net income reached a record $1.3 billion in 2000***.
>
> ***Enron has built unique and strong businesses that have tremendous opportunities for growth***. These businesses – wholesale services, retail energy services, broadband services ... can be significantly expanded within their very large existing markets and extended to new markets with enormous growth potential. ***At a minimum, we see our market opportunities company-wide tripling over the next five years***.
>
> ***Enron is laser-focused on earnings per share, and we expect to continue strong earnings performance***.

* * *

Enron Wholesale Services

... [W]holesale services income before interest, minority interests and taxes (IBIT) increased 72 percent to $2.3 billion.... [W]e have had 20 consecutive quarters of year-over-year growth.

* * *

Enron Energy Services

Our retail unit is a tremendous business that experienced a break-out year in 2000. We signed contracts with a total value of $16.1 billion of customers' future energy expenditures, almost double the $8.5 billion signed in 1999. We recorded increasing positive earnings in all four quarters in 2000, and the business generated $103 million of recurring IBIT. Energy and facilities management outsourcing is now a proven concept, and we've established a profitable deal flow .... In 2001 we expect to close approximately $30 billion in new total contract value ....

Enron Broadband Services

We have created a new market for bandwidth intermediation with Enron Broadband Services. In 2000 we completed 321 transactions with 45 counterparties.

* * *

Enron also has developed a compelling commercial model to deliver premium content-on-demand services via the Enron Intelligent Network.... ***Full-length movies-on-demand service has been successfully tested in four U.S. metropolitan markets***.

* * *

Strong Returns

Enron is increasing earnings per share and continuing our strong returns to shareholders. Recurring earnings per share have increased steadily since 1997 and were up 25 percent in 2000....

... ***Our results put us in the top tier of the world's corporations. We have a proven business concept*** ....

* * *

Our talented people ... financial strength ... have created our sustainable and unique businesses.

294. Enron's 00 Annual Report also discussed Enron's various businesses:

Wholesale services is Enron's largest and fastest growing business, with sustainable growth opportunities in each of its markets....

[A]nd our competitive position is growing stronger.

* * *

Enron Energy Services ... continued to grow rapidly through 2000, with increasing profits in all four quarters of 2000 .... The value of our contracts in 2000 totaled more than $16 billion, increasing Enron Energy Services' cumulative contract value to more than $30 billion since late 1997.

* * *

We are positioned to dramatically increase our profitability in 2001. Retail energy earnings will be fueled by the rapid growth of our U.S. and European businesses and the strong execution and extension of existing contracts.

* * *

Enron Broadband Services made excellent progress executing its business plan in 2000. The build-out of Enron's 18,000-mile global fiber network is near completion, bandwidth intermediation transaction volume is growing exponentially .... Clearly, the Enron business model is working in the broadband market.

295. Enron's 00 Annual Report also contained Enron's 00 financial results and statements, as audited and certified by Andersen:

Enron Corp. and Subsidiaries Consolidated Income Statement
(in millions, except per share amounts)

	Year ended December 31,		
	2000	1999	1998
Total Revenues	$ 100,789	$40,112	$31,260
Net Income	$ 979	$ 893	$ 703
Diluted earnings per share	$1.12	$1.10	$1.01

296. Enron's 00 Annual Report and its certified financial statements also contained the following financial information:

Enron Corp. and Subsidiaries Consolidated Balance Sheet
(in millions, except shares)

	Year ended December 31,	
	2000	1999
Total current assets	$38,381	$ 7,255
Total Assets	$65,503	$33,381
Total current liabilities	$28,406	$ 6,759
Long-Term Debt	$ 8,550	$ 7,151
Total shareholders' equity	$11,470	$ 9,570

297. Enron's 00 Annual Report also contained key "Credit Information" regarding Enron (in millions):

	2000	1999
Total Obligations		

Balance sheet debt (short- and long-term)	$10,229	$ 8,152
Key Credit Ratios		
Funds flow interest coverage	4.07	3.67
Pre-tax interest coverage	2.54	2.63
Debt/Total Capital	40.9%	38.5%

298. Note 16 to Enron's 00 financial statements stated with respect to Enron's transactions with related parties that:

> In 2000 and 1999, Enron entered into transactions with limited partnerships (the Related Party) whose general partner's managing member is a senior officer of Enron. ***The limited partners of the Related Party are unrelated to Enron. Management believes that the terms of the transactions with the Related Party were reasonable compared to those which could have been negotiated with unrelated third parties***.

299. After Enron reported better-than-expected 4thQ 00 and 00 results and held its extraordinarily bullish analyst conference in late 1/01, Enron's stock stabilized and recovered and advanced to as high as $82-3/32 per share on 2/5/01. Again, Enron's insiders unloaded their Enron stock, selling 1.1 million shares in 1/01-3/02/01, at as high as $82 per share, pocketing $82 million in illegal insider trading proceeds.

300. Each of the statements made between 3/31/00 and 3/1/01 was false and misleading when issued. The true but concealed facts were:

(a) Enron's financial statements and results issued during this period were false and misleading as they inflated Enron's revenues, earnings, assets, and equity and concealed billions of dollars of debt that should have been shown on Enron's balance sheet, as described in ¶¶418-611.

(b) Contrary to the representations that Enron's transactions with its related parties were fair to Enron and on terms representative of those that could be obtained in arm's-length transactions with third parties, in fact, the transactions with Enron's related parties were grossly unfair to Enron and set up in a manner to permit Enron to pay off key Enron insiders, including Fastow and certain favored investment banks and bankers, for their participation in the scheme, which included arranging the illicit and illegal financial transactions with those related parties on terms that no independent third party would ever have agreed to, as detailed herein.

(c) Enron's financial condition, including its liquidity and credit standing, was not nearly as strong as represented, as Enron was concealing billions of dollars of debt that should have

been reported on its balance sheet – and which would have very negatively affected its credit rating, financial condition and liquidity – by improperly transferring that debt to the balance sheets of various non-qualifying SPEs and partnerships it controlled, as detailed herein.

(d) Enron generated hundreds of millions of dollars of profits and transferred billions of dollars of debt off its balance sheet by entering into non-arm's-length transactions with SPEs and partnerships Enron controlled, including Chewco/JEDI, for which Enron had guaranteed loans to the SPEs and Barclays had provided a phony equity portion, to avoid improper consolidation.

(e) The results of Enron's WEOS business – its largest business unit – were manipulated and falsified to boost its reported profitability in various ways. ***First***, by phony or illusory hedging transactions with entities that were not independent of Enron. ***Second***, by the abuse of mark-to-market accounting by adopting unreasonable contract valuations and economic assumptions when contracts were initially entered into. And ***third***, by arbitrarily adjusting those values upward at quarter's end to boost the wholesale operation's profits for that period – a practice known inside Enron as "moving the curve." For instance:

(i) Prospective international deals were prepared by internal Enron "developers." The developers presented the materials to Enron's RAC department with an estimated net present value ("NPV"), calculated over 20 years, and Enron's return on investment ("ROI") over the life of the deal. To determine the NPV and ROI, numerous economic assumptions – such as foreign-exchange rates, revenue growth, inflation rates, cost escalation, economic growth and demand – were used. However, Enron manipulated the assumptions to inflate projected revenues and deflate projected costs. For example, Enron picked the lowest possible consumer-price-index figure from all available world markets and the highest possible revenue-stream escalator figures, which in combination would boost a project's "profit" by many millions of dollars; and

(ii) Enron's Liquid Propane Gas ("LPG") Group created phony earnings at year-end 00 using earnings-curve manipulations. As an example, the LPG Group had a deal for a long-term fixed-price LPG position involving gas plants in England. Enron guaranteed delivery of the 10,000 tons of LPG per month over the length of the contract, based on the market price when

the gas was delivered and, using mark-to-market accounting, booked the projected total contract revenue. Even though Enron could not determine what the LPG price would be so many years out, Enron moved the curve up $20 million on the deal because Enron needed to get its revenue numbers up for the end of 00. When one trader refused to move the curve up because there was no valid justification to do so, the trader was told to mind his own business and the curve was moved up by a superior. The trader left Enron because of this manipulation. This was not an isolated incident as, in fact, ***curve manipulations occurred in every quarter in all of Enron's WEOS operation***.

(f) The financial performance and the value of contracts entered into by EES were grossly overstated through various techniques, including the misuse and abuse of mark-to-market accounting to create huge current-period values for Enron on what were, in fact, highly speculative and indeterminate outcomes of long-term contracts. This resulted in EES improperly and prematurely recognizing hundreds of millions of dollars of revenue that not only boosted its financial results, but allowed top EES managers and executives to collect huge bonuses based on these improperly inflated contract valuations.

(g) EES was, in fact, losing hundreds of millions of dollars on many of its retail energy contracts. To induce customers to enter into these agreements – so that Enron could claim its EES business was growing and succeeding – Enron had, in effect, "purchased" their participation by promising them unrealistic savings, charging low prices Enron knew would likely result in a loss, and spending millions of dollars in the short term to purchase purportedly more energy-efficient equipment, a significant portion of which costs Enron knew it was likely never to recover and certainly never to make a profit on. Enron executives knew that Enron would lose money on the EES deals, but had to make them more and more attractive to generate new clients, while the Company utilized unrealistic projections and mark-to-market accounting to mislead investors into believing that the EES contracts were making money. For instance:

(i) EES had originally targeted residential retail customers, but this failed due to insurmountable hurdles, including the fact that Enron did not have sufficient infrastructure to bill residential customers monthly. In 97, Enron transformed EES into a ***commercial-industrial business*** and then purportedly signed up several major customers, including Starwood Properties,

Chase Bank, Eli Lilly, Owens-Corning, Simon Properties, the Archdiocese of Chicago, and others. However, EES still faced insurmountable hurdles: ***One***, because each customer's contract was individualized, there were no economies-of-scale savings and the cost of performance precluded making a profit. ***Two***, Enron still did not have sufficient infrastructure to do the monthly billing. ***Three***, a prerequisite for each contract was for Enron to upgrade the customer's facilities with huge current capital expenditures, which was uneconomical and guaranteed losses on most contracts;

(ii) EES entered into DSM contracts, which bundled energy-related products and services for its customers, including providing power and equipment as commodities to companies like J.C. Penney, Quaker Oats, IBM, Starwood Properties, Albertsons, Safeway, and others, along with long-term management and consulting services on the customers' usage of the power over the life of the contract. Enron booked 100% of the commodity portion of the contract up front, and 70% (on average) of the estimated long-term services revenue. Because the revenues from each contract were pulled into the single quarter when the contract was signed using mark-to-market accounting, EES had to close increasingly higher revenue-producing DSM transactions to show growth in EES's revenues and profits. This was called "***continually feeding the monster***" inside EES;

(iii) The Enron DSM contract with J.C. Penney had losses of $60 million, the IBM deal was a significant loss for Enron from the outset, and the CitiGroup contract was known at its inception to cost Enron millions in losses. In the 4thQ 99 EES deal with Owens Illinois, EES recognized a multi-million dollar profit when the deal closed, even though it was known this deal would likely lose money for EES. When CitiGroup and other money-losing EES deals were discussed inside EES, people said "***EES always sells at a negative***"; and

(iv) In connection with EES's huge Eli Lilly deal – $1.3 billion over 15 years announced in 2/01 – the contract called for Enron to provide Lilly its commodity energy needs ($595 million), plus operation, maintenance and repair ("OMR") ($510 million), and demand-side management – DSM – ($195 million). Enron recognized over $40 million of the commodity portion of the contract as revenue in the 1stQ 01 without any basis in fact. A special $50 million cash "special distribution" payment to Lilly, to be paid on 2/23/02, related to Enron's DSM savings

anticipated for Lilly over the course of the contract. But to provide the DSM to Lilly – making Lilly's facilities more energy efficient – Enron first had to spend $94 million to upgrade Lilly's plants in the hope that it would recoup large energy savings as a result of modernizing the Lilly plants. Moreover, to realize OMR savings, Enron had to train and deploy 250 workers to replace Lilly personnel. For Enron to ever make a profit, it had to recover its up-front investment – $50 million in cash to do the deal, $94 million for facility upgrades, and $24 million in labor costs (training and transfers). And Enron had to pay Lilly if the anticipated savings fell short of projections. For Lilly, the Enron EES contract was a win-win situation: all its factories would be upgraded at no cost, a new work force would be hired and trained at substantially lower labor costs to Lilly, ***plus it got $50 million up-front cash just to sign the contract***. Even though Enron claimed the Lilly deal was a $1.3 billion deal, it was actually only worth $267 million because Enron did not disclose that to win the Lilly contract it had to invest ***$168 million*** up-front, and was, in fact, a contract on which Enron would suffer a loss.

(h) The purported prospects for, and actual success of, Enron's EBS division was grossly overstated. ***First***, Enron's broadband network – the so-called Enron Intelligent Network or EIN – was plagued by serious and persistent technical difficulties, which prevented it from providing the type of high-speed and high-quality transmission that was indispensable to any hope of commercial success. ***Second***, Enron was encountering significant difficulties in completing the build-out of its broadband network and, as a result, did not have currently, and would not have at any reasonable time in the foreseeable future, a functioning broadband network. For instance, the EIN – the core of the Enron Broadband Operating System ("BOS") – was doomed to failure due to numerous intractable problems:

- For EIN to work, Enron had to build 20 pooling points internationally and 30 in the U.S. Measuring data flow at the pooling points required something known as inter-agent messaging and InterAgent – the software that was to make the intelligent network operational – became the core of EIN. But InterAgent had to "speak" to hardware from various different manufacturers, such as Cisco and Sun, which it could not do. Since InterAgent failed, EIN would fail as well.
- To create InterAgent, Enron had acquired a company called Modulus. From the outset there was no way Modulus could create a viable InterAgent program because it was simply too small (three employees) to undertake a project of such magnitude. By spring 99, the development of the EIN had "***deteriorated into chaos***." The

problems in building the EIN did not improve during 99. By 10/99, EBS was "***in crisis mode***," and Rice, CEO of EBS, realized that EIN was a disastrous failure.

- In fact, "***EBS did not have a single real customer in 1999***."
- While Enron extolled the number of orders and users it had for its network, the truth was that "***the sales staff could not sell what the engineers could not build, and the engineers could not build what the sales staff had promised***." Consequently, a "***blend-and-extend***" trick was introduced. EBS sales representatives were told to sell anything now – get customers to place any order no matter how small (and move delivery into next year) – and, in return, Enron would place a ***larger order*** to buy something from the customer. For instance, ***Real Networks gave Enron a $100,000 order, but Enron gave a $7 million purchase order to Real Networks for software***.
- Enron trumpeted high-profile customers, including Inktomi, Microsoft and Real Networks, as proof that EBS was a genuine broadband provider. But these small $100,000 deals represented favors by Microsoft and Real Networks to Enron in exchange for orders by Enron in 99 worth as much as $7 million (in at least one other case). Enron frequently paid larger amounts to vendors in exchange for much smaller orders.

(i) To inflate the purported revenues of its EBS operations, Enron was engaging in transactions involving so-called dark fiber – unlit broadband-transmission capability – recognizing significant revenue on these transactions when, in fact, they were artificial contrivances known as "dark-fiber swaps," which involved no real economic substance, but were simply a swap of Enron's dark-fiber capacity with some counterparty for its dark-fiber capacity. A dark-fiber swap involves two parties each purchasing fiber-optic capacity from the other at artificially high prices, which inflated the profits that each reported on the sales side of the transaction. Some of Enron's counterparties to these dark-fiber swaps included 360 Networks, Touch America, Qwest and Level Three, with which Enron did a huge swap code-named "Hamachi."

(j) Enron exacerbated the manipulative and deceptive financial impact of dark-fiber swaps by accounting for the revenue or payment it received from the counterparty that bought dark fiber from Enron ***as current-period revenue*** while, at the same time, Enron was ***capitalizing*** the amounts it paid to that party to buy dark fiber from it on the other side of the swap. Thus, Enron avoided recognizing the expense of that purchase in the current period and instead, amortized it over many, many years – a deliberate accounting manipulation where revenue and expense were mis-matched to inflate current-period results. For instance:

(i) Enron entered into dark-fiber swaps to book a profit on the gain from the sale. The EBS dark-fiber deals used an overvalued price for the swaps. Even though Enron agreed to pay a higher price – above true value – for the fiber it was getting, Enron also paid an equivalent higher price for what it was selling. One deal that Enron did with LJM illuminates this. Top executives asserted pressure on EBS personnel to make needed revenue numbers for the 3rdQ 00, which resulted in booking a dark-fiber deal with LJM worth over $300 million. The sole reason for this deal was to enable Enron to make the required quarterly revenue number;

(ii) Enron boasted about its high and increasing volume of broadband trades, but these purported trades were not profitable. In essence, Enron and its trading partners exchanged fiber-optic capacity with one another in transactions that were nearly similar in the buying and selling prices. So while cash was exchanged in these transactions, they did not result in actual profits for Enron or its trading partners because the Company's cash outlay for purchasing access to the other party's fiber-optic lines was nearly the same as the money paid for access to Enron's network;

(iii) The situation in EBS was so desperate by Spring 01 that there was a coup attempt by several managers who reported to CEO Rice and COO Hannon and wanted them moved out of EBS. The managing directors met with Skilling and informed him that EBS was in extremely dire straits – there was "***no way to win***," EBS "***had no income***," and the "***cash-burn rate was too high***." They showed Skilling actual EBS performance numbers. Rejecting their request, Skilling neither replaced Rice and Hannon nor did he make any changes, other than having the managing director also now report to him directly to keep him updated on the disaster in EBS; and

(iv) Despite concrete evidence of EBS's failed operations, EBS CEO Rice publicly stated that broadband's assets had an estimated value of $36 billion. A high-ranking former EBS manager – one of the very first broadband employees – responded: "***I don't know what metric he was looking at. We were well into the business by then and in the process of flopping***."

(k) Enron lied about the number of customers. At the 1/00 conference Enron claimed it had 16 million customers. To arrive at that figure, Enron took the number of its Internet service provider ("ISP") partners – in reality, these partners were Enron vendors paid to transmit

streaming content because the EIN and BOS didn't work – and multiplied that number by the number of customers each ISP had. Thus, the 16 million customers Enron claimed as its own, in fact, belonged to ISPs. Moreover, assuming that Enron could provide the high-quality uninterrupted bandwidth-on-demand that it claimed the EIN could provide through the BOS – neither of which ever worked – as of 12/00 an internal EBS document reflects that EBS only had enough server capacity to reach about 47,000 customers, which is about 15 million customers short of the total Enron claimed ***12 months earlier***! In short, ***Enron had no real broadband customers or revenues***, and the EIN was nowhere near being ***substantially complete***.

(l) The prospects for future revenue and profits from Enron's EBS operation and the purported value of that operation to Enron and to its stock price was completely arbitrary and without any basis in fact because Enron knew from ***current*** problems in that business, as well as the current state of EBS business, that such revenue and profit forecasts and valuations were arbitrary, unreasonable and unobtainable.

(m) Enron's purported growth in broadband intermediation – trading bandwidth access – was neither as successful as claimed nor was the market developing as quickly or in the manner Enron asserted. Enron grossly overstated ***the number of customers or counterparties*** it was doing bandwidth intermediation with by counting as ongoing customers or trading partners entities that had done only a test or an experimental trade and not engaging in any ongoing bandwidth intermediation. Even worse, Enron grossly overstated the ***number of trades*** being conducted by its broadband intermediation to create the illusion of ever-increasing levels of activity, which it accomplished by splitting up what was, in fact, a single unified trade into five or 10 or even more separate trades, thus creating the false image of increasing trading activity. For instance, Broadband traders would turn one EBS transaction into multiple trades, just to show the volume of broadband deals was increasing. Management was well aware of how traders broke down the deals to better the numbers. Indeed, traders were instructed many times to manipulate the numbers of trades. And while this trade value never made sense, they were inflated since cash bonuses were paid based on the deal's size, not its viability or earnings: "***It was very simple. You just tweaked the assumptions on different variables, which were changed to make the return higher***."

(n) Enron was abusing and misusing mark-to-market accounting with respect to its broadband intermediation activity, utilizing this accounting method – together with false assumptions of ultimate value – to create much higher current-period revenue and bottom-line results than were reasonable and attainable had proper accounting techniques been used. For instance:

(i) One analyst-trader was told by VPs in his group to manipulate the assumption numbers so upper management would get bigger bonuses when the higher valued deals were closed. And when it started to look like a deal was about to unwind – becoming a true loss because the assumptions were never valid – Enron moved the earnings curves – "***Shifting the curves and making new deals to bury the losses from the past was constantly the strategy***"; and

(ii) In fact, there were only about 20 actual broadband transactions or intermediations – all with tiny margins. And one of these deals was derived solely from a 10-year deal with Rice University to provide broadband services to Breiman University, a sister university in Germany. The deal called for Rice University to pay Enron the total over 10 years, but the Company recognized all of the revenue in the 2ndQ and 3rdQ 00. This deal would never have closed had not Lay donated $5 million for an endowment at Rice University. Moreover, Breiman could cancel the project and did so in early 01.

(o) Enron grossly misrepresented and overstated the nature and potential favorable impact of the Blockbuster VOD joint venture as well as its success. ***First***, Blockbuster did not have the legal right to electronically distribute movie content – the indispensable element of a successful broadband based VOD system – in cable-quality digital format. ***Second***, due to technical problems with its broadband network, Enron could not transmit movies or other content with sufficient quality or speed to permit the VOD system to ever succeed. Notwithstanding these substantial defects – plus gross abuse of mark-to-market accounting – Enron discounted and recognized a wholly unrealistic projection of revenue over the entire 20-year life of the Blockbuster VOD venture into current periods, offset it by unrealistically low expense estimates, and failed to take any proper reserve for uncertainty of outcome or collectability. Consequently, Enron secretly recognized over $11 million of profits in the 4thQ 00 and the 1stQ 01 – ***two-thirds of the earnings*** claimed by EBS in those two periods – in one of the largest one-time and upward manipulations of

Enron's financial statements. Specifically, in 00, EBS executives were desperate because they were not generating any revenue, which was the catalyst behind the deal with Blockbuster. But an EBS director of engineering stated: "***Flat out, we didn't have the technology to do it, and we didn't have the expertise. It was a deal EBS executives entered into with Blockbuster with no capacity to do it***." A former EBS employee, who worked directly on the Blockbuster deal in multiple capacities, including product development, financial analysis, and content distribution, stated: "***[T]he Blockbuster deal was a fraud, and Enron's top management knew it***." Employees working on the Blockbuster VOD deal were told time and again, after they stressed the deal's lack of economic sense, to "***just drink more Enron Kool-Aid***." The Blockbuster deal had no economic substance at the time:

- Discussions with Blockbuster first got off the ground over two days in 3/00. Even though at that point EBS personnel had no way to deliver the VOD product, and no technical knowledge of what they were to deliver, within 48 hours the EBS team had agreed to a 20-year exclusive deal for VOD.

- EBS employees knowledgeable about the technical challenges knew from the day the deal was announced that the fledgling EIN could not then – and probably never would be able to – deliver VOD as represented by Enron. In 6/00, Rice personally tried to recruit two EBS engineers, who had left Enron out of frustration over EBS problems, by telling them that they were essential because "***we [Enron] can't deliver the Blockbuster deal***."

- While Blockbuster had the rights from Hollywood to supply videotapes, ***it did not have electronic-content distribution rights for movies***. When Enron tried to convince Hollywood to grant Blockbuster the right to distribute digital video content, Hollywood refused. EBS never succeeded in persuading Hollywood to grant Blockbuster the requisite content rights. By mid-11/00, the reality was that Hollywood studios would not give DSL-quality content to Blockbuster. Thus, Enron did not have one movie to offer, let alone DSL quality.

- While Enron announced that the Blockbuster deal test markets were a huge success in 12/00, Enron executives behind the scenes were directing the VOD team to revise and restructure the flawed business model because they knew it would never make money.

(p) Enron represented that it successfully managed its balance sheet by effectively hedging its merchant investments and placing billions of dollars of non-recourse debt in related but independent parties. In fact, the hedges were illusory, not real, and were largely dependent on the value of Enron's own stock where Enron still was exposed to the risk of its merchant investments. In fact, that debt was ***not*** non-recourse because if Enron's credit rating was downgraded that debt would become recourse as to Enron. This was an extraordinarily dangerous situation for Enron

because, in fact, based upon its true financial condition, which was known to its insiders, Enron did not deserve the investment-grade credit rating it was carrying and it was in constant and precarious danger of losing that rating when the true structure of its off-balance-sheet partnerships and SPEs became known and its true financial condition was revealed.

(q) In fact, Enron did not deserve an investment-grade credit rating and did not have a solid or substantial financial structure because it was inflating the value of its assets by billions of dollars while concealing billions of dollars of debt that should have been on its balance sheet. As a result, Enron's true financial structure was extremely fragile.

(r) As a result of the foregoing, the forecasts for strong continued revenue and earnings growth for Enron's wholesale and retail energy operations were completely false, in part, because the historical financial performance and condition of those operations had been materially falsified – thus there was no real basis upon which to forecast such further growth – and because neither of those businesses had the current strengths or success to justify the forecasts and claims for future growth that were being made.

(s) As a result of the foregoing, the revenue and EPS forecasts being made by and for Enron going forward were also grossly false because historical earnings, upon which those forecasts were based, were falsified and the result of improper accounting manipulation. In truth, Enron's various business operations not only had huge concealed losses, which would have to be recognized and would very adversely impact Enron's financial results, but those core business operations simply did not have the strength or success necessary for them to generate anywhere near the kind of revenue and profit growth being forecast for them.

301. On 3/9/01, Enron suddenly revealed it had ***terminated*** its Blockbuster VOD joint venture which it had been telling investors for months was a great success and which would lead to huge profits. *Bloomberg News* reported:

> Enron Corp. ... said ***Blockbuster didn't provide the "quantity and quality" of movies needed to drive the service.... "We were able to obtain some content which was adequate for the trial but wouldn't be enough when we move forward on a commercial basis," said Kelly Kimberly, senior vice president of Enron's Broadband Services unit***.

As Enron's stock fell sharply in the wake of this revelation, Enron and Enron's bankers rushed to try to support the stock and minimize the impact of the termination of the Blockbuster deal.

302. On 3/12/01, JP Morgan issued a report on Enron. It rated Enron a "***Buy***," continued to forecast 01 and 02 EPS of $1.77 and $2.08 for Enron and stated:

> We view the termination of the Enron/Blockbuster deal as ***a mild negative***....
>
> ***We are not guiding down our numbers at this point because we feel that the content-delivery story still remains the same. Enron will most likely be able to shop its technology around and ink another $1 billion worth of contracts in 2001. In addition, the content volumes anticipated under the 20-year Blockbuster deal will most likely be picked up with another provider, now that Enron can shop around.***

303. On 3/12/01, Lehman Brothers issued a report on Enron. It rated Enron a "***Strong Buy***," continued to forecast 01 and 02 EPS of $1.75 and $2.05 and a 20% five-year EPS growth rate for Enron and stated:

> - Termination of agreement with Blockbuster ***more bark than bite as delivery platform technically sound*** .... No change in ... fundamental outlook. Overreaction has created attractive entry point. Reiterate 1 – ***Strong Buy, Target Price $100***.
>
> * * *
>
> - ***Enron has proven the technical viability of the platform*** ....

304. On 3/12/01, CitiGroup issued a report on Enron. It rated Enron a "***Buy***," with a $100 price target, and forecast 01 and 02 EPS of $1.73 and $2.05, with a 20% long-term EPS growth rate for Enron. It also stated:

> Enron announced a mutual decision to terminate their agreement with Blockbuster....
>
> ... ***[W]e still maintain our bullish view on Enron***. We are not recommending Enron because of the potential for Content Delivery.... Instead, we see three reasons for owning Enron: Wholesale (Merchant) Energy, Retail Energy, and Bandwidth Trading. The first two are actuals, while the last is a very robust potential, in our view....
>
> WHOLESALE (MERCHANT) ENERGY: KEY DELIVER FOR 3-5 YEARS
>
> First, and most important, is Wholesale Energy .... This business, which now accounts for 80% of Enron's earnings, grew at approximately 50% CAGR for the past 4 years .... ***We are projecting minimum 30% compound annual growth at this segment for the next four years***....
>
> RETAIL ENERGY IS A UNIQUE FRANCHISE, BACKING UP GROWTH IN LATER YEARS

Enron Energy Services (Retail Energy) ... ***is moving ahead at a rapid pace***.... [T]he unit earned $103 million in 2000, and we project will earn more than $200 million in 2001.... ***[W]e project rapid growth from these levels, as we look towards the end of a 2001-2005 forecast period***.

Enron Energy Services is a unique franchise ... ***which should support corporate earnings growth in the 20%-25% during the last several years of our 2001-2005 forecast period***.

BANDWIDTH INTERMEDIATION (TRADING): PROJECT GREATER VALUE THAN ENERGY WITHIN 5 YEARS

Finally, we see Bandwidth Intermediation as a key growth driver, ***whose value is likely to exceed energy within 5 years***. The "top line" growth of bandwidth, approximately 20% per year, provides significantly greater upside potential than the gas and electricity markets ... ***we see it as sustaining Enron's growth after the energy opportunity becomes fully realized***.

* * *

The growth in bandwidth transactions validates for us the potential of the bandwidth commodity market.... For the full year 2001, we expect a 5-10 fold increase in transactions, with profitability likely in 2002/2003.

BOTTOM LINE: GROWTH INTACT

Bottom line, we see the key growth drivers – Merchant Energy, Retail Energy, and Bandwidth Intermediation – as solidly intact, and providing 20%-25% annual EPS growth over the next 5 years. In fact, we project a steady rise in Enron's growth rate, as Retail Energy and Bandwidth pick up relative to Wholesale Energy (by 2004, we see Enron's corporate EPS growing at 25%, up from today's 20%).

305. After Enron was forced to reveal the termination of the Blockbuster VOD joint venture and information became more widely circulated that Enron was having increasing difficulties obtaining payment for electricity sold from the Dabhol power plant by the provincial government, Enron's stock declined to as low as $51-33/64 on 3/22/01. Enron's insiders, accountants, lawyers and bankers knew that the price decline in Enron stock was triggering huge stock issuance obligations of Enron to SPEs ***that had been propped up at year-end 00 via restructurings to avoid the recognition and reporting of hundreds of millions of dollars of losses at that time. Thus, Enron and its banks flooded the markets with extremely positive and reassuring information about the fundamentals of Enron's business to try to support the stock***, while behind the scenes the Enron Defendants, Andersen, Vinson & Elkis, Kirkland & Ellis and certain of Enron's bankers worked feverishly to once again find a way to restructure several of the LJM2-related SPEs to avoid any major Enron stock

issuance which would have caused Enron's stock price to collapse and lead to the exposure and unraveling of the scheme.

306. On 3/13/01, JP Morgan issued a report on Enron. The report rated Enron a "***Buy***," continued to forecast 01 and 02 EPS of $1.77 and $2.08 for Enron and stated:

> We view yesterday's sell-off in response to a dissolved Blockbuster deal as overdone, ***and see a buying opportunity at these levels. We reiterate our Buy with a $120 price target***....
>
> ***We believe that Enron is undervalued at these levels*** ....
>
> ***Enron is still the delivery technology "arms dealer" to the content providers of the world*** .... ***The deal was not terminated because the technology doesn't work*** ....

307. On 3/22/01, *Bloomberg News* reported:

> Enron Corp., whose shares have fallen 17 percent in the past week on concern the company's telecommunications business won't generate the expected profit, ***said it still expects to earn $1.70 to $1.75 a share this year***.
>
> * * *
>
> "***Broadband is a core business of Enron's," spokesman Vance Meyer said. "All of our businesses are doing very well, and we plan to hit our earnings targets, and that includes broadband***."

308. On 3/22/01, CitiGroup issued a report on Enron. It rated Enron's stock a "***Buy***" and forecast 01 and 02 EPS to $1.73 and $2.05 and a 20% long-term EPS growth rate for Enron. It also stated:

> Enron Corporation: REAFFIRMS CONFIDENCE IN $1.70-$1.75 GUIDANCE FOR 2001 ... OUR OUTLOOK ON ENRON REMAINS STRONG
>
> Enron this morning reaffirmed their confidence in their 2001 earnings target of $1.70 to $1.75, on the heels of yesterday's sell-off. We remain confident in Enron's ability to achieve this goal, and maintain our 2001 EPS estimate of $1.73. As we stated yesterday, we think that the sell-off was unjustified as it related to concerns over ENE bandwidth unit.... We are also not concerned about last weeks announcement of the termination of the Blockbuster deal, as we have always placed a greater value on the bandwidth trading portion of Enron's bandwidth strategy, rather than on content delivery. ***We remain confident that bandwidth trading, the key segment within ENE's bandwidth strategy, will show strong growth in 1Q and the remainder of 2001***.

309. On 3/23/01, Enron held a conference call for analysts, money and portfolio managers, institutional investors and large Enron shareholders to discuss Enron's business. During the call – and in follow-up conversations with analysts – Skilling, Rice, Causey, Koenig and Fastow stated:

- ***Enron was giving an update on what was going on in the Company relative to the discussions it had at its analyst meeting in 1/01 and other discussions it had externally and with analysts subsequent to that time.***

- ***Enron's business was in great shape.***

- ***Enron's wholesale business was having an outstanding quarter consistent with the outstanding year it had last year and Enron expected that to continue.***

- ***In Enron's retail business it had already announced $4 billion in new contracts. Enron was highly confident in its target for the year of $225 million of income and $30 billion of new originated contracts.***

- ***In Enron's broadband business there had been some rumors out there that it had terminated its intermediation business. That was absolutely not true. Enron was having a great quarter in the intermediation side of the bandwidth business. It was ahead of plan and Enron expected this to be a good business moving forward.***

- ***Enron content services business was still a core area of the business. The Blockbuster contract was not providing Enron the content it needed for VOD. Enron was very optimistic about the outlook for that and over the next several months would have specific contracts to show investors.***

- ***EBS was coming along just fine. Enron was committed to it and very, very comfortable with where it stood. Enron's strength in the bandwidth business was predicated on a surplus in supply and fast declining prices are good for Enron. In fact, that is better for Enron as time goes on. So EBS was looking good.***

- ***In India, Enron had a government guarantee. So Enron did not feel that it was in a bad position there. It had strong contracts and guarantees and would prevail in India. Enron was very confident of that.***

- ***Some people had asked does Enron have to issue equity? From a credit standpoint, there was absolutely no need to issue additional equity in the foreseeable future. Enron had some financing vehicles with de minimus share requirements.***

- ***Enron had a strong balance sheet. Enron was in great shape on the balance sheet.***

- ***Despite a bad stockmarket, Enron was in good shape.***

- ***Enron was very comfortable with $1.70 to $1.75 EPS for 01.***

310. On 3/22/01, JP Morgan issued a report on Enron. It rated Enron a "***Buy***," continued to forecast 01 and 02 EPS of $1.77 and $2.08 for Enron and stated:

> ***We firmly believe that the Enron story is fully intact and remain confident that the only earnings risk is to the upside. We reiterate our Buy recommendation and our target price of ... $120 ... for Enron Corp....***
>
> ***... Enron has developed a better mousetrap of a business model, and we continue to believe that it should be rewarded for it.... Earnings visibility and competitive positioning have continually improved over ... time.***

* * *

Broadband concerns are overblown, underscoring the efficiency of the business model.

Our best estimate for the 8.3% drop yesterday is Enron's confirmation that it would redeploy 200-250 employees at its Enron Broadband unit. The company and market sources confirm that Bandwidth Intermediation is taking off and liquidity in trading capacity is building up quickly. Enron said that the bulk of the displaced employees are the result of either consolidating its locations (Portland, Oregon and Houston) or from Broadband businesses other than Intermediation and Content Delivery which remain solidly on track. The dissolution of the Blockbuster exclusivity is a very minor issue and is in no way a harbinger of Content Delivery woes.

311. In mid 3/01, Skilling traveled to Portland, Oregon to meet privately with Enron broadband executives and employees. In the meeting, Skilling stated that the broadband business faced a "complete meltdown." Despite that knowledge, in late 3/01, Skilling stated to the public in a meeting in New Orleans that the broadband operation was going full speed – "pedal to the metal."

312. On 3/31/01, Lehman Brothers issued a report on Enron. It rated Enron a "***Strong Buy***" and continued to forecast 01 and 02 EPS of $1.82 and $2.18 for Enron. Lehman Brothers also ***raised*** the five-year secular growth rate to 20% for Enron. It also stated:

* Relative Valuation Has Bottomed Out. ***Mounting Evidence Of Major New Markets Will Act As Catalyst To Expansion In Multiple. At A Minimum We Expect Collection Of The 20% Growth In EPS***.

* * *

New Market Catalyst Coupled With Solid Earnings Gains Likely To Lift Stock Out Of Doldrums: ***Enron has quietly lifted earnings guidance from 15% to 20% over the last 12 months indicating that the present rate is sustainable for the foreseeable future.... Significant traction has been gained. Presentations at the annual analyst meeting and the assumption of a higher profile in quarterly investor briefings lead us to believe that market penetration in these new areas will rekindle interest in the stock***.

313. As Enron approached the end of its 1stQ 01, Enron, its lawyers, accountants and bankers came under excruciating pressure to support Enron's stock price. Enron's stock price was weakening dramatically, falling to as low as $51-33/64 on 3/22/01, piercing more stock issuance price triggers. Enron, its accountants, bankers and lawyers knew that if Enron disclosed the true nature of its finances in reporting its 1stQ 01 results, *i.e.*, that its profits were grossly overstated while its debt levels had been understated by billions and with the now triggered stock issuance obligations, Enron's stock would collapse, triggering further stock issuance guarantees, causing Enron to lose its

investment-grade credit rating and bringing the Enron Ponzi scheme to a halt. Thus, secretly behind the scenes, Enron, Andersen, Vinson & Elkins, Kirkland & Ellis and certain of Enron's bankers worked feverishly in late 3/01 to ***yet again restructure*** several of the SPEs with which Enron had done illicit transactions to artificially boost its profits and high debt, especially the Raptors. However, because Enron and its bankers, accountants and lawyers were running out of tricks to manipulate Enron's finances, they were forced to repeat the restructuring done at year-end 00 by recapitalizing the Raptor SPEs in a fashion that again simply increased the number of shares of stock Enron would have to issue if its stock declined to now lower trigger prices. This action represented a massive double-down bet on the price of Enron stock, which put tremendous pressure on the participants in the scheme to keep Enron stock trading at high levels.

314. Nevertheless, Enron and its bankers continued to assure investors and the markets that Enron's core wholesale energy and retail energy businesses were very strong and that its broadband content delivery business would still be able to show significant, albeit slower growth, that its broadband intermediation business ***actually was benefitting*** from the volatility and decline of broadband access prices and that the worst was over with respect to Enron's Dabhol power plant situation in India.

315. On 4/3/01, Enron issued a release regarding a new long-term energy management contract with J.C. Penney:

> Enron Energy Services, a subsidiary of Enron Corp., and J.C. Penney Company, Inc., ... announced today a long-term energy management agreement covering the purchase of more than $600 million in energy-related commodities.

316. On 4/17/01, Enron reported ***better-than-expected*** 1stQ 01 results:

> Enron Corp. announced today an 18 percent increase in diluted earnings per share to $0.47 for the first quarter of 2001 from $0.40 a year ago. Results for the quarter include:
>
> • a 281 percent increase in revenues to $50.1 billion;
>
> • a 20 percent increase in net income to $406 million;
>
> * * *
>
> • a 59 percent increase in new retail energy services contracts to $5.9 billion; and

- a seven-fold increase in broadband network services delivered.

"***Enron's wholesale business continues to generate outstanding results. Transaction and volume growth are translating into increased profitability," said Jeff Skilling, Enron's president and CEO. "In addition, our retail energy services and broadband intermediation activities are rapidly accelerating***."

* * *

Wholesale Services: Income before interest, minority interests and taxes (IBIT) increased 76 percent to $755 million in the recent quarter, ***marking Wholesale Services' 21st consecutive period of year-over-year quarterly earnings growth***.

* * *

Retail Energy Services: ... IBIT for the retail business increased to $40 million in the first quarter.

Contracting in the first quarter increased almost 60 percent to $5.9 billion. ***Recently announced long-term energy management customers include Owens-Illinois, Quaker Oats, Eli Lilly, JCPenney and Saks Incorporated***.

* * *

Enron's global broadband platform is substantially complete .... Enron's broadband intermediation activity increased significantly, with over 580 transactions executed during the quarter – more than in all of 2000.

317. On 4/17/01, Enron held a conference call for analysts and investors to discuss Enron's 1stQ 01 results and its business. On 4/18/01, Enron executives Skilling, Koenig, Rice, Causey and Fastow also appeared at Enron's Analyst Conference in New York City. In the conference call and in follow up conversations with analysts and in formal presentations and break-out sessions at the conference, they stated:

- ***For the first quarter of 01, Enron reported outstanding results, including an 18% increase in EPS to $.47 compared to $.40 a year ago. A 281% increase in revenues to $50 billion versus $13 billion a year ago and a 20% increase in net income to $406 million versus $338 million a year ago. Enron's 1stQ results demonstrated the strength of all of its businesses***.

- ***Wholesale services led Enron's strong performance in the first quarter. Total income for the quarter increased 76% to $755 million from $429 million a year ago marking wholesale services' 21st consecutive period of year-over-year quarterly earnings growth. These earnings were primarily attributable to Enron's leading role worldwide in its commodity sales and service business where Enron markets and delivers energy and other commodities. As for the wholesale business – just an outstanding quarter, another outstanding quarter***.

- ***Enron had two revenue sources in EBS, bandwidth intermediation and content services. In its bandwidth intermediation business, it was making excellent progress in creating a commodity market for bandwidth. During the quarter, it completed***

580 transactions or more than double its 4thQ 00 activity and more than all of the year 00 activity. It also more than doubled its customer base during the quarter with the addition of 70 new customers for a total of 120 customers and counterparties.

- ***Overall, on the intermediation side, very strong development of the marketplace and the commoditization of bandwidth, and Enron was feeling very good about the development of this business.***

- ***As to bandwidth and content services, Enron was focused exclusively on high potential, near-term opportunities with large content providers to provide VOD. Enron had already successfully demonstrated the technical capability of its network. During the 1stQ, Enron terminated its relationship with Blockbuster due to their inability to secure content from major movie studios. Enron expected to secure premium content directly from content owners.***

- ***First quarter results were great. Enron had a great quarter, the Company was doing very well. Each of Enron's major businesses continued to generate high levels of earnings and provided opportunities to extend its business model to new markets.***

- ***Enron was very optimistic about each of its businesses and was confident that its record of growth was sustainable for many years to come. Enron felt very good about the prospects for the future.***

- ***Enron was increasing its earnings forecasts for the year 01 to a range of $1.75 to $1.80 per share with 15+% growth in EPS in 02.***

318. On 4/17/01, Skilling appeared on CNNfn, was interviewed and stated:

> [W]e ... said to investors, as long ago as December ... that we felt very comfortable with the $1.70 to $1.75 number for this year.... [W]e're raising that from $1.75 to $1.80. ***And we feel very comfortable with that number***....

319. On 4/17/01, CS First Boston issued a report on Enron. It rated Enron a "***Strong Buy***," with a $110 target price, and ***increased*** Enron's forecasted 01 and 02 EPS to $1.80 and $2.25. It also stated:

> ENE reported 1Q'01 EPS of $0.47 .... Our estimate was $0.45.
>
> * * *
>
> Enron Energy Services (EES) showed $40 million in 1Q'01 ebit vs. $6 in 1Q'00. ***New contract signings of $5.9 billion keep EES on target for our ebit estimate of $225 million in '01 vs. $103 in '00.***
>
> Our '01 estimate is $1.80 per share.... ***Based on the trends shown in the 1Q'01 data, we are increasing our '02 eps estimate from $2.20 to $2.25.***

320. On 4/18/01, JP Morgan issued a report on Enron. It rated Enron a "***Buy***," with a $120 price target, and ***increased*** Enron's forecasted 01 and 02 EPS to $1.77 and $2.08. It also stated:

> 1Q01 RESULTS STRONG AS EXPECTED; REITERATE BUY

* * *

- Enron's 1Q01 Earnings Results were strong as expected, and we reiterate our Buy with a $120 price target.

* * *

- Retail Energy continues to ink contracts towards its 2001 $32 billion contract value goal.

- ***Broadband services is growing***, albeit a slower pace due to customer's capital issues and economic climate.

* * *

- EBS ... ***also hit higher transactional volumes than in all of 2000***. It seems the earnings stream in this segment may be a bit more lumpy in these earlier stages than our initial forecasts would have indicated. ***We believe this is of little consequence to its development, however, since the businesses have met or exceeded profitability and performance targets internally. We recently talked to management regarding the business, and felt comfortable they were getting adequate traction with customers and the interest for its bandwidth intermediation services exists. On the content side, it seems that management is more than satisfied with business development post-Blockbuster, as they have access to twice as much content as they did during the agreement. The stumbling block it seems is not technology*** ....

321. On 4/18/01, Merrill Lynch issued a report on Enron. It rated Enron a "***Buy***" and increased Enron's forecasted 01 and 02 EPS to $1.80 and $2.15, with an 18% five-year EPS growth rate for Enron. It also stated:

Raising the Bar – Again!

- We reiterate our Buy opinions....

- ENE's operating growth continues to soar, delivering record 1Q'01 operating EPS of $0.47 vs. our estimate of $0.46 and $0.02 better than the Street. In a word: ***impressive***. Specifically:

	1Q'01
Revenues	+281%
IBIT	+27%
Op. EPS	+17%

* * *

- ***While Wholesale (WEOS) was the clear standout, strength was evident throughout***....

- ***Given the strong performance in 1Q'01 ... we are once again raising EPS expectations in '01 & '02, from $1.74 and $2.06 to $1.80 & $2.15, respectively***.

Impressive Indeed

Exceeding Expectations.... ***[P]erformance ultimately comes down to earnings growth – and Enron continues to deliver.*** Continuing a track record of outperforming consensus expectations over the last several quarters, ***Enron once again posted impressive results*** ....

Raising the Bar.... [O]ur EPS forecasts for Enron are once again on the rise. Our '01 and '02 forecast is increasing from $1.74 and $2.06 to $1.80 and $2.15, respectively. Bottom line: EPS growth momentum appears to be on the rise. ***Following 15% growth in '98, 18% growth in '99 and 25% growth last year, we believe growth in '01 and '02 now solidly rests in the 20%+ range***.

* * *

Broadband is Executing

Enron has continued to successfully execute its Broadband strategy despite recent industry turmoil and negative investor psychology in the tech/telecom marketplace. At 18,000 route miles of fiber ... connecting into third-party networks, ENE's broadband foundation is now effectively complete. On this base, ENE executed over 581 transactions in 1Q'01 with about 120 customers and counter-parties, up from 236 transactions with only 50 customers just last quarter.

Despite speculation of its demise (given recent downsizing and internal redeployment efforts and the Blockbuster separation), Enron remains very committed to its content services strategy.... ***Enron has indicated that pending discussions in advanced stages could in short order yield twice as many movies than with BBI***. As these new relationships solidify, we believe ENE will achieve its target of signing $1 billion in new contract value in '01, effectively equal to the value originally ascribed to the 20-year Blockbuster agreement....

322. On 4/18/01, Lehman Brothers issued a report on Enron. It rated Enron a "***Strong Buy***," increased Enron's forecasted 01 and 02 EPS to $1.80 and $2.10, and forecasted a 20% five-year EPS growth rate for Enron. It also stated:

- ***Enron guided annual street expectations higher while handily beating Q1 consensus estimates. Raising our 01 and 02 estimates to $1.80 and $2.10 respectively. Continue to recommend shares in ENE*** ....

* * *

- ENE reported results of $0.47 vs. consensus expectations of $0.45. Results were driven by Wholesale operations .... ***Retail and Broadband segment activities are rapidly gaining traction***.

- Management raised earnings guidance for 2001 to a range of $1.75-$1.80 ....

- ... ***[W]e are raising our 2001 and 2002 annual estimates to $1.80 and $2.10 respectively***.

323. On 4/19/01, CIBC issued a report on Enron. It rated Enron a "***Buy***" and ***increased*** Enron's forecasted 01 and 02 EPS to $1.78 and $2.05. It also stated:

> Enron Energy Services – Reported EBIT of $40 million compared to a 6 million in Q1/00. Revenues for this high-growth segment in the current quarter were $693 million, up from $314 million a year ago. Total contracting in the first quarter increased to $5.9 billion....
>
> Enron Broadband Energy Services – ... ***EBS has completed 580 transactions, which represents more transaction than completed in all of 2000***. Further there were 70 new customers who were added, bringing the total to 120.

324. As Enron and its bankers flooded the market with very positive statements about Enron's finances and business and after Enron reported better-than-expected 1stQ01 results, Enron's stock stabilized and increased in price to as high as $64-3/4 at the end of 4/01, as Enron and its bankers continued to flood the securities markets with extremely bullish statements about the current success of Enron's business and its future prospects – actually ***increasing*** the forecasts of Enron's future revenue and earnings growth. But then, on 5/8-9/01, Enron stock again fell from $57-13/16 to $48-7/16 in two days, trading as low as $52 on 5/17 – ***below equity issuance target prices***. Again, Enron and its bankers rushed to support Enron's stock price.

325. On 5/18/01, JP Morgan issued a report on Enron. It rated Enron a "***Buy***," with a $120 price target, and ***increased*** Enron's forecasted 01 and 02 EPS to $1.77 and $2.08 and stated:

> Enron Weakness Not Explainable Fundamentally; Reiterate Buy
>
> * * *
>
> We don't believe the recent slide of Enron's stock is based on fundamentals or a negative catalyst, but rather a lack of willingness on the part of some investors to believe in Enron's continued transformation and application of its business model. ***The company has consistently delivered growth in its scale, reach, products and capabilities across both the Energy and other sectors. We strongly believe that Enron will continue to deliver, and don't view some persistent negative news flows as capable of derailing strong performances by its businesses as a whole. We reiterate our Buy rating and $120 12-month price target***.
>
> ***Enron's fortunes have certainly not peaked ... we believe the earnings power of the company continues to grow***.... ***[W]e are very confident that Enron is on track***.

326. On 5/18/01, CitiGroup issued a report on Enron. It rated Enron a "***Buy***," with a $100 price target, while continuing to forecast 01 and 02 EPS of $1.80 and $2.05 and a 20% long-term EPS growth rate for Enron. It also stated:

> Enron Corporation: REITERATE BUY; BELIEVE LEADERSHIP INTACT
>
> • ... Stock price down 39% from 52-week high ($90 on August 23) vs. peer group, up 1.9%

* * *

- ***We see ENE's business fundamentals intact, and in fact, improving. Growth rate expansion to 25% from 20%; growing returns on capital; bandwidth trading all good reasons to own stock – justify premium valuation***.

327. On 6/7/01, CitiGroup issued a report on Enron. It rated Enron a "***Buy***," with a $100 price target, and forecast 01 and 02 EPS of $1.80 and $2.05, with a 20% long-term EPS growth rate for Enron. It also stated:

> Enron Corporation : Reiterate Buy; Merchant Energy Fundamentals Remain Strong
>
> - We reiterate our Buy rating on ENE, in the face of the recent weakness of the stock, down 44% from 52-week high ($90 on August 23).
>
> * * *
>
> - In our view, recent weakness has been driven by factors not related to core Energy Merchant business, namely India and their broadband strategy.
>
> * * *
>
> ***Continued Concern Over Broadband Business***
>
> We continue to believe strongly in Enron's bandwidth trading strategy, and see it as a tremendous opportunity to extend their industry-leading risk management skills to the rapidly developing bandwidth commodity market. Enron's core strategy remains the management of price risk for customers, which is facilitated by their Bandwidth Intermediation (trading & marketing) group. We are not deterred by what some see as negative developments in other segments of their bandwidth efforts (*i.e.* Blockbuster deal termination in Content Delivery)....
>
> Bottom Line
>
> We reiterate our Buy rating on ENE. ***Their fundamentals not only remain intact, but are in fact growing stronger, in our view***.... ***[W]hich we expect to drive 20% earnings growth over the next several years (expanding to 25% by 2005***).

328. On 7/12/01, Enron reported ***better-than-expected*** 2ndQ 01 results:

> Enron Corp. announced today a 32 percent increase in diluted earnings per share to $0.45 for the second quarter of 2001 from $0.34 a year ago. Strong results in the quarter include:
>
> - a 40 percent increase in net income to $404 million;
>
> * * *
>
> - an 89 percent increase in new retail energy services contracts to $7.2 billion.

"***Enron completed another quarter of exceptional performance. Our wholesale and retail energy businesses continue to dramatically expand business activity and increase profitability***...." said Jeff Skilling, Enron president and CEO.

"In contrast to our extremely strong energy results, this was a difficult quarter in our broadband business. ***However, our asset-light approach will allow us to adjust quickly to weak broadband industry conditions. We are significantly reducing our broadband cost structure to match the reduced revenue opportunities currently available***," said Skilling.

* * *

Retail Energy Services: ... ***IBIT for the business increased 30 percent to $60 million in the second quarter. Enron's retail business is firmly on track in 2001 to more than double last year's results to $225 million***.

In the second quarter, $7.2 billion of new contracts were completed, which represents an 89 percent increase compared to a year ago. ***Enron has very successfully penetrated key customer segments with its outsource energy product*** ....

329. On 7/12/01, Enron held a conference call for analysts and investors to discuss Enron's 2ndQ 01 results and its business. On 7/25-27/01, Enron executives Skilling, Koenig, Causey, Kean and Fastow also appeared at Enron Analyst Conferences in New York City and Boston. During the conference calls and in follow-up conversations with analysts and in formal presentations and break-out sessions at the conferences, they stated:

- ***For the 2ndQ 01, Enron reported outstanding results including a 40% increase in net income to $404 million versus $289 million a year ago and a 32% increase in diluted earnings per share to $.45 compared to $.34 a year ago. As the numbers show, Enron's energy business fundamentals were excellent***.

- ***Enron had confidence in achieving EPS for the full year 01 of $1.80 and $2.15 per share for 02. Enron was expressing its confidence, strong confidence in the remainder of this year and next year given the business prospects that it saw on the horizon***.

- ***The EES business was poised to expand rapidly with commensurate increases in profitability. Enron was firmly on track to achieve its 01 target of $225 million of IBIT in its retail business. So, the retail business had a great, great quarter as well***.

- ***Broadband services reported $102 million IBIT loss in the 2ndQ compared to a loss of $8 million a year ago. This quarter's loss reflects significantly lower revenues but comparable operating expenses as compared it to the prior period. Industry conditions in the broadband area were very weak. Luckily, Enron's strategy of minimizing the amount of hard assets allowed it to significantly reduce costs to be more in line with the revenue opportunities that were in the industry. Enron's focus going forward would be in the intermediation area***.

- ***In bandwidth intermediation, Enron was making good progress, continued good progress in creating a market for bandwidth. Enron had completed over 759 transactions in the 2ndQ, which was a 31% increase over the 1stQ of this year.***

Enron also increased its customer base during the quarter with the addition of 45 new customers for a total of 165 customers.

- ***Overall, a great quarter. 2ndQ results were outstanding. Business fundamentals remained strong. Enron's new businesses were expanding and adding to its earnings power and Enron was well positioned for future growth.***

- ***Enron's projected EPS for 01 was $1.80 – a 22% increase on the prior year. Enron expected EPS to be continuing to grow at that kind of rate.***

- ***The earnings guidance Enron was giving was that it believed that 22% this year looks very good and it could continue that kind of growth rate next year. That would give investors some sense of Enron's confidence from what it was seeing. Enron's business was very strong.***

- ***Enron was certainly not signaling any slowdown. Enron expected the kind of strong growth seen from Enron in the past would continue. Enron had met or exceeded earnings expectations for every quarter for the last four years. Enron continued to see very strong dynamics and fundamentals for its business and believed that it could perform at that level. Over time, Enron's stock price would come back.***

- ***Enron's transactions with LJM during the 2ndQ were only a couple of real minor things related to transactions that had been done earlier. There were no new transactions in LJM.***

- ***Enron felt very good about the prospects for the business. That was why Enron provided the guidance for next year at $2.15. Enron believed in a 20% kind of growth rate and was very comfortable with it. Enron felt very good about that and giving that guidance.***

330. On 7/12/01, *Bloomberg News* ran a story about Enron's Dabhol Power Plant stating:

ENRON'S CEO SAYS WORST IS OVER IN INDIAN POWER UNIT DISPUTE

Enron Corp. Chief Executive Jeffrey Skilling said he thinks the worst is over in the dispute between Enron's Dabhol Power Co. utility and its sole customer, an arm of the Indian state of Maharashtra.

"***I think we're past the high-water mark***," Skilling said in an interview following the release of the company's second-quarter earnings. "***There will continue to be noise, but I think the contracts are very clear. They have very strong provisions, so they will be enforced***."

Enron has "zero intention of taking any economic loss on the project," he said. "Zero."

331. On 7/12/01, Skilling appeared on CNNfn "Market Call," was interviewed and stated:

CNNfn: Congrats on the quarter. But it's an interesting quarter for you ***in that, for a change, not everything's firing on all cylinders.***

SKILLING: Well, you know, it's a little bit of the "Tale of Two Cities." You know, the energy business is very strong. As you can see from our numbers, we had a great quarter-another great quarter in the energy

> business. Broadband business is suffering from some of the problems the broadband business has, ***but luckily, in Enron, it's a very small portion of our net income. So, the real story for Enron is this strong, strong growth and strong profitability of our energy business***.

332. On 7/12/01, Skilling appeared on CNNfn "The Money Gang," was interviewed and stated:

> ***The energy business is very strong. As you can see from our numbers, we had a great quarter, another great quarter, in the energy business.... So the real story for Enron is just strong, strong growth and strong profitability of our energy business***.

333. On 7/12/01, JP Morgan issued an e-mail to investors regarding Enron which stated:

> ***Earnings release very positive; Reiterate Buy for ENE***
>
> * * *
>
> Action: Reiterate Buy
>
> Comments on business unit performance:
>
> 1. Wholesale marketing and trading: ***Very positive news from this segment, which continues to drive growth for the company***....
>
> 2. Retail Energy (EES): Their contract amounts booked this quarter hit our targets, and the business unit is on track to double earnings over last year. The demand for services the business provides is high and we feel very comfortable that Retail will continue to do very well ....
>
> * * *
>
> ***In addition, the company has reiterated guidance for 2001, and raised guidance for 2002 up to $2.15 per share***.

334. On 7/13/01, CIBC issued a report on Enron. It rated Enron a "***Buy***" and ***increased*** Enron's forecasted 01 and 02 EPS to $1.80 and $2.15. It also stated:

> ***Enron delivered another quarter of solid performance driven by strong results from wholesale energy activities***. Enron reported an increase in fully diluted EPS (recurring) of 32% to $0.45 per share, up from $0.34 in Q2/00. ***We are maintaining our BUY rating .... Management also reiterated its confidence in meeting the guidance of $1.80 in earnings for the full year 2001 and provided new guidance on fiscal year 2002 of 2.15 per share. We are increasing our estimates to reflect management guidance and prospects in wholesale and retail energy markets***.

335. On 7/13/01, CitiGroup issued a report on Enron. It rated Enron a "***Buy***" with a $75 price target. It also ***increased*** Enron's forecasted 01 and 02 EPS to $1.80 and $2.15 with a 20% long-term EPS growth rate for Enron. It also stated:

Enron Corporation: Strong 2Q Driven by Merchant Energy, Above Expectations

- ENE reported strong 2Q EPS of $0.45 ... well above our expectations ....
- Merchant Energy again drove the strong results, with IBIT up 93% over last year ....
- Bandwidth trading, somewhat below expectation, still shows strong sequential growth, up 31% – 759 transactions in 2Q:01 vs. 580 in 1Q:01. Partial reason for weakness appears to be credit concerns with some telecom counterparties.
- Enron reaffirmed 2001 guid. of $1.80 and introduced 2002 guidance of $2.15. We raise our 2000 EPS estimate by $0.10 to $2.15, reflecting our continued confidence in their Merchant Energy platform.

* * *

RETAIL ENERGY SERVICES

Enron Energy Services, Enron's retail energy services IBIT increased to $60 million in 2Q:01 (in-line with our expectations) vs. $40 million in 1Q:01 and $46 million in the year ago quarter. ***It appears more likely that Enron will earn towards the upper end of our estimate range of $200-$250 million for 2001, up from $103 million in 2000 and a ($68) million start-up loss in 1999. Their official guidance is at $225 million and we think it is likely that they will come in above that number***. We see this segment as growing increasingly important for Enron.... We expect this segment ... to grow rapidly, and be a strong source of visible earnings growth during the last half of our 2001-2005 period.

336. On 7/18/01, Enron filed a Form S-3 with the SEC pursuant to the registration of $1.9 billion in Zero Coupon Convertible Senior Notes due 2021. This Form S-3 incorporated Enron's Form 10-K for 00. This Registration Statement was materially false and misleading in violation of GAAP. The Registration Statement was signed on 5/31/01, by Skilling, Causey, Fastow, Belfer, Chan, Blake, John Duncan, Gramm, Jaedicke, Lay, LeMaistre, Mendelson, Pereira, Savage, Wakeham and Winokur.

337. On 7/25/01, *Bloomberg News* reported on Enron's Analyst Conference in New York:

ENRON'S SKILLING VOWS TO MEET OR BEAT PROFIT PROJECTIONS

Enron Corp. will meet or beat its profit projections this year and next, Chief Executive Jeffrey Skilling said, criticizing analysts who've recently lowered their forecasts for the largest energy trader.

Enron said July 12 that it expects to make $1.80 a share this year and $2.15 in 2002.

"***We will hit those numbers, and we will beat those numbers***," Skilling told a meeting of analysts and investors in New York.

* * *

Analysts have also cited concern about unpaid power bills by Enron customers in California and India, and losses by Enron's broadband trading unit, which may hurt Enron's profits.

"***All of these are bunk," Skilling said. "These are not issues for this stock.***"

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The refusal of a state government in India to pay $64 million in power bills is not going to hurt Enron's earnings, Skilling said.

"***In India, we have government guarantees on the performance of our contract," Skilling said. "We're convinced we'll be paid in full" for the $875 million the company has invested so far, plus unpaid power bills.***

338. On 7/26/01, Lehman Brothers issued a report on Enron. It rated Enron a "***Strong Buy***" and ***increased*** Enron's forecasted 01 and 02 EPS to $1.82 and $2.18 while forecasting a 17% five-year EPS growth rate for Enron. It also stated:

- ***Wholesale Continues To Knock The Cover Off The Ball. Retail Earnings Showing Acceleration As Backlog Expands 89% Yr/Yr And 22% Q/Q.***

* * *

- ... ***In Our View, Stock Has Minimal Risk*** ....

Wholesale Reports Another Strong Quarter: Wholesale EBIT grew 93% versus 2Q 2000. ***Operations continue to hit on all cylinders***....

Retail Snowball Beginning To Roll Downhill: Energy Services EBIT grew 30% for the quarter. The leading indicator for anticipated growth is new contracts. For the quarter EES registered $7.2 billion in new contracts. This represents an 89% increase versus 2Q 2000 and a 22% increase over Q1 2001.... With the second quarter in the bank (2Q by far toughest comparison for the year) EES is right on target to double EBIT in 2001. ***We continue to view this segments potential in the context of the proverbial snowball thats been launched downhill.***

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The Silver Lining In The Broadband Storm Cloud: Transactions, volumes delivered and customers continue to expand at a prodigious rate.... Transactions registered similarly spectacular gains up 31% versus Q1 and over 33-fold versus last year.

339. Each of the statements made between 3/12/01-7/26/01 was false and misleading when issued. The true but concealed facts were:

(a) Enron's financial statements and results issued during this period were false and misleading as they inflated Enron's revenues, earnings, assets, and equity and concealed billions of dollars of debt that should have been shown on Enron's balance sheet, as described in ¶¶418-611.

(b) Contrary to the representations that Enron's transactions with its related parties were fair to Enron and on terms representative of those that could be obtained in arm's-length transactions with third parties, in fact, the transactions with Enron's related parties were grossly unfair to Enron and set up in a manner to permit Enron to pay off key Enron insiders, including Fastow and certain favored investment banks and bankers, for their participation in the scheme, which included arranging the illicit and illegal financial transactions with those related parties on terms that no independent third party would ever have agreed to, as detailed herein.

(c) Enron's financial condition, including its liquidity and credit standing, was not nearly as strong as represented, as Enron was concealing billions of dollars of debt that should have been reported on its balance sheet – and which would have very negatively affected its credit rating, financial condition and liquidity – by improperly transferring that debt to the balance sheets of various non-qualifying SPEs and partnerships it controlled, as detailed herein.

(d) Enron generated hundreds of millions of dollars of profits and transferred billions of dollars of debt off its balance sheet by entering into non-arm's-length transactions with SPEs and partnerships Enron controlled, including Chewco/JEDI, for which Enron had guaranteed loans to the SPEs and Barclays had provided a phony equity portion, to avoid improper consolidation.

(e) The results of Enron's WEOS business – its largest business unit – were manipulated and falsified to boost its reported profitability in various ways. ***First***, by phony or illusory hedging transactions with entities that were not independent of Enron. ***Second***, by the abuse of mark-to-market accounting by adopting unreasonable contract valuations and economic assumptions when contracts were initially entered into. And ***third***, by arbitrarily adjusting those values upward at quarter's end to boost the wholesale operation's profits for that period – a practice known inside Enron as "moving the curve." For instance:

(i) Prospective international deals were prepared by internal Enron "developers." The developers presented the materials to Enron's RAC department with an estimated net present value ("NPV"), calculated over 20 years, and Enron's return on investment ("ROI") over the life of the deal. To determine the NPV and ROI, numerous economic assumptions – such as foreign-exchange rates, revenue growth, inflation rates, cost escalation, economic growth and demand – were used. However, Enron manipulated the assumptions to inflate projected revenues and deflate projected costs. For example, Enron picked the lowest possible consumer-price-index figure from all available world markets and the highest possible revenue-stream escalator figures, which in combination would boost a project's "profit" by many millions of dollars; and

(ii) Enron's Liquid Propane Gas ("LPG") Group created phony earnings at year-end 00 using earnings-curve manipulations. As an example, the LPG Group had a deal for a long-term fixed-price LPG position involving gas plants in England. Enron guaranteed delivery of the 10,000 tons of LPG per month over the length of the contract, based on the market price when the gas was delivered and, using mark-to-market accounting, booked the projected total contract revenue. Even though Enron could not determine what the LPG price would be so many years out, Enron moved the curve up $20 million on the deal because Enron needed to get its revenue numbers up for the end of 00. When one trader refused to move the curve up because there was no valid justification to do so, the trader was told to mind his own business and the curve was moved up by a superior. The trader left Enron because of this manipulation. This was not an isolated incident as, in fact, ***curve manipulations occurred in every quarter in all of Enron's WEOS operation***.

(f) The financial performance and the value of contracts entered into by EES were grossly overstated through various techniques, including the misuse and abuse of mark-to-market accounting to create huge current-period values for Enron on what were, in fact, highly speculative and indeterminate outcomes of long-term contracts. This resulted in EES improperly and prematurely recognizing hundreds of millions of dollars of revenue that not only boosted its financial results, but allowed top EES managers and executives to collect huge bonuses based on these improperly inflated contract valuations.

(g) EES was, in fact, losing hundreds of millions of dollars on many of its retail energy contracts. To induce customers to enter into these agreements – so that Enron could claim its EES business was growing and succeeding – Enron had, in effect, "purchased" their participation by promising them unrealistic savings, charging low prices Enron knew would likely result in a loss, and spending millions of dollars in the short term to purchase purportedly more energy-efficient equipment, a significant portion of which costs Enron knew it was likely never to recover and certainly never to make a profit on. Enron executives knew that Enron would lose money on the EES deals, but had to make them more and more attractive to generate new clients, while the Company utilized unrealistic projections and mark-to-market accounting to mislead investors into believing that the EES contracts were making money. For instance:

(i) EES had originally targeted residential retail customers, but this failed due to insurmountable hurdles, including the fact that Enron did not have sufficient infrastructure to bill residential customers monthly. In 97, Enron transformed EES into a ***commercial-industrial business*** and then purportedly signed up several major customers, including Starwood Properties, Chase Bank, Eli Lilly, Owens-Corning, Simon Properties, the Archdiocese of Chicago, and others. However, EES still faced insurmountable hurdles: ***One***, because each customer's contract was individualized, there were no economies-of-scale savings and the cost of performance precluded making a profit. ***Two***, Enron still did not have sufficient infrastructure to do the monthly billing. ***Three***, a prerequisite for each contract was for Enron to upgrade the customer's facilities with huge current capital expenditures, which was uneconomical and guaranteed losses on most contracts;

(ii) EES entered into DSM contracts, which bundled energy-related products and services for its customers, including providing power and equipment as commodities to companies like J.C. Penney, Quaker Oats, IBM, Starwood Properties, Albertsons, Safeway, and others, along with long-term management and consulting services on the customers' usage of the power over the life of the contract. Enron booked 100% of the commodity portion of the contract up front, and 70% (on average) of the estimated long-term services revenue. Because the revenues from each contract were pulled into the single quarter when the contract was signed using mark-to-market accounting, EES had to close increasingly higher revenue-producing DSM transactions to

show growth in EES's revenues and profits. This was called "***continually feeding the monster***" inside EES;

(iii) The Enron DSM contract with J.C. Penney had losses of $60 million, the IBM deal was a significant loss for Enron from the outset, and the CitiGroup contract was known at its inception to cost Enron millions in losses. In the 4thQ 99 EES deal with Owens Illinois, EES recognized a multi-million dollar profit when the deal closed, even though it was known this deal would likely lose money for EES. When CitiGroup and other money-losing EES deals were discussed inside EES, people said "***EES always sells at a negative***"; and

(iv) In connection with EES's huge Eli Lilly deal – $1.3 billion over 15 years announced in 2/01 – the contract called for Enron to provide Lilly its commodity energy needs ($595 million), plus operation, maintenance and repair ("OMR") ($510 million), and demand-side management – DSM – ($195 million). Enron recognized over $40 million of the commodity portion of the contract as revenue in the 1stQ 01 without any basis in fact. A special $50 million cash "special distribution" payment to Lilly, to be paid on 2/23/02, related to Enron's DSM savings anticipated for Lilly over the course of the contract. But to provide the DSM to Lilly – making Lilly's facilities more energy efficient – Enron first had to spend $94 million to upgrade Lilly's plants in the hope that it would recoup large energy savings as a result of modernizing the Lilly plants. Moreover, to realize OMR savings, Enron had to train and deploy 250 workers to replace Lilly personnel. For Enron to ever make a profit, it had to recover its up-front investment – $50 million in cash to do the deal, $94 million for facility upgrades, and $24 million in labor costs (training and transfers). And Enron had to pay Lilly if the anticipated savings fell short of projections. For Lilly, the Enron EES contract was a win-win situation: all its factories would be upgraded at no cost, a new work force would be hired and trained at substantially lower labor costs to Lilly, ***plus it got $50 million up-front cash just to sign the contract***. Even though Enron claimed the Lilly deal was a $1.3 billion deal, it was actually only worth $267 million because Enron did not disclose that to win the Lilly contract it had to invest ***$168 million*** up-front, and was, in fact, a contract on which Enron would suffer a loss.

(h) The purported prospects for, and actual success of, Enron's EBS division was grossly overstated. ***First***, Enron's broadband network – the so-called Enron Intelligent Network or EIN – was plagued by serious and persistent technical difficulties, which prevented it from providing the type of high-speed and high-quality transmission that was indispensable to any hope of commercial success. ***Second***, Enron was encountering significant difficulties in completing the build-out of its broadband network and, as a result, did not have currently, and would not have at any reasonable time in the foreseeable future, a functioning broadband network. For instance, the EIN – the core of the Enron Broadband Operating System ("BOS") – was doomed to failure due to numerous intractable problems:

- For EIN to work, Enron had to build 20 pooling points internationally and 30 in the U.S. Measuring data flow at the pooling points required something known as inter-agent messaging and InterAgent – the software that was to make the intelligent network operational – became the core of EIN. But InterAgent had to "speak" to hardware from various different manufacturers, such as Cisco and Sun, which it could not do. Since InterAgent failed, EIN would fail as well.

- To create InterAgent, Enron had acquired a company called Modulus. From the outset there was no way Modulus could create a viable InterAgent program because it was simply too small (three employees) to undertake a project of such magnitude. By spring 99, the development of the EIN had "***deteriorated into chaos***." The problems in building the EIN did not improve during 99. By 10/99, EBS was "***in crisis mode***," and Rice, CEO of EBS, realized that EIN was a disastrous failure.

- In fact, "***EBS did not have a single real customer in 1999***."

- While Enron extolled the number of orders and users it had for its network, the truth was that "***the sales staff could not sell what the engineers could not build, and the engineers could not build what the sales staff had promised***." Consequently, a "***blend-and-extend***" trick was introduced. EBS sales representatives were told to sell anything now – get customers to place any order no matter how small (and move delivery into next year) – and, in return, Enron would place a ***larger order*** to buy something from the customer. For instance, ***Real Networks gave Enron a $100,000 order, but Enron gave a $7 million purchase order to Real Networks for software***.

- Enron trumpeted high-profile customers, including Inktomi, Microsoft and Real Networks, as proof that EBS was a genuine broadband provider. But these small $100,000 deals represented favors by Microsoft and Real Networks to Enron in exchange for orders by Enron in 99 worth as much as $7 million (in at least one other case). Enron frequently paid larger amounts to vendors in exchange for much smaller orders.

(i) To inflate the purported revenues of its EBS operations, Enron was engaging in transactions involving so-called dark fiber – unlit broadband-transmission capability – recognizing significant revenue on these transactions when, in fact, they were artificial contrivances known as

"dark-fiber swaps," which involved no real economic substance, but were simply a swap of Enron's dark-fiber capacity with some counterparty for its dark-fiber capacity. A dark-fiber swap involves two parties each purchasing fiber-optic capacity from the other at artificially high prices, which inflated the profits that each reported on the sales side of the transaction. Some of Enron's counterparties to these dark-fiber swaps included 360 Networks, Touch America, Qwest and Level Three, with which Enron did a huge swap code-named "Hamachi."

(j) Enron exacerbated the manipulative and deceptive financial impact of dark-fiber swaps by accounting for the revenue or payment it received from the counterparty that bought dark fiber from Enron ***as current-period revenue*** while, at the same time, Enron was ***capitalizing*** the amounts it paid to that party to buy dark fiber from it on the other side of the swap. Thus, Enron avoided recognizing the expense of that purchase in the current period and instead, amortized it over many, many years – a deliberate accounting manipulation where revenue and expense were mis-matched to inflate current-period results. For instance:

(i) Enron entered into dark-fiber swaps to book a profit on the gain from the sale. The EBS dark-fiber deals used an overvalued price for the swaps. Even though Enron agreed to pay a higher price – above true value – for the fiber it was getting, Enron also paid an equivalent higher price for what it was selling. One deal that Enron did with LJM illuminates this. Top executives asserted pressure on EBS personnel to make needed revenue numbers for the 3rdQ 00, which resulted in booking a dark-fiber deal with LJM worth over $300 million. The sole reason for this deal was to enable Enron to make the required quarterly revenue number;

(ii) Enron boasted about its high and increasing volume of broadband trades, but these purported trades were not profitable. In essence, Enron and its trading partners exchanged fiber-optic capacity with one another in transactions that were nearly similar in the buying and selling prices. So while cash was exchanged in these transactions, they did not result in actual profits for Enron or its trading partners because the Company's cash outlay for purchasing access to the other party's fiber-optic lines was nearly the same as the money paid for access to Enron's network;

(iii) The situation in EBS was so desperate by Spring 01 that there was a coup attempt by several managers who reported to CEO Rice and COO Hannon and wanted them moved out of EBS. The managing directors met with Skilling and informed him that EBS was in extremely dire straits – there was "***no way to win***," EBS "***had no income***," and the "***cash-burn rate was too high***." They showed Skilling actual EBS performance numbers. Rejecting their request, Skilling neither replaced Rice and Hannon nor did he make any changes, other than having the managing director also now report to him directly to keep him updated on the disaster in EBS; and

(iv) Despite concrete evidence of EBS's failed operations, EBS CEO Rice publicly stated that broadband's assets had an estimated value of $36 billion. A high-ranking former EBS manager – one of the very first broadband employees – responded: "***I don't know what metric he was looking at. We were well into the business by then and in the process of flopping***."

(k) Enron lied about the number of customers. At the 1/00 conference Enron claimed it had 16 million customers. To arrive at that figure, Enron took the number of its Internet service provider ("ISP") partners – in reality, these partners were Enron vendors paid to transmit streaming content because the EIN and BOS didn't work – and multiplied that number by the number of customers each ISP had. Thus, the 16 million customers Enron claimed as its own, in fact, belonged to ISPs. Moreover, assuming that Enron could provide the high-quality uninterrupted bandwidth-on-demand that it claimed the EIN could provide through the BOS – neither of which ever worked – as of 12/00 an internal EBS document reflects that EBS only had enough server capacity to reach about 47,000 customers, which is about 15 million customers short of the total Enron claimed ***12 months earlier***! In short, ***Enron had no real broadband customers or revenues***, and the EIN was nowhere near being ***substantially complete***.

(l) The prospects for future revenue and profits from Enron's EBS operation and the purported value of that operation to Enron and to its stock price was completely arbitrary and without any basis in fact because Enron knew from ***current*** problems in that business, as well as the current state of EBS business, that such revenue and profit forecasts and valuations were arbitrary, unreasonable and unobtainable.

(m) Enron's purported growth in broadband intermediation – trading bandwidth access – was neither as successful as claimed nor was the market developing as quickly or in the manner Enron asserted. Enron grossly overstated ***the number of customers or counterparties*** it was doing bandwidth intermediation with by counting as ongoing customers or trading partners entities that had done only a test or an experimental trade and not engaging in any ongoing bandwidth intermediation. Even worse, Enron grossly overstated the ***number of trades*** being conducted by its broadband intermediation to create the illusion of ever-increasing levels of activity, which it accomplished by splitting up what was, in fact, a single unified trade into five or 10 or even more separate trades, thus creating the false image of increasing trading activity. For instance, Broadband traders would turn one EBS transaction into multiple trades, just to show the volume of broadband deals was increasing. Management was well aware of how traders broke down the deals to better the numbers. Indeed, traders were instructed many times to manipulate the numbers of trades. And while this trade value never made sense, they were inflated since cash bonuses were paid based on the deal's size, not its viability or earnings: "***It was very simple. You just tweaked the assumptions on different variables, which were changed to make the return higher***."

(n) Enron was abusing and misusing mark-to-market accounting with respect to its broadband intermediation activity, utilizing this accounting method – together with false assumptions of ultimate value – to create much higher current-period revenue and bottom-line results than were reasonable and attainable had proper accounting techniques been used. For instance:

(i) One analyst-trader was told by VPs in his group to manipulate the assumption numbers so upper management would get bigger bonuses when the higher valued deals were closed. And when it started to look like a deal was about to unwind – becoming a true loss because the assumptions were never valid – Enron moved the earnings curves – "***Shifting the curves and making new deals to bury the losses from the past was constantly the strategy***"; and

(ii) In fact, there were only about 20 actual broadband transactions or intermediations – all with tiny margins. And one of these deals was derived solely from a 10-year deal with Rice University to provide broadband services to Breiman University, a sister university in Germany. The deal called for Rice University to pay Enron the total over 10 years, but the

Company recognized all of the revenue either in the 2ndQ or 3rdQ 00. This deal would never have closed had not Lay donated $5 million for an endowment at Rice University. Moreover, Breiman could cancel the project and did so in early 01.

(o) Enron grossly misrepresented and overstated the nature and potential favorable impact of the Blockbuster VOD joint venture as well as its success. ***First***, Blockbuster did not have the legal right to electronically distribute movie content – the indispensable element of a successful broadband based VOD system – in cable-quality digital format. ***Second***, due to technical problems with its broadband network, Enron could not transmit movies or other content with sufficient quality or speed to permit the VOD system to ever succeed. Notwithstanding these substantial defects – plus gross abuse of mark-to-market accounting – Enron discounted and recognized a wholly unrealistic projection of revenue over the entire 20-year life of the Blockbuster VOD venture into current periods, offset it by unrealistically low expense estimates, and failed to take any proper reserve for uncertainty of outcome or collectability. Consequently, Enron secretly recognized over $11 million of profits in the 4thQ 00 and the 1stQ 01 – ***two-thirds of the earnings*** claimed by EBS in those two periods – in one of the largest one-time and upward manipulations of Enron's financial statements. Specifically, in 00, EBS executives were desperate because they were not generating any revenue, which was the catalyst behind the deal with Blockbuster. But an EBS director of engineering stated: "***Flat out, we didn't have the technology to do it, and we didn't have the expertise. It was a deal EBS executives entered into with Blockbuster with no capacity to do it***." A former EBS employee, who worked directly on the Blockbuster deal in multiple capacities, including product development, financial analysis, and content distribution, stated: "***[T]he Blockbuster deal was a fraud, and Enron's top management knew it***." Employees working on the Blockbuster VOD deal were told time and again, after they stressed the deal's lack of economic sense, to "***just drink more Enron Kool-Aid***." The Blockbuster deal had no economic substance at the time:

- Discussions with Blockbuster first got off the ground over two days in 3/00. Even though at that point EBS personnel had no way to deliver the VOD product, and no technical knowledge of what they were to deliver, within 48 hours the EBS team had agreed to a 20-year exclusive deal for VOD.
- EBS employees knowledgeable about the technical challenges knew from the day the deal was announced that the fledgling EIN could not then – and probably never would

be able to – deliver VOD as represented by Enron. In 6/00, Rice personally tried to recruit two EBS engineers, who had left Enron out of frustration over EBS problems, by telling them that they were essential because "***we [Enron] can't deliver the Blockbuster deal***."

- While Blockbuster had the rights from Hollywood to supply videotapes, ***it did not have electronic-content distribution rights for movies***. When Enron tried to convince Hollywood to grant Blockbuster the right to distribute digital video content, Hollywood refused. EBS never succeeded in persuading Hollywood to grant Blockbuster the requisite content rights. By mid-11/00, the reality was that Hollywood studios would not give DSL-quality content to Blockbuster. Thus, Enron did not have one movie to offer, let alone DSL quality.

- While Enron announced that the Blockbuster deal test markets were a huge success in 12/00, Enron executives behind the scenes were directing the VOD team to revise and restructure the flawed business model because they knew it would never make money.

(p) Enron represented that it successfully managed its balance sheet by effectively hedging its merchant investments and placing billions of dollars of non-recourse debt in related but independent parties. In fact, the hedges were illusory, not real, and were largely dependent on the value of Enron's own stock where Enron still was exposed to the risk of its merchant investments. In fact, that debt was ***not*** non-recourse because if Enron's credit rating was downgraded that debt would become recourse as to Enron. This was an extraordinarily dangerous situation for Enron because, in fact, based upon its true financial condition, which was known to its insiders, Enron did not deserve the investment-grade credit rating it was carrying and it was in constant and precarious danger of losing that rating when the true structure of its off-balance-sheet partnerships and SPEs became known and its true financial condition was revealed.

(q) In fact, Enron did not deserve an investment-grade credit rating and did not have a solid or substantial financial structure because it was inflating the value of its assets by billions of dollars while concealing billions of dollars of debt that should have been on its balance sheet. As a result, Enron's true financial structure was extremely fragile.

(r) As a result of the foregoing, the forecasts for strong continued revenue and earnings growth for Enron's wholesale and retail energy operations were completely false, in part, because the historical financial performance and condition of those operations had been materially falsified – thus there was no real basis upon which to forecast such further growth – and because

neither of those businesses had the current strengths or success to justify the forecasts and claims for future growth that were being made.

(s) As a result of the foregoing, the revenue and EPS forecasts being made by and for Enron going forward were also grossly false because historical earnings, upon which those forecasts were based, were falsified and the result of improper accounting manipulation. In truth, Enron's various business operations not only had huge concealed losses, which would have to be recognized and would very adversely impact Enron's financial results, but those core business operations simply did not have the strength or success necessary for them to generate anywhere near the kind of revenue and profit growth being forecast for them.

340. In mid-8/01, a management level employee in Enron wrote Lay a letter setting forth some of the massive irregularities that were going on inside Enron

> Dear Mr. Lay,
>
> * * *
>
> Skilling's abrupt departure will raise suspicions of accounting improprieties and valuation issues. Enron has been very aggressive in its accounting – most notably the Raptor transactions and the Condor vehicle. We do have valuation issues with our international assets and possibly some of our EES MTM positions.
>
> The spotlight will be on us, the market just can't accept that Skilling is leaving his dream job.... How do we fix the Raptor and Condor deals?... [W]e will have to pony up Enron stock and that won't go unnoticed.
>
> * * *
>
> We have recognized over $550 million of fair value gains on stocks via our swaps with Raptor, much of that stock has declined significantly – Avici by 98%, from $178 mm to $5 mm. The New Power Co. by 70%, from $20/share to $6/share. The value in the swaps won't be there for Raptor, so once again Enron will issue stock to offset these losses. Raptor is an LJM entity. It sure looks to the layman on the street that we are hiding losses in a related company and will compensate that company with Enron stock in the future.
>
> ***I am incredibly nervous that we will implode in a wave of accounting scandals.... [T]he business world will consider the past successes as nothing but an elaborate accounting hoax***. Skilling is resigning now for "personal reasons" but I think he wasn't having fun, looked down the road and knew this stuff was unfixable and would rather abandon ship now than resign in shame in 2 years.
>
> Is there a way our accounting guru's can unwind these deals now? I have thought and thought about how to do this, but I keep bumping into one big problem – ***we booked the Condor and Raptor deals in 1999 and 2000, we enjoyed a wonderfully high stock price, many executives sold stock, we then try and reverse or fix the deals in***

2001 and it's a bit like robbing the bank in one year and trying to pay it back 2 years later. Nice try, but investors were hurt, they bought at $70 and $80/share looking for $120/share and now they're at $38 or worse. We are under too much scrutiny and there are probably one or two disgruntled "redeployed" employees who know enough about the "funny" accounting to get us in trouble.

* * *

I realize that we have had a lot of smart people looking at this .... ***None of that will protect Enron if these transactions are ever disclosed in the bright light of day***.

* * *

My concern is that the footnotes don't adequately explain the transactions. If adequately explained, the investor would know that the "Entities" described in our related party footnote are thinly capitalized, the equity holders have no skin in the game, and all the value in the entities comes from the underlying value of the derivatives (unfortunately in this case, a big loss) AND Enron stock and N/P. ***Looking at the stock we swapped, I also don't believe any other company would have entered into the equity derivative transactions with us at the same prices or without substantial premiums from Enron***....

Raptor looks to be a big bet, if the underlying stocks did well, then no one would be the wiser. If Enron stock did well, the stock issuance to these entities would decline and the transactions would be less noticeable. ***All has gone against us. The stocks, most notably Hanover, The New Power Co., and Avici are underwater to great or lesser degrees***.

* * *

I firmly believe that the probability of discovery significantly increased with Skilling's shocking departure. Too many people are looking for a smoking gun.

Summary of Raptor Oddities:

* * *

2. ***The equity derivative transactions do not appear to be at arms length***.

    a. Enron hedged New Power, Hanover, and Avici with the related party at what now appears to be the peak of the market. New Power and Avici have fallen away significantly since. The related party was unable to lay off this risk. This fact pattern is once again very negative for Enron.

    b. ***I don't think any other unrelated company would have entered into these transactions at these prices***. What else is going on here? What was the compensation to the related party to induce it to enter into such transactions?

3. ***There is a veil of secrecy around LJM and Raptor. Employees question our accounting propriety consistently and constantly***. This alone is cause for concern.

a. Jeff McMahon was highly vexed over the inherent conflicts of LJM. ***He complained mightily to Jeff Skilling*** .... 3 days later, Skilling offered him the CEO spot at Enron Industrial Markets ....

b. ***Cliff Baxter complained mightily to Skilling and all who would listen about the inappropriateness of our transactions with LJM***.

c. I have heard one manager level employee ... say "***I know it would be devastating to all of us, but I wish we would get caught. We're such a crooked company."... Many similar comments are made when you ask about these deals***.

341. On 8/14/01, Lehman Brothers issued a report on Enron. It rated Enron a "***Strong Buy***" and continued to forecast 01 and 02 EPS of $1.82 and $2.18 for Enron. Lehman also ***raised*** to 20% the five-year EPS growth rate for Enron. It also stated:

• Relative Valuation Has Bottomed Out. ***Mounting Evidence Of Major New Markets Will Act As Catalyst To Expansion In Multiple. At A Minimum We Expect Collection Of The 20% Growth In EPS***.

* * *

... Enron has quietly lifted earnings guidance from 15% to 20% over the last 12 months indicating that the present rate is sustainable for the foreseeable future.... Significant traction has been gained. Presentations at the annual analyst meeting and the assumption of a higher profile in quarterly investor briefings lead us to believe that market penetration in these new areas will rekindle interest in the stock.

342. Despite the efforts of Enron and its banks to support Enron's stock during 5/01-7/01, it continued to erode. By late 7/01, Enron's stock had pierced more equity issuance trigger levels, trading as low as $42. In early 8/01, as Enron was forced to reveal it was abandoning its attempt to create an international water business and was attempting to sell the Dabhol power plant, Skilling and other top insiders at Enron knew the end was at hand. By 8/9/01, Enron stock still traded as low as $42. By 8/29/01, Enron stock had plunged to as low as $37-17/64. Skilling decided to attempt to try to escape the coming conflagration by resigning. Because Skilling had been promoted to CEO only a few months earlier, this resignation had the potential to cause the scheme they were participating in to completely unravel. Thus, it was necessary to cover up the true reason for Skilling's resignation and disguise the true reason he was leaving Enron. So Enron created a false story that Skilling was resigning for personal reasons.

343. On 8/14/01, Enron announced that its new CEO Skilling was resigning "***for personal reasons***" and would be succeeded by Lay. On 8/14/01, Lay sent an e-mail to thousands of Enron employees, which immediately became public:

> Our performance has never been stronger; our business model has never been more robust; our growth has never been more certain ....

In a conference call with analysts, investors and large Enron shareholders, Lay, Kean, Causey, Fastow and Skilling stated:

- Having served as CEO of the Company from 85 until earlier this year, ***Lay could honestly say he had never felt better about the Company, its business model, its prospects and probably most importantly its incredibly deep pool of talent***.

- Skilling stated: "***First of all ... this is purely a personal decision and I can't stress enough that it has nothing whatsoever to do with Enron. I am doing it solely for personal and family reasons. [M]y reasons for leaving the business are personal and I'd just as soon keep those private***."

- Skilling stated: "***The numbers, the earnings show that the company is just in excellent shape right now. There is nothing to disclose, the company is in great shape and I just want to reinforce it***.... ***The company is in great shape***.... [E]verybody that has looked at the numbers knows, this is an entirely personal decision ...."

- Skilling stated: "***I think right now the numbers are looking good***. In fact, I think last quarter, second quarter, in every one of those products, whether it was crude and crude products, metals, pulp and paper, coal and there is one other one, weather. Volumes had more, had more than doubled in every single one of those second quarter of 2001 over second quarter of 2000 and they are all profit which is another, I mean that is a real good thing. So, I am feeling real good about that.... I think people ought to be focusing on is the whole European expansion. ***Very, very strong growth in Europe and that continues***. And that is a big, big market, so across the whole wholesale business, I think it's pretty much steady as she goes. ***We have got a lot going on and it looks like it is succeeding very, very well***."

- Lay stated: "***There were no changes in Enron's earnings outlook.... [T]he company is on solid footing and was looking forward to continued strong growth***. [Enron] had a very, very strong first half, second quarter ... second quarter net income is up 40%, earnings per share up about 32%. In the last five years, [Enron] had 20% per year compound annual growth and earnings per share. ***If anything, there seems to be even a little acceleration in the company's both financial performance and operational performance.... I see absolutely no change in our business direction or our business strategy***."

- Lay stated: "You can go back over a ten-year period, the income before interest and taxes has, in fact, been increasing at about 30% per year, compounded and that growth has been stronger in the last couple of years as you also know.... Retail or Enron Energy Services, of course, in recent, fairly new business, only started about five years ago ... but in that business, over the last two or three years, we have been doubling revenue and doubling income quarter-on-quarter, year-on-year for now about the last three years. ***We expect that to continue to grow very, very strong***....

[T]he company believe[s] that the Enron Energy Services component could become as large or larger than Enron's wholesale business within a five or six year period or so."

- Lay stated: "***The company is very strong, we have very deep talent, very broad talent and we think, in fact, there should be no change in the performance or the outlook for the company going forward***."

344. During the 8/14/01 conference call, the following question was asked of Lay and he answered as shown below:

QUESTION: Yes, this question is for Ken Lay. I just, underlying investor concerns anytime an executive leaves and I just wondered, was hopeful that ***you could confirm that there are no accounting issues*** ... that had anything to do with the decision of Mr. Skilling to depart.

LAY: ***Jeff, there is absolutely no problems that had anything to do with Jeff's departure. There are no accounting issues, no trading issues, no reserve issues, no previously unknown problem issues. And, indeed, we just finished our two day regular August Board meeting with our Board and all the committees and as we always do, we go through a lot of things into detail, including the gentlemen around the table making presentations to those various groups but I think I can honestly say that the company is probably in the strongest and best shape that it has probably ever been in.... [T]he company is strong and has tremendous momentum inside the company***.

345. On 8/14/01, CS First Boston issued a report on Enron. It retained CS First Boston's "***Strong Buy***" rating on Enron with a price target of $84. It continued to forecast 01 and 02 EPS of $1.80 and $2.25 for Enron. It also stated:

CEO Skilling Resigns; Chmn Lay Takes Back CEO & Pres Roles. No Other "Shoes to Drop." Retain Strong Buy

* * *

Late yesterday, ENE announced that its CEO, Mr. Jeff Skilling resigned for personal reasons....

Our analysis and information indicates that there are no changes or disclosure items inherent in the departure....

Our estimates for ENE are $1.80 in '01 and $2.25 in '02.

346. On 8/14/01, Bank America issued a report on Enron which continued to rate Enron a "***Strong Buy***" and forecast 01 and 02 EPS of $1.85 and $2.15. It also stated:

- ENE announced today that Jeff Skilling, President and CEO, has resigned for personal reasons.

* * *

- ... We would use any weakness as a buying opportunity as the stock is trading far off its highs ....

- While we realize that this high level departure follows those of other visible members of management in the last 18 months, we are highly confident in the abilities of Ken Lay and the existing management team.

347. On 8/15/01, Lehman Brothers issued a report on Enron. The report continued to rate Enron a "***Strong Buy***" and continued to forecast 01 and 02 EPS of $1.82 and $2.18 and a 20% five-year EPS growth rate for Enron. It also stated:

- ***We Don't Expect Any Falloff In Operating Performance Or Unusual Charges To Follow Skilling's Resignation***.

- ***We Would Be A Buyer Of The Stock On Any Significant Weakness*** .... ***Rating Remains Unchanged. We Continue To Think At Minimum Investors Will Collect The 20% Growth Rate Over The Next 12 Months***.

348. On 8/15/01, JP Morgan issued a report on Enron. It continued to rate Enron a "***Buy***" and continued to forecast 01 and 02 EPS of $1.82 and $2.17 for Enron. It also stated:

CEO Jeff Skilling Resigns; A Negative But Not Deleterious; Reiterate Buy

* * *

- Former CEO Jeff Skilling resigned abruptly yesterday for ***personal reasons*** ....

- While we are quite surprised and disappointed about Mr. Skilling's decision to leave the company, we believe that Enron has the deepest management "bench" in our universe. ***In addition, we also feel confident that Enron's transformation to an information and logistics company is well underway and others*** ... will carry the torch to move Enron in its current strategic direction.

- ***We reiterate our Buy on Enron, and believe that upcoming catalysts will provide further clarity on Enron's earnings sustainability***.

349. On 8/15/01, CIBC issued a report on Enron. It continued to rate Enron a "***Buy***" and forecast 01 and 02 EPS of $1.80 and $2.15 for Enron. It also stated:

Leadership Change: The current President and CEO of Enron Corp., Jeff Skilling announced his resignation effective today. The reason for his departure was cited as "personal concerns" and ***not related to Enron's current or expected performance***....

In discussing the leadership change in a conference call after yesterday's close, Ken Lay and Jeff Skilling re-iterated their confidence in the Enron business model and ***assured investors the management change was not related to financial or operating performance***.

350. Despite Enron's and its bankers' reassurances regarding the reason for Skilling's resignation and that Enron's business was very strong and there were no undisclosed problems, Enron's stock fell sharply from $43-13/64 on 8/14/01 prior to the Skilling announcement to $36-7/8 on 8/15/01.

351. On 8/16/01, executives Lay, Skilling and Fastow met with several of Enron's banks to try to support Enron's stock.

352. On 8/17/01, JP Morgan issued a report on Enron. It continued to rate Enron "***Buy***" and continued to forecast 01 and 02 EPS of $1.82 and $2.17 for Enron. It also stated:

> MANAGEMENT MEETING BRINGS MORE CONFIDENCE AFTER SKILLING DEPARTURE; REITERATE BUY
>
> * * *
>
> • ***Meeting with senior management has reaffirmed our confidence in Enron staying the course strategically***.
>
> * * *
>
> ***We reiterate our Buy rating on Enron following a meeting with senior management last night. We are maintaining our target price of $90*** ....
>
> * * *
>
> ... ***[W]e continue to believe that fundamentally the company is better positioned today than it has ever been***.

353. On 8/17/01, Lehman Brothers issued a report on Enron. It continued to rate Enron a "***Strong Buy***," continued to forecast 01 and 02 EPS of $1.82 and $2.18 and continued to forecast a 20% five-year EPS growth rate for Enron. It also stated:

> • ***Last night, we met with Ken Lay and other members of senior management. The Enron machine is in top shape and continues to roll along. We don't see any reason to change our estimates or outlook***.

354. On 8/17/01, CS First Boston issued a report on Enron. It continued to rate Enron a "***Strong Buy***" and continued to forecast 01 and 02 EPS of $1.80 and $2.25 EPS for Enron. It also stated:

> ENE fell a further 8% yesterday mostly related to speculation of negative issues surrounding the departure of Mr. Jeff Skilling as CEO....
>
> ... ***[I]ntensive meetings with ENE management continue to show no truth to any of the speculations, which caused the share price decline***.

Further comments and discussions show that business trends are good and ENE is in position to meet or exceed the 20% eps growth rate model we have estimated.

355. On 8/28/01, Enron was reiterated a "***Strong Buy***" by analyst William J. Maze at Bank America with a 12-month target price of $60 per share.

356. On 8/28/01, Lay was interviewed by *Bloomberg News* which reported that Lay said:

[T]he company's earnings are still growing. Over the last four or five years, we've been growing at a 20 percent compound annual rate as far as earnings per share. Third quarter this year, our net income was up over - or, up 40 percent, and earnings per share increase was about 32 percent, so the company's growing at a very rapid rate. And certainly we believe that the current stock price is unduly depressed.

357. On 8/28/01, Bank America issued a report on Enron, continuing to rate it a "***Strong Buy***" and forecasting 01 and 02 EPS of $1.85 and $2.15. It also stated:

- Today's Wall Street Journal featured an article on ENE, which focused largely on Ken Lay's (Chairman and CEO) efforts to help restore credibility through fuller disclosure on its complicated business.
- In light of this positive article, we believe there are several reasons to be bullish on the stock. Among them are:
- More detailed information should help alleviate a significant overhang.
- The re-emergence of Ken Lay is reassuring.
- The management team has a great deal of depth.
- We believe the stock is oversold. Given ENE's leadership role in the industry and its reputation as an innovator, we believe it deserves a premium valuation.
- Strong quarterly performance, demonstration that the growth rate is sustainable and fuller disclosure should lead to improvement.
- We reiterate our ***Strong Buy*** rating.

358. On 8/29/01, a management level employee in Enron's EES operation sent a letter to Enron's Board, which laid out and detailed the fraud that was going on in Enron's EES operations:

To the Board of Directors:

One can only surmise that the removal of Jeff Skilling was an action taken by the board to correct the wrong doings of the various management teams at Enron. However, based on my experience at this company, I'm sure the board has only scratched the surface of the impending problems that plague Enron at the moment. (*i.e.*, EES's ... hiding losses/SEC violations ... lack of product, etc.).

... I feel it is my responsibility to bring to the Board's attention the various ongoing [sic] that I observed during my short tenure (9 months) with the company.

EES Management

... [I]t became obvious that EES had been doing deals for 2 years and was losing money on almost all the deals they had booked. (JC Penney being a $60MM loss alone, then Safeway, Albertson's, GAP, etc.). Some customers threatened to sue if EES didn't close the deal with a loss (Simon Properties – $8MM loss day one).... Overnight the product offerings evaporated. The only product left is for the hotel and mall customers. Except that Starwood is also mad since EES has not invested the $45MM in equipment under the agreement. Enron was suppose[d] to invest $45MM over the first 3 years of the contract. The people who negotiated the contract FORGOT to put in, at Enron's discretion ... it turns out that it doesn't make financial sense for Enron to put in the Equipment, but Starwood wants it. Now you will loose [sic] at least $45MM on the deal. The Crisis was set in motion. You should also check on the Safeway contract, Albertson's, IBM and the California contracts that are being renegotiated.... It will add up to over $500MM that EES is losing and trying to hide in Wholesale. Rumor on the 7th floor is that it is closer to $1 Billion....

This is when they decided to merge the EES risk group with Wholesale to hide the $500MM in losses that EES was experiencing. But somehow EES, to everyone's amazement, reported earnings for the 2nd quarter. According to FAS 131 – Statement of Financial Accounting Standards (SFAS) #131, "Disclosures about Segments of an Enterprise and related Information," EES has knowingly misrepresented EES' earnings. This is common knowledge among all the EES employees, and is actually joked about....

These are numerous operational problems with all the accounts.

* * *

... Some would say the house of cards are falling....

You are potentially facing Shareholder lawsuits, Employee lawsuits ... Heat from the Analysts and newspapers. The market has lost all confidence, and its obvious why.

You, the board have a big task at hand. You have to decide the moral, or ethical things to do, to right the wrongs of your various management teams.

* * *

... But all of the problems I have mentioned, they are very much common knowledge to hundreds of EES employees, past and present....

Check out the 7th floor.... They are very talkative at the moment.

359. The statements made surrounding and after Skilling's resignation were false and misleading. First of all, Skilling did not resign for "personal reasons," but rather, because he knew that the scheme to defraud he had been actively participating in was falling apart and about to be

exposed, which would result in Enron's stock price completely collapsing and Enron losing its investment-grade credit rating and likely going bankrupt. The assurances made that Enron had never been in better shape, its numbers looked good, there were no changes in Enron's earnings outlook, that the Company was very strong and the resignation did not signal any accounting problems or adverse disclosures were all lies as, in fact, Enron's business – which had been propped up through a series of manipulative devices and contrivances for years – was now on the verge of complete collapse, due to the accumulated weight of the falsification of its financial results.

360. While Enron, its lawyers, accountants and bankers made a valiant effort during the last half of 8/01 and 9/01 to assure investors that Skilling's departure did not signal any adverse developments at Enron and that Enron's core businesses were stronger than ever, Enron's stock price continued to decline to levels which triggered the equity issuance obligations of Enron to the SPEs. As Enron prepared its 3rdQ 01 results, *i.e.*, the quarter ended 9/30/01, it was apparent inside Enron that the fraudulent scheme to manipulate Enron's books had reached such gargantuan proportions and that there had become such intense public scrutiny on Enron, together with internal employee complaints to Enron's Board and accountants and lawyers, that Enron would have to recognize the economic impact of required equity issuances to the SPEs as well as some of the huge losses it had been concealing. However, Enron, its bankers, accountants and lawyers were still determined to attempt to salvage the scheme by minimizing the amount of losses and shareholder equity elimination which would be revealed and to try to prevent a complete collapse of Enron which they knew if it occurred, because of the size of Enron (it was the seventh largest corporation in the United States), would result in intense public and governmental scrutiny of what had happened and put them at risk for both civil and criminal proceedings. Behind the scenes, Enron and Andersen began to feverishly destroy documents and other electronic material to try to get rid of as much evidence as possible of their complicity in the wrongdoing.

361. In late 9/01, as Enron stock was falling sharply, frequently piercing equity issuance "trigger" prices, and Enron knew it was going to have to take large asset writedowns in connection with its 3rdQ 01 results, Enron was desperate to find a way to limit the size of these write-offs and generate apparently healthy "operating" earnings. So, on Sunday, 9/30/01, Enron and Qwest

(another Andersen client), with the help of Andersen and Vinson & Elkins, arranged a "swap" of fiber optic assets. This Qwest-Enron deal, one of the largest ever recorded, allowed Enron to avoid recording a huge loss by selling an asset whose value had plummeted on the open market. "Qwest said we will overpay for the assets, and you will overpay me on the contract," one former Enron executive said. Executives at Enron and Qwest held discussions into the final days of the 3rdQ, discussing how to account for the deal so that each would gain accounting benefits and improve their quarterly earnings results. On 9/30/01, a Sunday and the final day of the 3rdQ, Qwest signed a deal to buy from Enron "dark fiber" along a route from Salt Lake City to New Orleans. Enron agreed to buy "lit wavelength," or active fiber optic cable services from Qwest over a 25-year period, and each company exchanged checks for about $112 million around the close of the deal. The deal enabled Enron to book a sale and avoid recording a loss on the dark fiber assets, whose value in the open market had dropped far below the price on Enron's books.

362. On 10/9/01, Merrill Lynch issued a report on Enron. It rated Enron a ***"Buy"*** and forecast 01 and 02 EPS of $1.80 and $2.10 for Enron with a 17% five-year EPS growth rate. It also stated:

> ENE is well on its way to re-sharpening its focus on more profitable core business ***and*** substantially reducing debt load by the end of '02.
>
> * * *
>
> While recognizing a more moderate EPS growth rate from the above challenges at hand, we think ENE is nevertheless off to a great start in getting its financial health in order.... ***With these longer term clouds clearing, we have raised our long term opinion from Accumulate to Buy***.
>
> * * *
>
> • Moderating earnings estimates. We are cautiously lightening our 3-year growth outlook from the 20% range to 16%-17% per annum. Specifically, our EPS estimates for '02E have been revised down from $2.15 to $2.10 and we are setting our '03 EPSE at $2.45.

363. On 10/9/01, JP Morgan issued a report on Enron. It ***increased the rating on Enron to JP Morgan's "Top Pick" and continued to forecast 01 and 02 EPS of $1.82 and $2.17 for Enron***. It also stated:

Enron Corporation (BUY)
FOCUS LIST: ENRON BEING ADDED AS OUR
TOP PICK WITH A $90.00 TARGET

- ***We see Enron as our "Focus List" pick, our best Buy in the space***
- ***Over the next six months, we expect the stock to appreciate*** ....
- Enron should rebound from historically low valuation levels as investor confidence is shored-up through greater transparency and a track record of performance

* * *

- ***Longer term, we see Enron being uniquely able to sustain its earnings growth of 20%*** ....

... In addition to announcing important corporate events recently, we believe Enron is well positioned to achieve further corporate clarity and continued earnings growth. ***We reiterate our Buy rating and $90 price target***.

* * *

We see Enron as very well positioned to deliver 20% earnings growth over the next 3-5 years....

... ***[W]e are confident that Enron will continue to deliver on its promise of increasing returns on capital, greater transparency and sustainability of earnings growth.***

364. On 10/16/01, in reporting its 3rdQ 01 results, ***Enron revealed a $1 billion charge – a $1.11 per share charge – resulting in a $618 million or $.84 per share loss***. However, Enron cast this large loss as not a negative development, but as a positive one. Enron's release stated:

> Enron Corp. announced today recurring earnings per diluted share of $0.43 for the third quarter of 2001, compared to $0.34 a year ago. Total recurring net income increased to $393 million, versus $292 million a year ago.
>
> "***Our 26 percent increase in recurring earnings per diluted share shows the very strong results of our core wholesale and retail energy businesses and our natural gas pipelines," said Kenneth L. Lay, Enron chairman and CEO. "The continued excellent prospects in these businesses and Enron's leading market position make us very confident in our strong earnings outlook***."
>
> Non-recurring charges totaling $1.01 billion after-tax, or $(1.11) loss per diluted share, were recognized for the third quarter of 2001. The total net loss for the quarter, including non-recurring items, was $(618) million, or $(0.84) per diluted share.
>
> "***After a thorough review of our businesses, we have decided to take these charges to clear away issues that have clouded the performance and earnings potential of our core energy businesses***," said Lay.

According to Enron, the $1.0 billion charge was due to and consisted of:

– $287 million related to asset impairments recorded by Azurix Corp. These impairments primarily reflect Azurix's planned disposition of its North American and certain South American service-related businesses;

– $180 million associated with the restructuring of Broadband Services, including severance costs, loss on the sale of inventory and an impairment to reflect the reduced value of Enron's content services business; and

– $544 million related to losses associated with certain investments, principally Enron's interest in The New Power Company, broadband and technology investments, and early termination during the third quarter of certain structured finance arrangements with a previously disclosed entity.

365. Publicly, Enron and the banks tried to minimize the impact of the write-offs and shareholder equity dilution and to assure investors that Enron had cleaned up its balance sheet, taken all necessary losses and was positioned now to achieve strong profitable going forward due to the strength of its core wholesale and retail energy businesses.

366. On 10/16/01, Enron held a conference call for analysts and investors to discuss Enron's 3rdQ 01 results and its business. During the call – and in follow-up conversations with analysts – Lay, Frevert, Whalley, Koenig, Causey, Fastow and Kean stated:

- ***For the third quarter of 01, Enron reported strong recurring operating performance which included a 35% increase in recurring net income to $393 million versus $292 million a year ago and a 26% increase in diluted recurring earnings per share to $.43 a share compared to $.34 a share a year ago. As these numbers show, Enron's core energy business fundamentals were excellent.***

- ***Enron reaffirmed that it was on track to meet its previously stated targets for recurring earnings per diluted share. That is, $.45 for the 4thQ of this year, $1.80 for the full year 01 and $2.15 for the full year 02.***

- ***Retail services had an outstanding 3rdQ with IBIT of $71 million representing more than 3.5 times that of the 3rdQ, last year. Enron continued to experience high demand for its retail products and was expanding its market share at a very rapid pace as the only nationwide provider of energy management services to commercial and industrial customers of all sizes. Enron had completed over 50 large consumer transactions, including the recent signing of contracts with Walmart, Northrop Grumman, the City of Chicago, Equity Office Properties and Wendy's in the U.S. and with Sainsbury and Guinness Brewery in the U.K.***

- ***Enron continued to actively participate in the intermediation market. Although the overall market had contracted recently, Enron entered into 405 intermediation transactions during the quarter.***

- ***Enron's liquidity was fine. Its debt to total capital ratio was about 50%. With the announced asset sales Enron expected the debt ratio to be close to 409% by year-end 02. Enron was very comfortable with its current liquidity position.***

- ***Enron had $5.7 billion of goodwill concentrated in 3 major areas, Portland General, Wessex Water and Electro. Enron estimated, based upon this recent review, that up to $200 million in goodwill adjustments may be necessary and will be recorded in the first quarter of 02***.

- ***Enron expected no credit downgrades***.

- ***Enron's 3rdQ recurring operating results were outstanding and its business fundamentals remained very strong***.

367. When questioned as to whether or not Enron would be taking additional large charge-offs, ***Lay denied it would***. *Bloomberg News* reported on 10/16/01:

ENRON HAS THIRD-QUARTER LOSS AFTER EXPANSION FAILS

* * *

Enron might take a first-quarter "adjustment' of less than $200 million because of accounting changes related to good will, Lay said in an interview. "If we thought there were any other significant concerns, we would have taken care of them today," Lay said.

368. On 10/16/01, Lay appeared on CNNfn, was asked about Enron's write-offs and stated:

LAY: ... [A]s to the charges, they related primarily to the Azurix's water business, our broadband business, and the new power company where we have investments and assets and those businesses. And we try to clean all those up in this quarter since they seemed to be providing quite a bit of distraction ***to the real quality and strong growth of our core businesses***.

CNNfn: And let's talk about the core businesses going forward .... What's key now? what's most important? what's driving future growth?

LAY: ***Well, primarily our wholesale business, which is growing very strong*** .... Our earnings were up about 35 percent. Strong growth in our retail business we're - in fact, we're the only company providing nationwide energy services. And again, that had a strong quarter also, adding about 12,000 new customers.... But I think the main thing is just to continue to grow these very solid, core businesses which in the third quarter this year provided about 35 percent increase in net income, to about $400 million and about 26 percent increase in earnings per share. And you're right, I mean, ***we reconfirmed our earnings for 19 - or 2001 at $1.80, which is what the Street expects, and 2.15 for next year. So it will be one more year of about 20 percent growth in earnings per share. And we've been doing that for the last three or four years***.

369. On 10/16/01, Lay appeared on CNBC, was interviewed and stated:

LAY: Well, first of all, ***we had a very strong third quarter***. Our overall net income was up about 35 percent, so just a little bit less than $400

> million after tax. Our earnings per share were up about 26 percent. Of course right on the Street's expectations.... Our retail business showed a very strong quarter with income before interest and taxes up about three and half fold. So we had a good strong quarter.... [W]e're very pleased with it, particularly given the current economy.
>
> * * *
>
> ***Next year looks good. We did reconfirm in our earnings release this morning that we expect to hit the fourth quarter numbers that we have been projecting and $1.80 for this year and $2.15 next year. So, again, about another 20 percent growth in earnings per share for next year.***

370. On 10/16/01, CitiGroup issued a report on Enron. The report continued to rate Enron stock a ***"Buy"*** and to forecast 01 and 02 EPS of $1.80 and $2.15 for Enron while raising Enron's long-term EPS growth rate to 23%. It also stated:

- Enron reported 3Q recurring operating EPS of $0.43 vs. $0.34, $0.01 above our estimate.
- KEY DRIVER: Solid Americas Wholesale Service (Merchant Energy) IBIT up 31%, in-line with volume growth of 35%.
- Recurring results exclude $2.2 billion in charges associated with several under-performing non-Merchant businesses.
- Although the large size of these write-offs may initially be viewed negatively by the market, we view them as clearing the balance sheet of under-performing non-core assets which have been an overhang on the stock. ***View write-offs positively in the long-run***.
- We reiterate our 2001 and 2002 EPS estimates of $1.80 and $2.15, respectively.

* * *

> ***Write-off of Under-Performing Non-Merchant Assets Rids Enron of Overhangs***
>
> In the third quarter, Enron took $1.01 billion in charges associated with several under-performing, non-Merchant businesses, in addition to a $1.2 billion decrease in their shareholders equity account.... Although these write-offs are significant and may be interpreted negatively at face value, ***we view them as strongly positive in the long-run, as they reflect the removal of several of the overhangs which have affected the stock***.

371. On 10/16/01, Bank America issued a report on Enron. The report continued to rate Enron a "***Strong Buy***" and continued to forecast 01 and 02 EPS of $1.85 and $2.15, as well as a 17% secular EPS growth rate for Enron. It also stated:

- Enron reported ongoing operating earnings of $0.43 per share, in line with consensus and a penny above our expectations.

- As expected, several non-recurring charges were recorded during the quarter to resolve disposition of and losses in non-core businesses totaling $1.01 billion after-tax. Including these charges, earnings for the quarter were $(0.84) per diluted share.

- Earnings were driven by wholesale trading and marketing, natural gas pipelines, and retail services. ***Management reiterated guidance for the year of $1.80 and for FY02 of $2.15 per share***.

372. On 10/17/01, CIBC issued a report on Enron. The report rated Enron a "***Buy***" and continued to forecast 01 and 02 EPS of $1.80 and $2.15 for Enron. It also stated:

> Enron met expectations despite lower contributions from regulated assets as ***wholesale energy services delivered another quarter of solid performance***. Enron reported an increase in fully diluted EPS (recurring) of 26% to $0.43 per share, up from $0.34 in Q3/00.

373. On 10/17/01, JP Morgan issued a report on Enron. The report continued to rate Enron a "***Buy***" and continued to forecast 01 and 02 EPS of $1.82 and $2.17 for Enron. It also stated:

> Enron Corporation (BUY)
> Third Quarter Results Strong In Core Businesses; More Resolution On Businesses Provided
>
> - Enron released ***strong third quarter results yesterday, with solid volume growth across all commodities and regions***. We were pleased to see strong traction in Europe and Other Commodities ....
>
> * * *
>
> Yesterday Enron reported strong third quarter earnings, posting strong results from its Wholesale Marketing and Trading and Retail businesses.... Its successes with Europe and Other Commodities was especially positive, ***as we believe this now separate unit will provide an excellent earnings growth engine for the company***.
>
> * * *
>
> ... ***[I]ts debt rating of investment grade – will most likely not be tripped, as Enron's ratings were reaffirmed by Fitch and Standard and Poor's. Moody's has put the company on credit watch, but ENE would have to slip two ratings levels in order to fall below investment grade***.
>
> ... ***The important take away is that Enron's earnings are supported by its cash flow, and are certainly sustainable***.

374. On 10/19/01, CS First Boston issued a report. The report continued to rate Enron a "***Strong Buy***" and continued to forecast 01 and 02 EPS of $1.80 and $2.15 for Enron. It also stated:

ENE declined by 10% yesterday in response to additional concerns about a $1.2 billion reduction in shareholder's equity (offset by a $1.2 b reduction in Notes Receivable).

* * *

Despite the obvious and serious concerns raised by the nature and background of the $1.2 billion equity reduction, ***we continue to look at ENE as a Merchant, Energy Services and Pipeline business capable of exceeding 20% eps growth on an annual basis***.

Because we expect that this growth will occur and we regard our eps estimates for ENE as conservative at $1.80 in '01 and $2.15 in '02, we continue to rate it Strong Buy.

375. On 10/19/01, CitiGroup issued a report on Enron. The report continued to rate Enron a "***Buy***" and continued to forecast 01 and 02 EPS of $1.80 and $2.15 for Enron as well as 23% long-term EPS growth rate for Enron. It also stated:

SUMMARY

- We reiterate our Buy rating on Enron after untangling part of a complicated story involving their balance sheet, cash flow and business practices.

* * *

- ... ***[C]ash flows appear solid over the balance of the year and 2002; and their core Merchant Energy operating performance is solid***.

376. On 10/20/01, JP Morgan issued a report on Enron. The report rated Enron a "***Long Term Buy***" and continued to forecast 01 and 02 EPS of $1.82 and $2.17 for Enron. It also stated:

ENRON'S LIQUIDITY POSITION – STRONG IN THE NEAR- TO MID-TERM

- Enron continues to underperform in the capital markets, ***but there is scant evidence of business impairment***.

- ***Liquidity, especially short-term, is not an issue, in our view***.

* * *

We see ample liquidity in the near- to medium-term.

377. On 10/23/01, Enron held a conference call for analysts, money and portfolio managers, institutional investors and large Enron shareholders to discuss Enron's results, its business and its prospects. During the call – and in follow-up conversations with analysts – Lay, Causey and Fastow stated:

- ***Enron was extremely disappointed with its stock price, particularly since its businesses are performing very well and it was continuing to conduct business as usual***.

- ***There had been a lot of recent attention to transactions Enron previously entered into with LJM, a private equity partnership. Enron wanted to reiterate a couple of things – the LJM transactions were reviewed by internal and external auditors and lawyers, approved by Enron's Board of Directors***.

- ***Lay and Enron's Board of Directors continued to have the highest faith and confidence in Fastow and believed he was doing an outstanding job as CFO***.

- ***Enron remained well positioned for continued success***.

- ***The transactions that were done with the partnerships could have been and would have been done with other parties and there would have been no change in the earnings recognized from the transactions***.

- ***Enron was not trying to conceal anything. Enron was not hiding anything***.

- ***There was a Chinese wall between LJM and Enron. The Board put in place and the Company adhered to some very strict procedures which would ensure that anytime anybody inside Enron was dealing with LJM, there would be a process whereby Enron and its shareholders' interest would be paramount. And again, keep it in mind that they did not have to put any projects or investments in LJM or any of the other vehicles related to LJM so it was strictly discretionary and obviously it had to be in Enron's best interest before those investments or projects were put in there***.

378. On 10/23/01, CS First Boston issued a report on Enron. The report continued to rate Enron a "***Strong Buy***" and continued to forecast 01 and 02 EPS of $1.80 and $2.15 for Enron. It also stated:

> ENE held a conference call this morning with information to address the recent decline in its share price and the financial and financing implications of the SEC request for information regarding "related party transactions."
>
> With committed bank credit lines of $3.35 billion un-drawn, $1.85 billion of which support already issued commercial paper, ENE has $1.5 billion available for new commercial paper issuance.
>
> * * *
>
> ENEs debt ratings are generally three steps above "junk" status.... ***[W]e regard ENEs credit ratings and balance sheet issues as unlikely to worsen materially***.

379. On 10/23/01, Lehman Brothers issued a report on Enron. The report continued to rate Enron a "***Strong Buy***" and continued to forecast 01 and 02 EPS of $1.82 and $2.18, as well as a 20% five-year EPS growth rate for Enron. It also stated: "***Stock will recover on strength of core business franchise***."

380. On 10/23/01, JP Morgan issued a report on Enron. The report rated Enron a "***Buy***" and forecast 01 and 02 EPS of $1.82 and $2.17 for Enron. It stated:

Enron Corporation (BUY)

ENRON DROPS PRECIPITOUSLY ON CREDIT AND SEC INQUIRY ISSUES; REITERATING OUR BUY BUT REDUCING TARGET PRICE TO $50

We are reiterating our Buy on Enron in the wake of severe price underperformance in the past few days stemming from credit and financing concerns.

* * *

... We continue to believe this is a crisis of perception that Enron can address through further clarity and transparency.

* * *

A Securities Exchange Commission (SEC) inquiry has begun, further contributing to weakness of the stock. It is important to note that this inquiry does not suggest that the SEC is accusing Enron of any particular securities violations. The only silver lining to this situation is that Enron was always acutely aware of the appearance of impropriety. It had gone to great lengths to assure that all transactions were properly reviewed, supported through fairness opinion, outside counsel opinions, etc. ***Because of that, we believe that the inquiry will be concluded relatively quickly***.

381. On 10/24/01, Lehman Brothers issued a report on Enron. The report continued to rate Enron a "***Strong Buy***," continued to forecast 01 and 02 EPS of $1.82 and $2.18 for Enron and continued to forecast a 20% five-year EPS growth rate for Enron. It also stated:

- Ample liquidity exists to handle short term credit needs. $1.7 billion remains on commercial paper backup lines and supplemental revolver.

* * *

- We heard nothing to sway us from our conviction that the stock should be bought aggressively ....

382. On 10/25/01, Enron issued a release, stating:

Enron Continues As Market-Maker of Choice, Says CEO Lay; Transaction Volume Shows Strength of Core Businesses; Company Draws Down Credit Facility to Address Investor Concerns

* * *

The company also reported that it has taken action to dispel uncertainty in the financial community. Specifically, Enron drew on its committed lines of credit to provide cash liquidity in excess of $1 billion.

"***We are making it clear that Enron has the support of its banks and more than adequate liquidity to assure our customers that we can fulfill our commitments in the ordinary course of business***," said Chief Financial Officer Jeff McMahon. "This is an important step in our plan to restore investor confidence in Enron. Additionally, we will update investors over the next several days regarding our plans to maintain our long-term credit rating."

"We are especially gratified by this strong vote of confidence from both our customers and banks because that, more than anything, should enable the financial community to look beyond today's headlines and focus on the inherent value of our company," said Lay.

383. On 11/1/01, Enron issued a release, stating:

ENRON SECURES COMMITMENTS FOR ADDITIONAL $1 BILLION IN FINANCING

Enron Corp. announced today that J.P. Morgan (the investment banking arm of JP Morgan & Co.) and Salomon Smith Barney Inc. (the investment banking arm of Citigroup Inc.) as co-arrangers have executed commitment letters to provide $1 billion of secured credit lines .... The proceeds will be used to supplement short-term liquidity and to refinance maturing obligations....

"***With more than $1 billion in cash currently on our balance sheet, this additional credit capacity will further solidify Enron's standing as the leading market maker in wholesale energy markets***," said Kenneth L. Lay, Enron chairman and CEO. "***We very much appreciate the support of two of our longstanding banking partners, JP Morgan and Citigroup***."

"This is yet another step in our efforts to enhance market and investor confidence," said Jeffrey McMahon, Enron chief financial officer. "***We are moving aggressively to strengthen our balance sheet and maintain our investment grade credit rating***."

384. A few weeks later, Enron revealed that it was restating its 97, 98, 99 and 00 financial results to eliminate $600 million in previously reported profits and approximately $1.2 billion in shareholders' equity as detailed below:

ENRON ACCOUNTING RESTATEMENTS				
	1997	1998	1999	2000
Recurring Net Income Amount of Overstatement	$ 96,000,000	$113,000,000	$250,000,000	$ 132,000,000
Debt Amount of Understatement	$711,000,000	$561,000,000	$685,000,000	$ 628,000,000

Shareholders Equity Amount of Overstatement	$313,000,000	$448,000,000	$833,000,000	$1,208,000,000

385. The partnerships – Chewco, LJM1, and LJM2 – ***were used by Enron management to enter into transactions that it could not, or would not, do with unrelated commercial entities***. Many of the most significant transactions were designed to ***accomplish favorable financial results, i.e., not to achieve bona fide economic objectives or to transfer risk***. Other transactions were implemented improperly ***to offset losses***. They allowed Enron to conceal from the market ***very large losses resulting from Enron's merchant investments by creating an appearance that those investments were hedged – that is, that a third party was obligated to pay Enron the amount of those losses – when in fact that third party was simply an entity in which only Enron had a substantial economic stake. These transactions resulted in Enron reporting earnings from the 3rdQ 00 through the 3rdQ 01 that were almost $1 billion higher than should have been reported***!

386. As huge as the 11/01 restatements of Enron's 97-00 financial statements were, they just scratched the surface of the true extent of the prior falsification of Enron's financial statements, failing to eliminate additional hundreds of millions of dollars of phony profits as Enron, Andersen, Vinson & Elkins and the banks were still trying to keep Enron afloat and trying to conceal how extensive the fraud had really been.

387. Notwithstanding the write-offs and restated revelations of 10/01-11/01, the Enron Defendants, JP Morgan and CitiGroup believed that they could limit their legal exposure for participation in the scheme if they could effectuate a sale of Enron to another company. So, in 10/01 to 11/01, as the Enron scheme began to unravel and Enron reported a huge 3rdQ 01 loss and restated its 97-01 financial results, JP Morgan and CitiGroup worked hand-in-hand with Enron to desperately try to save Enron in the hope that by arranging a salvation merger with Dynegy (for which JP Morgan and CitiGroup would each be paid approximately $45 million in fees) they could prevent the insolvency of Enron and the inevitable investigations and revelations that would follow such insolvency.

388. On 11/14/01, Enron executives Lay, Whalley, McMahon and Causey held a conference call for analysts and stated:

- ***Enron had made some very bad investments. Investments such as Azurix, India and Brazil had performed poorly. Because of these investments, Enron became over-leveraged. Enron entered into related-party transactions that produced various conflicts of interest.***
- ***Enron's core business was still the best franchise in the industry.***
- ***Enron remained optimistic that actions to prevent insolvency substantially answered Enron's credit and liquidity questions. Enron's current transaction levels, while lower than the recent averages, have remained strong.***

389. In late 11/01, as JP Morgan and CitiGroup were desperately trying to arrange the sale of Enron to Dynegy so they could split a $90 million fee and so Enron would not go bankrupt, which they knew would lead to suits over, and investigations into, their prior deals with Enron – which they knew would be highly embarrassing and could expose them to liability to third parties and subordination of their creditor claims against Enron. A key part of achieving a sale of Enron and thereby avoiding public exposure of defendants' participation in the Enron Ponzi scheme required Enron to keep its investment-grade credit rating, as failing to do so meant that Enron's debt would be accelerated and the Enron scheme would immediately collapse. So, in late 11/01, Rubin, the Vice Chairman of CitiGroup, and Harrison, the Chairman of JP Morgan, called Moody's – a key rating agency – and pressured Moody's to keep Enron's investment-grade credit rating in place until they had completed the sale of Enron to Dynegy.

390. Each of the statements issued between 10/16/01-11/14/01 was false and misleading. The true facts were that Enron's ***operating earnings*** for the 3rdQ 01 as reported were artificially inflated, as detailed herein, in part because of the huge dark-fiber swap transaction with Qwest; the write-offs taken by Enron on 10/16/01 did not clean up its balance sheet – in fact, there were ***billions of dollars of additional overvalued assets still on Enron's balance sheet***; and Enron's shareholder equity was still overstated by $1-$2 billion and Enron's previously reported earnings were grotesquely false as detailed herein. The forecasts of strong 01 operating EPS of $1.80 per share and 02 EPS of $2.15 for Enron were also completely false as there was no basis whatsoever for these forecasts as, in fact, Enron's business internally was collapsing and was riddled with huge operating

losses which were actually increasing but continuing to be concealed. In fact, Enron's liquidity was extraordinarily endangered. Finally, of course, the statements about the LJM partnerships and how transactions with LJM were arm's length and appropriately reviewed and approved and did not involve self-dealing and that everybody had confidence in Fastow, were falsehoods as well for, as is pleaded in detail elsewhere herein, the LJM partnerships were, in fact, manipulative contrivances designed to artificially inflate Enron's reported results and permit Fastow and other Enron insiders and favored bankers to self-deal with Enron's assets.

391. Rubin's and Harrison's effort to strong-arm Moody's failed. Despite the efforts of Enron, JP Morgan and CitiGroup to conceal Enron's true financial condition from Dynegy and get Dynegy to agree to acquire Enron, the due diligence efforts of Dynegy and its investment bankers uncovered that the true financial condition of Enron was far worse than had ever been disclosed publicly to date and that Enron had been engaged in a wide-ranging falsification of its financial statements over the several prior years. Thus, Dynegy refused to acquire Enron and Enron went bankrupt. By 11/28/01, the charade could be continued no longer and Enron's publicly traded debt had been downgraded to "junk" status by the rating agencies and on 12/2/01, Enron filed for bankruptcy – ***the largest bankruptcy in history***. Enron's common and preferred stock have become virtually worthless and its publicly traded debt securities have suffered massive price declines, inflicting billions of dollars of losses on purchasers of those securities.

392. As outrage over what is likely the worst financial scandal involving a public company in the history of the United States erupted, Congress launched the most massive investigation it has ever undertaken of a public company's financial fraud, summoning before it some of the Enron executives and Andersen partners who were intimately involved in these matters. Defendants Lay, Fastow, Buy and Causey of Enron and David Duncan, the Andersen partner in charge of the Enron account, and Temple, a senior Andersen lawyer who directed the destruction of documents, ***have all refused to testify, asserting that their testimony would incriminate them***.

393. As detailed herein, the scheme to defraud Enron investors complained of was extraordinary in its scope, duration and size. Billions of dollars in phony profits were reported. Billions of dollars of debt was hidden. Enron shareholders' equity was overstated by billions of

dollars. This was accomplished over a multi-year period through numerous manipulative devices and contrivances and misrepresentations to investors in Enron releases and SEC filings, including Registration Statements utilized to raise billions of dollars of new capital which was indispensable to keep Enron afloat. This fraudulent scheme could not have been and was not perpetrated only by Enron and its insiders. It was designed and/or perpetrated only via the active and knowing participation of Enron's general counsel, Vinson & Elkins, the law firm for the LJM2 entity and its SPEs, Kirkland & Ellis, Enron's accounting firm, Andersen, and Enron's banks, including JP Morgan, CitiGroup, CS First Boston, Merrill Lynch, Deutsche Bank, Barclays, Lehman Brothers and Bank America. Each of these actors directly violated the securities laws and played an important role in the fraudulent scheme, conspiracy and wrongful course of business complained of herein.

DEFENDANTS' SCHEME AND FRAUDULENT COURSE OF BUSINESS

394. Each defendant is liable for (i) making false statements, or for failing to disclose adverse facts while selling Enron securities, and/or (ii) participating in a scheme to defraud and/or a course of business that operated as a fraud or deceit on purchasers of Enron's public securities during the Class Period (the "Wrongful Conduct"). This Wrongful Conduct enabled the Enron Defendants to sell or dispose of over 20.7 million shares of Enron stock at artificially inflated prices for almost $1.2 billion in illegal insider trading proceeds, plus an additional $1+ billion in cash bonuses based on Enron's false earnings and inflated stock price and enabled defendants to raise over $1.8 billion for Enron from the sale of newly issued Enron securities during the Class Period. The Wrongful Conduct also allowed Enron's accountants, law firms and banks to pocket billions of dollars in fees, commissions and other charges as detailed herein.

ENRON DEFENDANTS' SCIENTER ALLEGATIONS

395. As pleaded in this Complaint, the financial fraud and fraudulent course of business at Enron permeated virtually all aspects of Enron's operations, including all of its three major business operations WEOS, EES and EBS. In addition, the fraud was not only widespread throughout Enron but involved the frequent manipulation of Enron's public disclosures and financial reports via ***huge*** transactions – many of which were entered into at or near the end of reporting periods, a circumstance, especially when it is repeated quarter after quarter as it was at Enron, which is a significant red flag. Further, not only were these transactions large, frequent, widespread and often at quarter-end, they were also highly structured and complex, requiring the personal attention of several top executives of Enron, especially those sitting on the Enron Management Committee, and the review and approval of board members, especially those sitting on the Enron Board's Executive, Finance and Audit Committees, which had direct jurisdiction over these types of corporate transactions and activities. Thus, it is logical, if not obvious, that all of Enron's officers and directors knew of, or at a minimum acted in reckless disregard of, the falsification of Enron's financial reports and the other false and misleading statements being made about its business operations.

396. In addition, every Enron Defendant sued for fraud had a strong motive to engage and participate in the scheme to defraud and to conduct Enron's business in a manner that operated as a fraud or deceit on purchasers of Enron's publicly traded securities. Every Enron Defendant sued for fraudulent misconduct sold substantial amounts, either in absolute or relative terms, of his or her Enron stock, pocketing significant proceeds from his or her illegal insider trading. In addition, Enron's officers were in a position to also pocket huge cash bonuses if, but only if, Enron achieved certain preset earnings targets and its stock advanced to certain targeted trading levels. Also, the Enron Defendants had permitted Enron's business model to evolve to where the actual ongoing success of the finances of the business depended upon keeping Enron's stock price trading above several equity issuance trigger levels which placed further pressures on them to do whatever was necessary to keep Enron's stock trading at high levels.

397. The Enron Defendants who were on Enron's Management Committee were the top executives of Enron. They had daily contact with each other while running Enron as "hands-on" managers, dealing with the important issues facing Enron's business, *i.e.*, WEOS, EES, EBS, its JEDI and LJM partnerships and the related SPEs and Enron's future revenues and profits. The Enron Defendants controlled and/or possessed the power and authority to control the contents of Enron's Registration Statements, its Form 10-K SEC filings and its quarterly and annual reports and press releases, and were provided with copies of the filings, reports and releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected.

398. The Enron directors who were on Enron's Executive, Finance and Audit Committees were much more involved in Enron's day-to-day operations than is normally the case with "outside directors." These directors were also in frequent contact with Lay, Skilling, Fastow, Buy and Causey to receive information from them about Enron's business and they received copies of Enron's internal operating and budget reports circulated to Enron's top executives. The Enron securities offerings during the Class Period ***could not have taken place without the authorization of Enron's Board***.

399. Because of the Enron Defendants' positions with the Company, they each had access to the adverse non-public information about its business, partnerships and investments, finances, products, markets and present and future business prospects via access to internal corporate documents (including the Company's operating plans, budgets and forecasts and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and/or Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith.

400. As alleged herein, the Enron Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading, that such statements or documents would be issued or disseminated to the investing public, and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities

laws. As set forth elsewhere herein in detail, the Enron Defendants, by virtue of their receipt of information reflecting the true facts regarding Enron, their control over, and/or receipt and/or modification of Enron's allegedly materially misleading misstatements and/or their association with the Company which made them privy to confidential proprietary information concerning Enron, participated in the fraudulent scheme alleged herein.

401. The scienter of the Enron Defendants sued for fraud is further evidenced by the large amount of insider selling. The Enron insiders sold the following amounts of stock:

Enron Corp.
Summary of Class Period Insider Sales
(all share amounts are adjusted for the
Company's 8/13/99 2-for-1 stock split)

INSIDER	SHARES SOLD	PROCEEDS
Baxter	619,898	$ 34,734,854
Belfer *	2,065,137	$ 111,941,200
Blake	21,200	$ 1,705,328
Buy	140,234	$ 10,656,595
Causey	208,940	$ 13,386,896
Chan	8,000	$ 337,200
Derrick	230,660	$ 12,563,928
John Duncan	35,000	$ 2,009,700
Fastow	687,445	$ 33,675,004
Foy	38,160	$ 1,639,590
Frevert	986,898	$ 54,831,220
Gramm	10,328	$ 278,892
Hannon	**	**
Harrison	1,011,436	$ 75,416,636
Hirko	473,837	$ 35,168,721
Horton	830,444	$ 47,371,361
Jaedicke	13,360	$ 841,438
Kean	64,932	$ 5,166,414
Koenig	129,153	$ 9,110,466

Lay	4,002,259	$ 184,494,426
LeMaistre	17,344	$ 841,768
Mark	1,895,631	$ 82,536,737
McConnell	32,960	$ 2,506,311
McMahon	39,630	$ 2,739,226
Olson	83,183	$ 6,505,870
Pai	3,912,205	$ 270,276,065
Rice	1,234,009	$ 76,825,145
Skilling	1,307,678	$ 70,687,199
Sutton	688,996	$ 42,231,283
Whalley	**	**
TOTAL:	20,788,957	$1,190,479,472

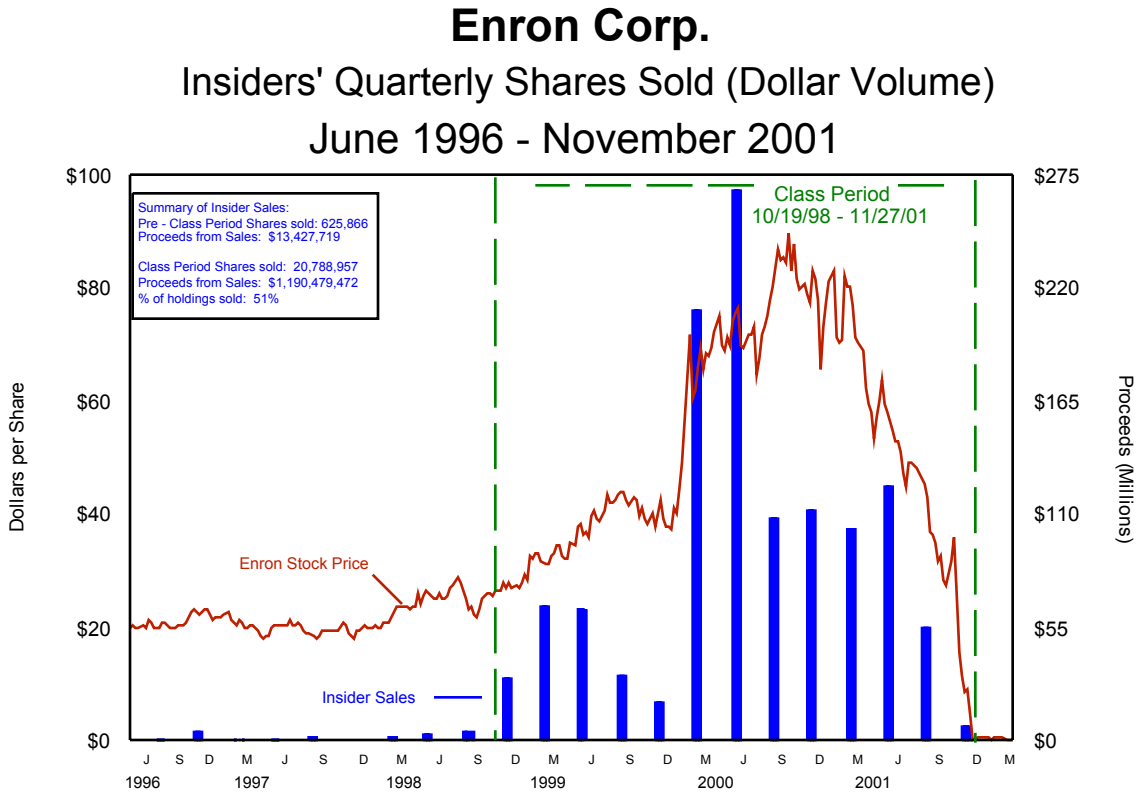
* Belfer's stock sales consist of $294,120 shares sold for $16,436,692 on the open market; 770,927 shares, with a value of $35,378,483, transferred to an exchange fund and 1,000,000 shares, with a value of $60,126,025, hedged through costless collars. The aggregate value of these dispositions was $111,941,200.

** Unknown but substantial.

402. These stock sales, in most instances, were large percentages of the Enron insiders' holdings of Enron stock plus vested options, as shown below:

Insider	Source	Common	Options	Total	Shares Sold Prior to Report Date	Available Holdings	CP Shares Sold	Proceeds	Percent of Shares Sold
Baxter	1/01 Form 4	5,996	250,848	256,844	619,898	876,742	619,898	$34,734,854	70.70%
Belfer	2001 Proxy	8,407,084	31,755	8,438,839	1,651,213	10,090,052	2,065,137	$111,941,200	20.47%
Blake	2001 Proxy	6,456	18,155	24,611	21,200	45,811	21,200	$1,705,328	46.28%
Buy	3/01 Form 4	6,662	25,643	32,305	140,234	172,539	140,234	$10,656,595	81.28%
Causey	8/01 Form 4	77,372	0	77,372	208,940	286,312	208,940	$13,386,896	72.98%
Chan	2001 Proxy	2,724	16,475	19,199	8,000	27,199	8,000	$337,200	29.41%
Derrick	6/01 Form 4	81,873	0	81,873	230,660	312,533	230,660	$12,563,928	73.80%
Duncan	2001 Proxy	134,498	39,755	174,253	0	174,253	35,000	$2,009,700	20.09%
Fastow	11/00 Form 4	29,336	0	29,336	687,445	716,781	687,445	$33,675,004	95.91%
Foy	1/00 Form 4	27,468	13,098	40,566	38,160	78,726	38,160	$1,639,590	48.47%
Frevert	2001 Proxy	215,149	1,052,202	1,267,351	986,898	2,254,249	986,898	$54,831,220	43.78%
Gramm	12/98 Form 4	1,374	652	2,026	10,328	12,354	10,328	$278,892	83.60%
Harrison	2001 Proxy	79,312	858,950	938,262	1,011,436	1,949,698	1,011,436	$75,416,636	51.88%
Hirko	5/00 Form 4	181,334	1,730,000	1,911,334	473,837	2,385,171	473,837	$35,168,721	19.87%
Horton	2001 Proxy	117,390	240,322	357,712	747,082	1,104,794	830,444	$47,371,361	75.17%
Jaedicke	2001 Proxy	17,332	39,755	57,087	5,360	62,447	13,360	$841,438	21.39%
Kean	1/01 Form 4	24,105	24,678	48,783	64,932	113,715	64,932	$5,166,414	57.10%
Koenig	5/01 Form 4	21,694	15,981	37,675	129,153	166,828	129,153	$9,110,466	77.42%
Lay	2001 Proxy	107,176	5,285,542	5,392,718	1,903,515	7,296,233	4,002,259	$184,494,426	54.85%
Lemaistre	2001 Proxy	16,532	39,755	56,287	9,344	65,631	17,344	$841,768	26.43%
Mark	5/00 Form 4	0	0	0	1,895,631	1,895,631	1,895,631	$82,536,737	100.00%
McConnell	3/00 Form 4	26,357	36,722	63,079	32,960	96,039	32,960	$2,506,311	34.32%
McMahon	3/00 Form 4	8,885	87,222	96,107	39,630	135,737	39,630	$2,739,226	29.20%
Olson	3/01 Form 4	9,298	5,893	15,191	83,183	98,374	83,183	$6,505,870	84.56%
Pai	6/01 Form 4	0	0	0	3,912,205	3,912,205	3,912,205	$270,276,065	100.00%
Rice	2001 Proxy	21,164	1,447,969	1,469,133	770,410	2,239,543	1,234,009	$76,825,145	55.10%
Skilling	2001 Proxy	1,117,339	824,038	1,941,377	1,137,678	3,079,055	1,307,678	$70,687,199	42.47%
Sutton	9/00 Form 4	283,646	194,306	477,952	688,996	1,166,948	688,996	$42,231,283	59.04%
						40,815,599	20,788,957	$1,190,479,472	50.93%

403. These defendants' illegal insider selling escalated massively as Enron's stock moved to more inflated levels during the Class Period and also when internally they knew the scheme was unraveling, especially after the termination of the Blockbuster deal, as the chart below shows:



404. In addition to these known insider stock sales, other high-ranking Enron management employees sold off millions more of their Enron shares – sales that were not reported to the SEC on Form 4's. It is believed these additional sales totaled more than $500 million.

405. Certain of the insider stock sales specified herein were undertaken pursuant to Rule 10b5-1 adopted by the SEC in 10/00. However, these sales were not protected by Rule 10b-1 because at the time the Rule 10b5-1 selling program was adopted by those Enron Defendants who did adopt the Rule 10b5-1 stock-selling plan, those individuals were already in the midst of pursuing the fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Enron securities, and knew that the price of Enron common stock was artificially inflated by the false and misleading statements and concealments those participating in the scheme had made. Thus, the plans were not entered into in good faith, but rather, were part of a scheme to evade the prohibition against insider trading contained in the 1934 Act.

406. There is also statistical evidence of the scienter of certain of Enron's officers and directors. Expert analysis of the timing of an insider's exercise of stock options can provide strong

evidence that the transactions were based on non-public information. Therefore, plaintiffs have hired Dr. Scott D. Hakala, an expert in security market econometrics and insider trading, to analyze the timing of defendants' option exercises and stock sales. Plaintiffs hereby incorporate the contents of the Declaration of Scott D. Hakala ("Hakala Decl.") which recounts Dr. Hakala's findings in this regard, attached as Ex. B to Exhibit Appendix. A detailed summary of his qualifications, including prior testimony and publications, is provided on the curriculum vitae attached to his declaration.

407. Dr. Hakala's analysis is based on the common sense notion that executives will not irrationally, and needlessly, waste large amounts of their wealth. In particular, where option exercises produce expected financial losses far beyond the traditional losses associated with executive risk aversion and can only rationally be explained by considering inside information, there exists strong evidence that inside information was utilized to conduct the transaction.

408. Options are valuable rights because an option allows its owner to preserve the opportunity for upside gain without any capital commitment and without any risk of loss. At any time prior to its expiration date, the market value of an option has two components: (1) "intrinsic value," the amount of money that one could obtain by exercising the option as of today (stock price less the strike or exercise price of the option); and (2) "time value," the value from any potential increase in the stock price during the term of the option. Premature sales of stock options are non-optimal, except for limited periodic sales for diversification or liquidity purposes. ***In sum, executives will be generally hesitant to exercise an option well in advance of the expiration date of the option, since an early option exercise forfeits the time value of the option and will only be rationally exercised when the market price is at least four times the strike price***.

409. Indeed, the rational executive will rarely forfeit more than a modest amount of the value of an option partly because it is unnecessary to do so. Asset liquidity or diversification can be achieved by financial instruments readily available and commonly used by executives. For example, executives commonly protect themselves from risk by the use of put options, call options, zero cost collars, and equity swaps. These instruments are readily available, commonly used, and can be obtained easily. Information regarding these options is readily available to these executives through financial advisors and is part of the course work involved in obtaining business degrees.

410. Indeed, such instruments were used in this case. In particular, Belfer entered into zero cost collars during the end of 00 and beginning of 01 covering 1,000,000 of his shares. These collars cost Belfer no cash to put into place and locked in a guaranteed minimum price for his shares of between $55.53 and $65.70 and provided this protection until the later part of 03. Belfer was costlessly ensured that he would be able to sell his Enron stock at inflated prices at any time through the later part of 03. Hence, while many Enron employees have lost their entire pensions and many stockholders have seen their Enron investments completely vanish, Belfer is now presently contractually entitled to trade his worthless Enron shares for approximately $60 million pursuant to these collars.

411. Should the holder of an executive option exercise his options on a particular date, an expert can determine the expected financial loss to the executive as compared with not exercising the option. This loss can be compared to empirically derived risk premiums to determine whether the executive's exercise can be explained as either (1) within the range of rational option exercises for a risk-adverse executive, or (2) outside the range of rational option exercises. Where the option exercises appear to be irrational, these option exercises may be rationally explained when inside information is taken into account. For example, prematurely exercising an option with a strike price close to the market price of a stock would be irrational unless the executive had inside information which led him or her to believe the company would soon be in bankruptcy.

412. The literature reveals that normal risk premiums on executive stock options of similar securities with similar trading restrictions typically range from 3%-6%. At the far extreme range, for extremely risk-adverse executives who are also highly undiversified, this risk premium can range as high as 10%.

413. Dr. Hakala's analysis in this case reveals that Enron executives rarely if ever exercised their options in a manner which exceeded this 10% threshold prior to the Class Period. By contrast, during the Class Period, this limit was continually exceeded. This analysis demonstrates defendants used and possessed inside, non-public information. In particular, as the Hakala Decl. details, many of the option exercises by Lay, Skilling, Pai and Rice exceed the 10% risk premium limitation which rationally bounds the limits of even a very risk-adverse, liquidity constrained executive.

414. Dr. Hakala's analysis concludes that the option exercises of those defendants provides ***strong evidence*** that these insiders were trading on insider information, as no rational executive would have made these transactions absent the use of inside information.

415. Dr. Hakala has also conducted a statistical analysis of defendants' trading patterns in this case. The results of his study demonstrate that there is less than 1 chance in 1000 that Lay, and less than 1 chance in 100 that other Enron officers traded in a manner that was independent of the possession and use of material adverse non-public information. In other words, Dr. Hakala's study concluded that the probability that the Enron officers traded on inside information is between 99% and 99.9%. This level of certainty far exceeds the scientific acceptance standard (95%), plaintiffs' civil standard of proof and plaintiffs' pleading burden. These results are summarized in the following chart:

Insider	Greater Than .99?	Greater Than .95?	Greater Than .90?	More Probable Than Not?
Belfer	N	N	N	Y
Buy	N	Y	Y	Y
Causey	N	N	N	Y
Derrick	N	N	N	Y
Fastow	N	N	N	Y
Frevert	N	N	Y	Y
Harrison	N	N	Y	Y
Hirko	N	N	Y	Y
Horton	Y	Y	Y	Y
Kean	N	N	N	Y
Koenig	N	Y	Y	Y
LeMaistre	N	N	N	Y
Mark-Jusbasche	N	Y	Y	Y
McConnell	N	N	N	Y
McMahon	N	N	N	Y
Olson	Y	Y	Y	Y
Sutton	N	Y	Y	Y

Lay	Y	Y	Y	Y
Skilling	Y	Y	Y	Y
Pai	Y	Y	Y	Y
Rice	Y	Y	Y	Y
Total-Yes	**6**	**10**	**13**	**21**

416. The details of each Enron Defendant's insider sales are set forth in Ex. C to Exhibit Appendix.

417. The scienter of the defendants other than the Enron Defendants, *i.e.*, the banks, law firms and accounting firms sued herein, are detailed in the individual sections of the Complaint setting forth the role and involvement of each of those defendants in the events complained of in this Complaint.

ENRON'S FALSE FINANCIAL STATEMENTS

418. In order to overstate Enron's assets, shareholders' equity, revenues, net income and earnings per share, understate debt, and present materially misleading financial statements during the Class Period, the defendants caused the Company to violate GAAP and SEC rules, in several ways, including:

(a) by improperly failing to consolidate entities into Enron's financial statements, defendants hid hundreds of millions in losses that should have properly reduced Enron's earnings, and hid hundreds of millions in debt which should have been included on Enron's balance sheets reported during the Class Period;

(b) by improperly accounting for common stock issued to a related-party entity which should have been treated as a reduction in shareholders' equity but was accounted for as a note receivable;

(c) by improperly accounting for broadband transactions;

(d) by grossly abusing mark-to-market accounting, including for a transaction involving Blockbuster;

(e) by improperly characterizing loans as forward contracts in order to conceal the true amount of Enron's debt;

(f) by improperly accounting for long-term contracts;

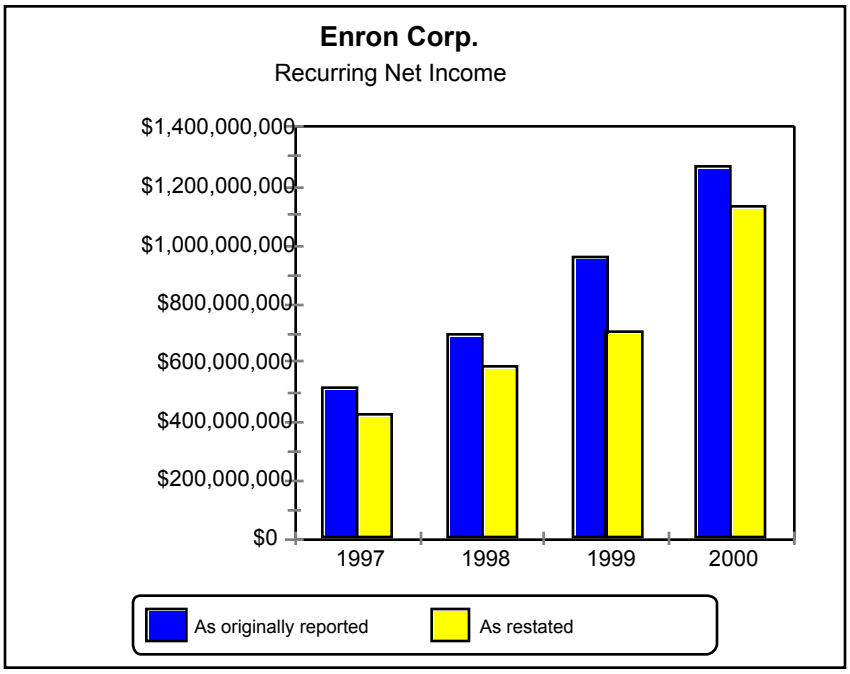
(g) by failing to record required write-downs for impairment in the value of Enron's investments, Enron's long-term assets, and its broadband and technology investments on a timely basis;

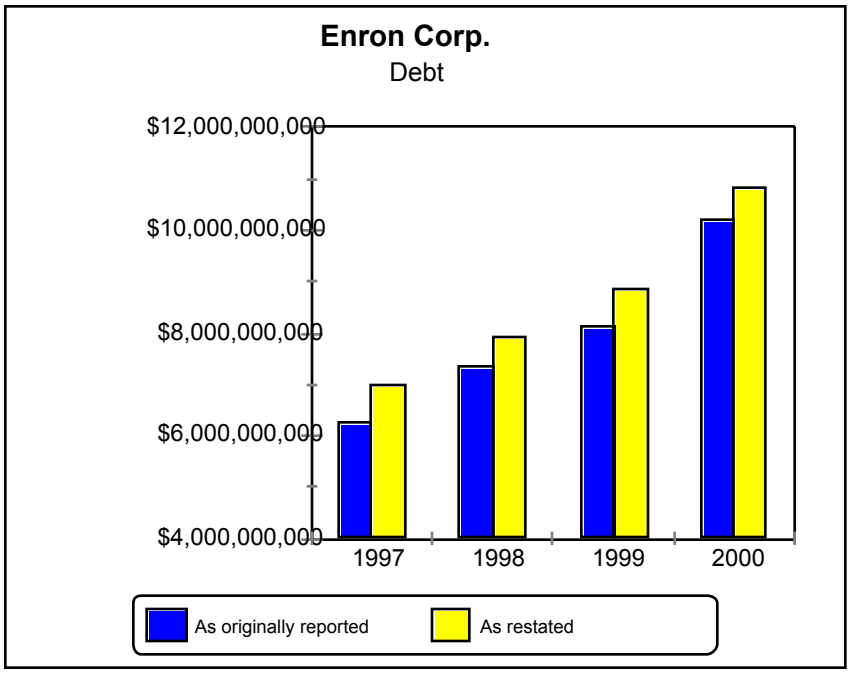
(h) by not recording an aggregate of $92 million in proposed audit adjustments from 97 to 00 until the very end of the Class Period;

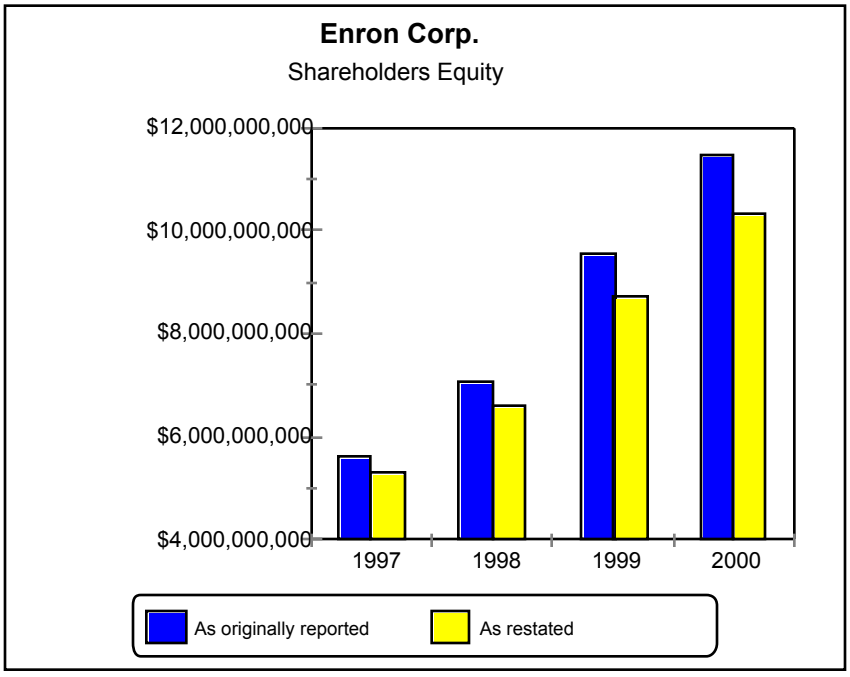
(i) by failing to adequately disclose its business and related party-transactions; and

(j) by misstating Enron's "Debt to Equity" and "Ratio of Earnings to Fixed Charges" presented in its financial statements.

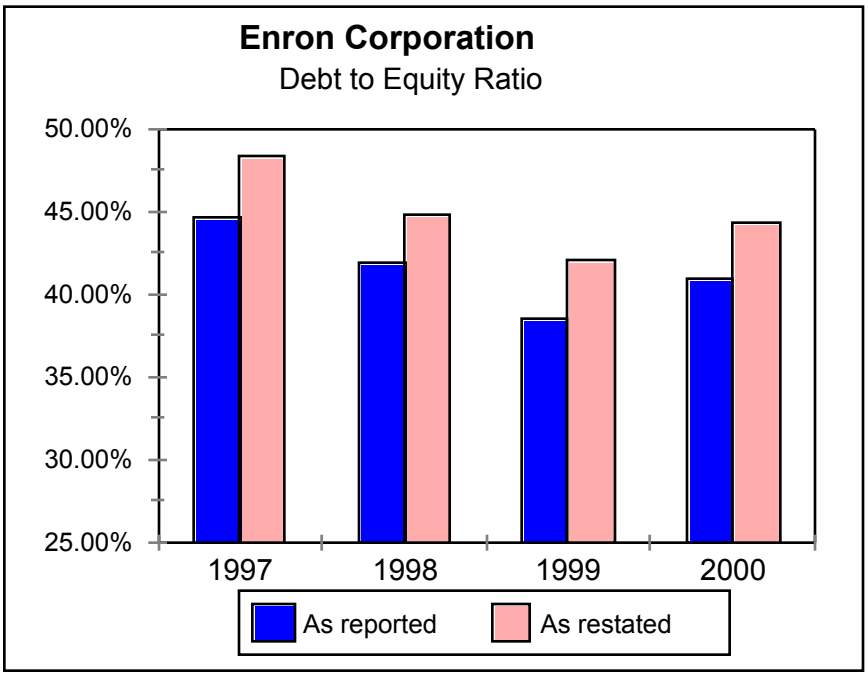
419. Enron has now admitted that its 97 through 00 year-end and 97 through 01 interim quarterly financial statements as originally filed with the SEC were false and improperly reported and has restated the results. While Enron's improper accounting was much more widespread than what the Company has either admitted or restated as alleged below, the scope and size of the restatement is substantial:




Enron Corp.
Debt
$12,000,000,000
$10,000,000,000
$8,000,000,000
$6,000,000,000
$4,000,000,000
1997
1998
1999
2000
As originally reported
As restated



420. Enron's manipulation of its results also had a dramatic impact on its key "debt-to-equity" ratio, measured as debt to total capitalization. Even the restatement, which did not correct the impact of Enron's phony forward sales contracts alleged herein, shows a significant impact from the concealed debt and improper equity adjustments on the Company's debt-to-equity ratio. This ratio is used by ratings agencies to evaluate the Company's credit rating which Fastow had termed "strategically critical":



421. The restatement adversely affected these debt and earnings ratios significantly:

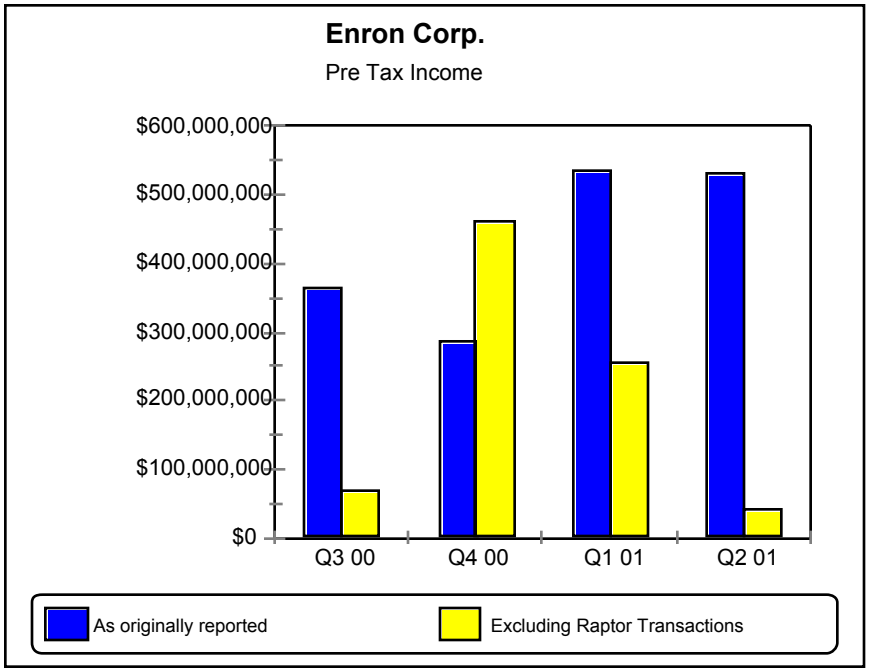
	1997	1998	1999	2000
Debt to Equity				
As reported	44.6%	41.9%	38.5%	40.9%
As restated	48.3%	44.8%	42.1%	44.3%
Ratio of Earnings to Fixed Charges				
As reported	1.02	2.08	2.29	2.34
As restated	.88	1.94	2.03	2.23

422. The amount of the restatement, however, was just the tip of the iceberg. The Enron Defendants engaged in many other egregious manipulations of Enron's financial statements which were not part of the restatement. As Accounting Malpractice.com noted on 2/22/02:

> Each passing week raises a new concern about not only the original financial reporting but also the veracity of the restatement itself. The emerging question is not whether a more conservative restatement would have reflected smaller profits, but whether a proper restatement would have reflected ***any profits*** from 1997 and forward?

423. In fact, Enron's restatement did not correct the Company's abuse of mark-to-market accounting, which accelerated or fabricated profits, including for its broadband business. The Company, with the assistance of certain of the banking defendants, also engaged in false forward sales contracts which concealed hundreds of millions of dollars in loans, none of which are part of

the restatement. Had Enron properly reported its results, its broadband efforts would have been shown to be a complete failure and its debt-to-equity ratios would have been much worse than even the restated amounts. The Raptors transactions were restated only as to the balance sheet effect but not as to $1.1 billion in pretax earnings that had been improperly recorded. Note the impact the Raptors transactions had on Enron's results (which was not restated):



424. During the Class Period, Enron painted a false picture of profitability and liquidity. This included the amounts reported on the Company's financial statements. Enron reported the following financial results for 97-01:

	1997	1998	1999	2000
Revenues	$20.3B	$31.2B	$40.2B	100.8B
Recurring Net Income	$515 M	$698 M	$957M	$1.27 B
Net Income	$105M	$703M	$893M	$1.27B
EPS	$0.16	$1.00	$1.18	$1.47
Total Assets	$22.5 B	$29.4 B	$33.4 B	$65.5 B
Debt	$6.25 B	$7.36 B	$8.15 B	$10.23 B

Shareholders' Equity	$5.62 B	$7.05 B	$9.57 B	$11.47 B
Ratio of Earnings Fixed Charges	1.02	2.08	2.29	2.34
Debt to Equity[6]	44.6%	41.9%	38.5%	40.9%
		3/31/01	6/30/01	9/30/01
Revenues		$50.1B	$50.1B	$47.6B
Recurring Net Income	$406 M	$404 M	$393 M	
Net Income		$425M	$404M	($618M)
EPS		$0.49	$0.45	
Total Assets		$67.3 B	$63.4 B	
Shareholders' Equity		$11.73 B	$11.74 B	

425. Enron included these results in press releases and SEC filings, including Form 10-Qs for the interim results and Form 10-Ks for the annual results. The financial results were also included and/or incorporated by reference into Enron's many Registration Statements and Prospectuses filed during the Class Period pursuant to debt and equity offerings. The SEC filings represented that the financial information was a fair presentation of Enron's financial results and financial position and that the results were presented in accordance with GAAP.

426. These representations were false and misleading as to the financial information reported, as such financial information was not prepared in conformity with GAAP, and was not "a fair presentation" of the Company's operations and financial position due to: (i) the Company's improper accounting for its subsidiaries; (ii) its improper accounting for investments in its broadband and content services business; (iii) its abusive and manipulative use of mark-to-market accounting; (iv) its mischaracterization of loans as forward sales contracts; (v) its failure to record losses for impaired assets; and (vi) its false and inadequate disclosures about its transactions with related parties. These manipulations, among others, caused the financial results to be presented in violation of GAAP and SEC rules.

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[6] Debt to equity is calculated using total capitalization as the denominator, consistent with what Enron reported in its Form 10-Ks.

427. GAAP are those principles recognized by the accounting profession as the conventions, rules and procedures necessary to define accepted accounting practice at a particular time. Regulation S-X (17 C.F.R. §210.4-01(a)(1)) states that financial statements filed with the SEC which are not prepared in compliance with GAAP are presumed to be misleading and inaccurate. Regulation S-X requires that interim financial statements must also comply with GAAP, with the exception that interim financial statements need not include disclosure which would be duplicative of disclosures accompanying the annual financial statements most recently filed. 17 C.F.R. §210.10-01(a).

428. Moreover, pursuant to §13(b)(2) of the 1934 Act, Enron was required to "(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and (B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that – (i) transactions are executed in accordance with management's general or specific authorization; [and] (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles ...."

A. Enron's Failure to Consolidate Subsidiaries and Special Purpose Entities

429. In order to maintain favorable credit ratings, *inter alia*, Enron management and its bankers developed a scheme to keep loans, obtained through partnerships and SPEs, off Enron's financial statements and at the same time inappropriately record income from transactions with these SPEs. Enron entered into arrangements with affiliates that Enron controlled and Enron financed. In violation of GAAP, Enron failed to consolidate the entities into its financial statements.

430. GAAP, as set forth in Accounting Research Bulletin ("ARB") No. 51, ¶1, states in part:

> There is a ***presumption that consolidated statements are more meaningful*** than separate statements and that they are usually necessary for a fair presentation when one of the companies in the group ***directly or indirectly has a controlling financial interest in the other companies***.

431. FASB Statement of Financial Accounting Standards ("SFAS") No. 94, ***requires*** consolidation of all majority-owned subsidiaries ***unless*** control is temporary or ***does not rest with the majority owner***.

432. GAAP also provides that, under very limited circumstances, certain qualifying SPEs do not have to be consolidated. But in order to even qualify as an SPE, and in turn, avoid consolidation, a public company's investment entity must meet very specific criteria under SFAS No. 125. For example, the SPE must have standing apart from the transferor (Enron) and the transferor can not maintain effective control over the transferred assets. SFAS No. 125, ¶¶9c, 26.

433. Thus, in accordance with GAAP, to the extent an Enron investment entity was even qualified as an SPE, a party unrelated to Enron had to be independent, had to control the SPE and must have maintained the risks and rewards of ownership. The defendants knew however, that for many of Enron's SPEs, it directly or indirectly maintained control over the SPE, and knew that such entities did not qualify as SPEs under SFAS No. 125. In order to improperly keep these entities off Enron's books, the Enron Defendants focused on language from EITF No. 90-15 regarding leasing transactions. Here, consolidation could be avoided if the initial substantive residual equity investment, on behalf of the lessor, was at least 3%.[7] Notwithstanding that EITF No. 90-15 states that a greater percentage might well be necessary depending on circumstances and that this standard

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[7] Although not applicable to the transactions alleged herein, additional guidance for SPEs is described in FASB Emerging Issues Task Force Abstracts ("EITF"). The EITF guidance which the Enron Defendants relied on as to whether an SPE should be consolidated was derived from EITF Issue No. 90-15, Impact of Nonsubstantive Lessors, Residual Value Guarantees, and Other Provisions in Leasing Transactions; EITF Topic No. D-14, Transactions Involving Special-Purpose Entities; and EITF Issue No. 96-21, Implementation Issues in Accounting for Leasing Transactions Involving Special-Purpose Entitles. Furthermore, EITF Topic No. D-14 provides the general guidance for non-consolidation of an SPE:

> Generally, the SEC staff believes that for ***nonconsolidation*** and sales recognition by the sponsor or transferor to be appropriate, the majority owner (or owners) of the SPE ***must be an independent third party who has made a substantive capital investment in the SPE, has control of the SPE, and has substantive risks and rewards of ownership of the assets of the SPE*** (including residuals). Conversely, the SEC staff believes that nonconsolidation and sales recognition are not appropriate by the sponsor or transferor when the majority owner of the SPE makes only a nominal capital investment, the activities of the SPE are virtually all on the sponsor's or transferor's behalf, and the substantive risks and rewards of the assets or the debt of the SPE rest directly or indirectly with the sponsor or transferor.

regarding leased assets did not even apply to the SPEs Enron had created, the financial management of Enron, with the participation of Andersen, Enron's lawyers and the banking defendants, inappropriately used this provision as the overriding rule to avoid consolidating certain SPEs. Moreover, many of Enron's SPEs did not even meet the 3% minimum standard. Accordingly, these SPEs, under any accounting machination, were improperly not consolidated or adequately disclosed in Enron's financial statements. As such, billions of dollars in loans and losses were concealed, and millions of dollars of income was improperly recognized from transactions with these entities, some of which were non-qualifying SPEs. The Company's use of SPEs to monetize (accelerate recognition of) future contract revenues and book them as current revenues was known internally as "Enron's trick."

434. This misstatement allowed Enron to improperly minimize the amount of debt reported on its balance sheet, which was crucial to its strategy. As *The Wall Street Journal* reported on 11/8/01:

> But to make all of its growth dreams possible, Enron had to make sure that its balance sheet didn't become too laden with debt. Too much debt would lead major ratings agencies, such as Moody's Investors Service and Standard & Poor's, to lower Enron's credit rating. Such downgrades could significantly increase the company's cost of borrowing and make it more difficult to finance its continued expansion.

(1) Chewco

435. Chewco Investments was an entity that should have been, but was not, consolidated. Chewco was less than 3% owned by parties independent to Enron. Consequently, Chewco was improperly excluded from Enron's financial statements despite being controlled by Enron. Chewco was formed in 97 with $400 million in financial backing to buy interests in another Enron partnership, and was run by Michael Kopper ("Kopper"), a managing director of Enron's Global Equity Markets Group. Neither this entity, nor its relationship to Enron, was disclosed in Enron's SEC filings during the Class Period.

436. More specifically, in 93, Enron created a joint venture investment partnership called Joint Energy Development Investment Limited Partnership ("JEDI"). Enron was the general partner but, because Enron and its limited partner had joint control, Enron did not consolidate JEDI into its consolidated financial statements. In 97, Enron needed to replace the limited partner's interest in

JEDI. In order to maintain JEDI as an unconsolidated entity, Enron needed to identify a new independent partner. Unable to find any independent entity willing to invest, in early 11/97, Fastow created a new entity to be the new limited partner, and named it "Chewco Investments" – after the Star Wars character "Chewbacca." Kopper, an Enron employee who reported to Fastow, was inserted as manager of Chewco, because, as Vinson & Elkins advised, since Kopper was not a senior officer of Enron, his role in Chewco would not have to be disclosed. Vinson & Elkins prepared the legal documentation for these entities. Kirkland & Ellis also participated in structuring these deals and represented two straw parties (Big River and Little River) which were partners in Chewco, whose sole purpose was to help Enron conceal debt and losses.

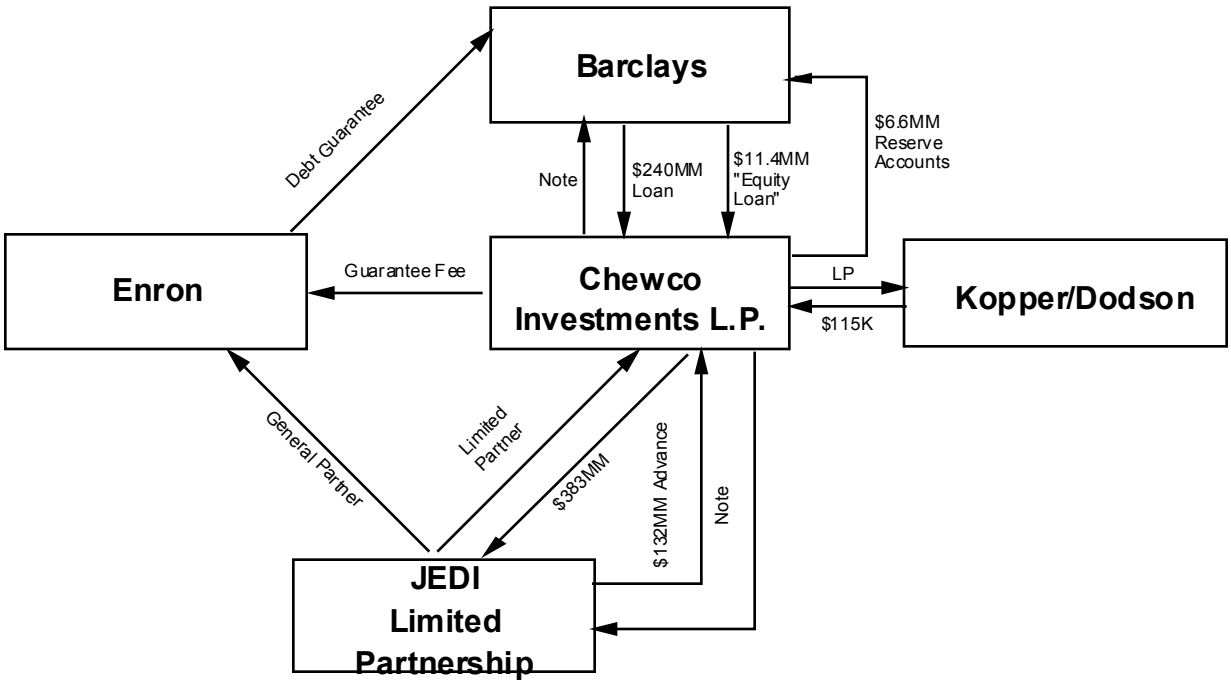
437. Enron also put together a bridge financing arrangement, under which Chewco and its members would borrow $383 million from two banks on an unsecured basis to buy out the limited partner's interest from JEDI. The loans were guaranteed by Enron. However, the transaction did not comply with SPE non-consolidation rules since Kopper, an Enron employee, controlled Chewco, and Chewco had no third-party independent investors. In order to qualify for non-consolidation, Enron sought to replace the bridge financing with another structure that would qualify Chewco as an SPE with sufficient outside independent equity such that the consolidation of Chewco and JEDI into Enron's financial statements could be avoided at year end 97.

438. To achieve this goal, in 12/97, Enron created a new capital structure for Chewco, consisting of: (a) a $240 million unsecured subordinated loan to Chewco from Barclays, which Enron guaranteed; (b) a $132 million advance from JEDI to Chewco under a revolving credit agreement; and (c) $11.5 million in equity (representing 3% of total capital) from Chewco's general and limited partners. On 12/18/97, Kopper transferred his ownership interest in Chewco to William Dodson, Kopper's domestic partner. This sham transfer to Dodson was made for the sole purpose of creating the false impression that Kopper, and thus Enron, had no formal interest in Chewco.

439. However, even after employing the bogus transfer to Dodson, the Enron Defendants could not get the 3% equity needed to avoid consolidation because Kopper indirectly invested approximately $125,000 in Chewco before transferring his interest to Dodson. However, no third-party investors were willing to provide outside equity. To obtain the remaining $11.4 million needed

to reach 3%, Barclays agreed to provide what were described as "equity loans" to entities investing in Chewco. Barclays and the Enron Defendants prepared the documentation to allow Barclays to characterize the advances as loans (for business and regulatory reasons), while allowing Enron and Chewco simultaneously to mischaracterize them as equity contributions in order to approach the 3% equity investment. The Barclays loans were reflected in documents that resembled promissory notes and loan agreements, but were labeled "certificates" and "funding agreements." The Barclays documents required the borrowers to pay "yield" at a specified percentage rate, *i.e.*, interest. Barclays, however, threw a wrench into the scheme by requiring the borrowers to establish cash "reserve accounts" of $6.6 million in cash that would secure repayment of the $11.4 million. The reserve account was funded when JEDI wired $6.58 million to Barclays on 12/30/97. The agreement was prepared by Vinson & Elkins. This transfer cut Chewco's purported 3% at risk, independent "equity" in half.

440. Thus, even the illusory "equity" of 3% was not achieved since Barclays received the reserve of $6.6 million to secure what was clearly a loan and therefore did not qualify as outside equity "at risk." Consequently, even under Enron's contorted interpretation of qualifying SPEs, Chewco did not have the required equity at risk and did not qualify as an adequately capitalized SPE. As a result, under EITF No. 90-15 and Topic D-14, Chewco was required to be, but improperly was not, consolidated into Enron's consolidated financial statements from the outset. Further, because JEDI's non-consolidation depended upon Chewco's non-consolidation status, JEDI also should have been consolidated beginning in 11/97. A simplified diagram of the Chewco transaction is as follows:



441. The problems with the purported independent "equity" in Chewco were known and openly discussed within Enron. Barclays clearly knew about the manipulation since it helped structure the $11.4 million loan to appear as equity, and Vinson & Elkins and Kirkland & Ellis knew due to their involvement in setting up the paperwork for the transaction.

442. Beginning in 12/97, Enron improperly recognized revenues arising from the JEDI partnership (in which Chewco was supposedly the independent partner). The revenue recognition was improper since Chewco was not an unrelated third party. This revenue included fees paid to Enron by JEDI and Chewco that had no business purpose other than accelerating Enron's ability to recognize revenue.

(a) Enron Guarantee Fee

443. Enron guaranteed the $240 million unsecured subordinated loan by Barclays to Chewco in 12/97. In exchange, Chewco agreed to pay Enron a purported guarantee fee of $10 million up front (cash at closing) plus 315 basis points annually on the average outstanding balance of the loan. This fee was not calculated based on any analysis of the risks involved in providing the guarantee, but rather it was calculated based on the beneficial financial statement impact it would have for Enron. During the 12 months that the subordinated loan was outstanding, JEDI, through

Chewco, paid Enron $17.4 million under this fee agreement. Enron characterized these payments as "structuring fees" and recognized income from the $10 million up-front fee in 12/97. These were not in fact "structuring fees," but instead really amounted to improper transfers from one Enron pocket to another. Pursuant to GAAP, they should never have been recognized.

(b) "Required Payments" to Enron

444. The 12/97 JEDI partnership agreement required JEDI to pay Enron (the general partner) an annual management fee. Pursuant to GAAP, Enron was allowed to recognize income from this fee only when services were rendered. *See* FASB Statement of Concepts No. 5, ¶¶83-84. In 3/98, however, Enron and Chewco amended the partnership agreement to require that 80% of the annual management fee was to be a "required payment" to Enron. Although this amendment had no effect on the amount payable to Enron, Enron used it to accelerate the recognition of revenue. As of 3/31/98, Enron recorded a $28 million asset and recognized $25.7 million in income.

(c) Recognition of Income from Enron Stock

445. From the inception of JEDI in 93 through the 1stQ 00, Enron picked up its contractual share of income or losses from JEDI using the equity method of accounting. JEDI carried its assets at fair value, and changes in fair value of the assets were recorded in JEDI's income statement. Since JEDI held 12 million shares of Enron stock, market fluctuations in Enron stock were recorded as income or loss on JEDI's income statement. Under GAAP, a company may not recognize an increase in the value of its own stock as income. Specifically, pursuant to GAAP, as set forth in Accounting Principles Board ("APB") No. 9, ¶28:

> The Board reaffirms the conclusion of the former committee on accounting procedure that the following should be excluded from the determination of net income or the results of operations under all circumstances: (a) adjustments or charges or credits resulting from transactions in the company's own capital stock, (b) transfers to and from accounts properly designated as appropriated retained earnings (such as general purpose contingency reserves or provisions for replacement costs of fixed assets) and (c) adjustments made pursuant to a quasi-reorganization.

See also ARB No. 43, Chapter 1B (footnote omitted).

446. Despite this rule, Enron created a formula for computing how much income it could improperly record from appreciation of its own stock held by JEDI. Enron recorded $126 million in Enron stock appreciation during the 1stQ 00. However, later in the 1stQ 01, when the Enron

stock held by JEDI declined in value by approximately $94 million, Enron did not record its share of this loss – approximately $90 million – because it conveniently decided that it would no longer record increases or decreases in value of Enron stock held by JEDI.

447. Enron has now admitted that Chewco and JEDI did not meet the criteria to qualify as unconsolidated SPEs and has restated its results to consolidate these entities' losses and debt into its own financial statements. As a result, Enron failed to record losses from and debt attributed to these two entities by the following amounts:

	1997	1998	1999	2000
Unrecorded Losses	$45M	$107M	$153M	$91M
Unrecorded Debt	$711M	$561M	$685M	$628M

(2) LJM Partnerships

448. Enron also improperly accounted for the LJM partnerships and its transactions with those entities wherein it improperly recorded income from these entities and concealed debt. LJM Cayman L.P. ("LJM1") and LJM2 Co-Investment, L.P. ("LJM2") were investment limited partnerships formed in 99. Fastow was the managing member of the general partners of both LJM1 and LJM2. From 6/99 through 9/01, Enron and Enron-related entities entered into 24 business relationships in which LJM1 or LJM2 participated. These relationships were of several general types, including: (a) asset sales by Enron to LJM2 or vice versa; (b) purchases of debt or equity interests by LJM1 or LJM2 in Enron affiliates, Enron-sponsored SPEs or other entities in which Enron was an investor; (c) purchases of equity investments by LJM1 or LJM2 in SPEs designed to mitigate market risk in Enron's investments; (d) the sale of a call option and a put option by LJM2 on physical assets; and (e) a subordinated loan to LJM2 from an Enron affiliate. These entities ***generated "earnings" for Enron of $229 million in the second half of 99 out of total earnings for that period of $549 million.***

449. In fact, the LJM partnerships were controlled by Enron and were not independent entities. That the LJM partnerships were actually part of Enron is also demonstrated by LJM partnerships' use of Enron employees. The LJM1 and LJM2 employees were regular, full-time Enron employees for benefits purposes, with the LJM partnerships only paying the bonuses, and

in some cases the base salary. It was understood that some activities conducted by LJM2 employees would be for the benefit of Enron. Causey and Fastow were to allocate costs between Enron and LJM2.

450. Pursuant to GAAP, the results of LJM1 should have been consolidated into Enron's financial statements (as Enron has now admitted through the restatement, should have been done). However, by refusing to properly consolidate these results, defendants overstated earnings by $95 million and $8 million in 99 and 00, respectively, in Enron's financial statements. The failure to consolidate also caused Enron to improperly report $222 million in assets which it was not entitled to report in 99. Enron has now restated its financial results to record these losses and to remove the assets from its balance sheet. Enron also improperly recorded an additional $1 billion in income from LJM2, which it did not restate.

451. The board approved LJM1, knowing that Fastow would be general partner. Fastow raised $15 million from two limited partners, including ERNB Ltd. (an affiliate of CS First Boston). LJM1 was designed to allow Enron to engage in phony hedging transactions. The hedging transaction included the transfer of restricted Enron stock to LJM1.

452. One transaction LJM1 entered into with Enron was Enron's effort to hedge its position in Rhythms NetConnections ("Rhythms") stock.

453. The Rhythms transaction involved Enron using LJM1 to lock in gains on volatile investments. In 3/98, Enron had invested $10 million in the stock of Rhythms, a privately held ISP for businesses, by purchasing 5.4 million shares of Rhythms stock at $1.85 per share. On 4/7/99, Rhythms went public at $21 per share. By the close of the first trading day, the stock price reached $69. By 5/99, Enron's investment in Rhythms was worth approximately $300 million, but Enron was prohibited by a lock-up agreement from selling its shares before the end of 99.

454. Because Enron accounted for the investment as part of its merchant portfolio, it marked the Rhythms position to market, meaning that increases and decreases in the value of Rhythms stock were to be reflected on Enron's income statement as gains or losses. Skilling wanted to lock in the gains from Rhythms stock and protect earnings against any future drops in value. Given the size of Enron's position, the relative illiquidity of Rhythms stock, and the lack of

comparable securities in the market, it was prohibitively expensive to hedge Rhythms commercially. Enron was also looking for a way to take advantage of an increase in value of its own stock. But under GAAP, a company cannot recognize an increase in value of its own stock (including forward contracts) as income. *See* APB No. 9, ¶28.

455. To circumvent GAAP, Enron sought to use what it viewed as this "trapped" or "embedded" value of Enron stock. LJM1 was formed for this purpose and, immediately thereafter, the Rhythms transaction closed, on 6/30/99. The transaction had three principal elements: ***First***, Enron released 3.4 million shares of Enron stock for transfer to LJM1, which on 6/30/99 had a value of $276 million. Enron, however, restricted the shares to preclude their sale or transfer for four years. The value of the shares was discounted by approximately $108 million (or 39%) to account for the restriction. The restriction did not, however, preclude LJM1 from pledging the shares as security for a loan. In exchange for these Enron shares, LJM1 gave Enron a note (due on 3/31/00) for $64 million. ***Second***, LJM1 capitalized Swap Sub (a limited partner in LJM1) by transferring 1.6 million of the Enron shares to Swap Sub, along with $3.75 million in cash. ***Third***, Enron received from Swap Sub a put option on 5.4 million shares of Rhythms stock, under which Enron could require Swap Sub to purchase Rhythms shares at $56 per share in 6/04. The put option was valued at approximately $104 million.

456. The purported "hedge" that Enron obtained on its Rhythms position with Swap Sub that was used as a justification to allow Enron to report gains and losses on its income statement was never a true economic hedge. This was because Swap Sub's ability to make good on the Rhythms put rested on the value of the Enron stock. As a consequence, Swap Sub could perform on the put only if Enron stock performed well. Under this scenario, if Rhythms stock declined, any losses would to be absorbed by the value in the Enron stock, but if Enron stock and Rhythms stock both declined, Swap Sub would be unable to perform on the put, and Enron's purported hedge on Rhythms would fail.

457. In 1stQ 00, Skilling decided to liquidate the Rhythms position, due to the expiration of the lock-up on Rhythms stock, the decline in the value of Rhythms stock, and the continuing volatility of the Rhythms position and the hedge. This alone indicates that Skilling was aware of the

impact of the sham hedging transactions on Enron, as well as the improper non-consolidation of the SPE by Enron.

458. Because of the decline in price of Rhythms stock, the Rhythms options were calculated to have a value of $207 million. In exchange for terminating these options (and receiving approximately $27 million cash), Swap Sub returned Enron shares having an unrestricted market value of $234 million. The use of the unrestricted value of the shares was improper, however, because the Enron shares were not unrestricted, and still carried a four-year contractual restriction.

459. In 3/00, several Enron employees (Fastow, Kopper, Glisan, Kristina Mordaunt, Kathy Lynn and Anne Yaeger Patel) had obtained financial interests in LJM. While the initial capital contributions of the partners were a modest $25,000 for Fastow, $5,800 each for Glisan and Mordaunt, and smaller amounts for the others – a total of $70,000 – the Enron employees received massive returns on their investments. For example, in return for his $25,000 investment, Fastow received $4.5 million on 5/1/00. Glisan and Mordaunt each received approximately $1 million on their $5,800 investments within a matter of one or two months.

460. In late 99, Fastow created a second partnership, LJM2, with Fastow as the indirect general partner. LJM2 was to be a much larger private equity fund than LJM1. The Board unanimously approved the formation of LJM2 after the Finance Committee approved the transaction. CS First Boston, Merrill Lynch, JP Morgan and CitiGroup participated in setting up or were early investors in LJM2. Merrill Lynch and JP Morgan were the main lenders to LJM2 entities.

461. LJM2 solicited prospective investors as limited partners using a confidential Private Placement Memorandum ("PPM") detailing, among other things, the "unusually attractive investment opportunity" resulting from the partnership's connection to Enron. The favorable terms of the early LJM2 investors were an opportunity for some of Enron's bankers to be regarded with extremely high risk fee returns. Thus, JP Morgan, Merrill Lynch, CIBC and CitiGroup were early investors in LJM2. The PPM emphasized Fastow's position as Enron's CFO, and that LJM2's day-to-day activities would be managed by Fastow, Kopper and Glisan. It explained that "[t]he Partnership expects that Enron will be the Partnership's primary source of investment

opportunities" and that it "expects to benefit from having the opportunity to invest in Enron-generated investment opportunities that would not be available otherwise to outside investors." The PPM specifically noted that Fastow's "access to Enron's information pertaining to potential investments will contribute to superior returns." Merrill Lynch was the Placement Agent of the PPM and Kirkland & Ellis was legal counsel to LJM2.

462. The transactions between Enron and LJM2 that most misstated Enron's financial statements involved four SPEs known as the "Raptors." Similar to the Rhythms transaction, Enron improperly used the value of its own equity to counteract declines in the value of certain of its merchant investments, violating a basic accounting principle. *See* APB No. 9, ¶28. Enron used the Raptors to avoid reflecting losses in the value of some of its investments on the Company's income statement. If the value of the investments declined, the Raptors were designed so that the value of the corresponding hedge would increase by an equal amount. Consequently, the decline – which was recorded each quarter on Enron's income statement – would be offset by an increase in income from the hedge, which would also be recorded on Enron's income statement. Like the Rhythms hedge, these transactions were not real hedges – they were not with a creditworthy, independent outside party and there was no transfer of the economic risk of a decline in the investments. Enron still bore virtually all of the economic risk and, in effect, Enron was hedging risk with itself. This practice of using Enron's own stock to offset losses was contrary to a basic principle of financial reporting that, except under limited circumstances which Enron did not meet, a business may not recognize gains due to the increase in the value of its own capital stock on its income statement. *See* APB No. 9, ¶28 and ARB No. 43, Chapter 1.

463. When the value of many of Enron's merchant investments fell in late 2000 and early 2001, the Raptors' hedging obligations to Enron grew. At the same time, however, the value of Enron's stock declined, decreasing the ability of the Raptors to meet those obligations. These two factors combined to create in 1stQ 01 a $500 million impairment for Enron of the Raptors' obligations to it. In order to avoid recording a massive reserve, the Enron Defendants restructured the vehicles in the first quarter of 2001.

464. Ultimately, in the 3rdQ 01, Enron finally recorded an after-tax charge of $544 million ($710 million pre-tax) and also reported a reduction in shareholder equity by $1.2 billion. However, even this restatement did not correct the improperly reported income derived from the Raptors of $1 billion in 1999-2000. Transactions with the Raptors from the 3rdQ 00 through the 3rdQ 01 allowed Enron to improperly avoid reflecting almost $1 billion merchant investments losses on its income statement, such that pre-tax earnings were overstated by 240%.

465. Skilling was behind the decision to create the Raptors as he wanted to protect the value of merchant investments and avoid excessive quarter-to-quarter volatility in Enron's reported earnings. Due to the size and illiquidity of many of these investments, they could not practicably be hedged through traditional transactions with third parties. Employing artifices similar to the Rhythms transactions, Enron, with the participation of Andersen and Vinson & Elkins, who prepared the transaction documents, set up the Raptors. More details on the Raptors follows in ¶¶477-495.

(a) Manipulative Transactions Involving LJM

466. In addition to Rhythms and the Raptors, Enron and the LJM partnerships engaged in at least another 20 manipulative transactions from 9/99 through 7/01. These included:

(i) *Cuiaba*

467. In a transaction made effective 9/99, Enron sold LJM1 a 13% stake in a company building a power plant in Cuiaba, Brazil for $11.3 billion. This reduced Enron's ownership to the point where Enron purportedly did not control the entity and therefore did not have to consolidate its interest. This sale enabled Enron to improperly realize $34 million of mark-to-market income in the 3rdQ 99, and another $31 million of mark-to-market income in the 4thQ 99. In 8/01, Enron repurchased LJM1's interest in Cuiaba for $14.4 million.

468. LJM1's equity investment in Cuiaba, however, was not "at risk" within the meaning of the relevant accounting rule because Enron had agreed to make LJM1 whole for its investment. Thus, Enron was required to consolidate the entity, but did not and should not have improperly recognized the mark-to-market gains from the gas supply contract.

(ii) *ENA CLO*

469. In a transaction dated 12/22/99, Enron North America ("ENA") pooled a group of loans receivable into a trust to sell $324 million of notes, equity and securities known as collateralized loan obligations ("CLO's"). These CLO's were split into separate "tranches" based on risk ratings and other criteria. The tranches were marketed to institutional investors by Bear Stearns. When no outside buyer could be found for the lowest-rated tranches, these tranches were sold to Whitewing Associates, LP ("Whitewing," an investment partnership in which Enron is a limited partner) and LJM2. Two days before LJM2 paid $32.5 million for its interests in the CLO's, Whitewing loaned LJM2 $38.5 million. Whitewing investors were in turn assured by Enron that they would be made whole on the transaction.

470. There was no economic substance to LJM2's investment in the loans, and the transaction was done solely to allow Enron to improperly record the sale of loans as income in 99. The loan portfolio continued to deteriorate in 00. Enron eventually repurchased all of the outstanding Notes at par plus accrued interest. Enron also repurchased LJM2's equity stake at cost.

(iii) *Nowa Sarzyna (Poland Power Plant)*

471. In a transaction dated 12/21/99, Enron sold LJM2 a 75% interest in the Nowa Sarzyna power plant under construction in Poland. Enron did not want to consolidate the asset in its balance sheet. Enron intended to sell the asset to a third party or transfer it to an investment partnership it was attempting to form, but Enron was unable to find a buyer before year-end. Thus, Enron settled on LJM2 as a temporary holder of the asset. LJM2 paid a total of $30 million, part of it in the form of a loan and part an equity investment. Enron improperly recorded a gain of approximately $16 million on the sale. When this transaction closed, it was clear this would be only a temporary solution. The credit agreement governing the debt financing of the plant required Enron to hold at least 47.5% of the equity in the project until completion. Enron was able to obtain a waiver of that requirement, but only through 3/31/00. Thus, on 3/29/00, Enron bought out LJM2's interest for a total of $31.9 million. This provided LJM2 approximately a 25% rate of return.

(iv) *MEGS*

472. In order to avoid reporting this impaired asset in its year-end financials, Enron on 12/29/99 sold LJM2 a 90% equity interest in MEGS LLC, a company that owned a natural gas

gathering system in the Gulf of Mexico. Enron had attempted to sell this interest to another party to avoid consolidating the asset for year-end financial reporting purposes, but was unable to close that transaction by year-end. LJM2 purchased a $23.2 million note of MEGS for $25.6 million and an equity interest in MEGS for $743,000. The parties expected to find a permanent buyer within 90 days. On 3/6/00, Enron repurchased LJM2's interests. It paid LJM2 an amount necessary to give it the maximum allowed return. Subsequently, in 01, Enron recorded an impairment on the gas wells due to diminished performance. The decision to buy back LJM2's interests in MEGS was reflected on a document which McMahon, then Enron's Treasurer, at first declined to sign. Under the signature block he wrote: "'There were no economics run to demonstrate this investment makes sense. Therefore, we cannot opine on its marketability or ability to syndicate.'"

(v) Yosemite

473. In 11/99, Enron paid $37.5 million to purchase half of all the certificates issued by a trust called "Yosemite." In late December, Enron determined that it needed to reduce its holdings of the Yosemite certificates from 50% to 10% before the end of the year to avoid disclosing its ownership of the certificates in its "unconsolidated affiliates" footnote to its 99 financial statements. Enron, working with the underwriters of Yosemite-CitiGroup and Barclays, needed to find an intermediate owner of the certificates. That buyer was LJM2.

474. This transaction itself is improper in several respects. First, it was widely understood within Enron that LJM2 was involved simply to temporarily hold the Yosemite certificates before selling them to another entity. The LJM2 Approval Sheet (which was not prepared until 2/00) states that "'LJM2 intends to sell this investment to Condor within one week of purchase.'" Second, the legal documents show Enron selling the certificates to LJM2 on 12/29/99, and then LJM2 selling the certificates to Condor the next day, 12/30/99 – thus disposing of the certificates before year-end. Finally, the actual transaction did not occur in late 12/99 but, instead, on 2/28/00. The transaction involved Condor loaning $35 million to LJM2, which then immediately used the proceeds to purchase the Yosemite certificates from Enron. In effect, Condor bought the certificates from Yosemite, with the money and certificates passing – ever so briefly – through

LJM2. This was a sham to allow Enron to avoid reporting its interest In Yosemite in its year-end financial statements.

(vi) Backbone

475. Enron sold LJM certain telecommunications assets known as Backbone and recognized it as revenue. In the late 90s, EBS had embarked on an effort to build a nationwide fiber optic cable network. It laid thousands of miles of fiber optic cable and purchased the rights to thousands of additional miles of fiber. In mid-5/00, EBS decided to sell by the end of the 2ndQ a portion of its unactivated "dark" fiber, so that EBS could meet its 2ndQ numbers. Unable to find a legitimate buyer and with the quarter-end approaching, EBS sold the fiber to LJM2. The proposed terms called for EBS to remarket the fiber after LJM2 purchased it, and capped LJM2's return on the resale at 18%. Fastow was involved in the negotiations. He knew and was actually angry that EBS proposed to sell LJM2 dark fiber that was not certified as usable, and that it might take as long as a year for it to be certified. Causey and Rice were also involved in the negotiations. Ultimately, the transaction was consummated and Enron recognized $54 million in income from it.

(vii) Other Non-Qualifying SPE's

476. Enron also used LJM to act as independent equity for many other SPEs. These included Cortez, Rawhide, Margeaux, Fishtail, JGB Trust and LAB Trust. As noted above, LJM1 and LJM2 were not independent of Enron such that non-consolidation of these entities was improper.

(b) Raptors

(i) Raptor I

477. The first Raptor (Raptor I), created on 4/18/00, was an SPE called Talon LLC ("Talon") and was created solely to engage in hedging transactions with Enron. Talon was used by Enron to lock in gains from its ownership of Avici Systems ("Avici") stock. LJM2, as manager of Talon, invested $30 million in cash and received a membership interest. Enron contributed a $50 million promissory note, and restricted Enron stock and Enron stock contracts with a fair market value of approximately $537 million, discounted by 35% due to the restriction. In return, Enron received a revolving promissory note from Talon with an initial principal amount of $400 million.

478. LJM2 was guaranteed a specified initial return of $41 million, or a 30% annualized rate of return from Talon, whichever was greater, from income earned by Talon before hedging could begin with Enron. Thus, prior to Enron receiving any benefits of the "hedge," LJM2 had to have received back the entire amount of its investment plus a substantial return. This meant that LJM2's $30 million of capital "at risk" necessary to meet the 3% outside equity requirement for non-consolidation was illusory, and was really not "at risk." Thus, LJM2 did not qualify for non-consolidation but was not consolidated in violation of GAAP.

479. Enron created the income for the required $41 million of income for distribution to LJM2 by purchasing a put option on Enron stock from Talon for a premium of $41 million. Enron's purchase of the put option for $41 million was a sham, because the put option was essentially a bet by Enron that its own stock price would decline substantially. Moreover, the price of the put was grossly inflated solely to provide the necessary transfer to LJM2. Then Enron settled the option early, as of 8/3/00. Since Enron stock had increased in value and the period remaining on the put option had dwindled, the option was worth much less. Talon returned $4 million of the $41 million option premium to Enron and paid LJM2 $41 million. LJM2 then had no ongoing financial interest in what happened to Talon. Since LJM2 had received the $41 million payment, Talon could then enter into hedging transactions with Enron. The Finance Committee and the full board approved the transaction.

480. The documentation for these transactions was signed by Causey for Enron and by Fastow for Talon. They all were dated "as of" 8/3/00, even though many, if not all, of the transactions were not finally agreed upon until sometime in mid-9/00, and were back-dated to be effective "as of" 8/3/00. This dating manipulation was to lock in the highest possible gain. 8/3/00 was the date on which the stock of Avici, the holding in question, traded at its all-time high of $162.50 per share. By entering into a total return swap with Talon on Avici stock on that date, Enron locked in the maximum possible gains. By 9/30/00, Avici stock had declined to $95 per share. By dating the swap "as of" 8/3/00, Enron avoided recognizing losses of nearly $75 million on its third quarter 00 financial statements.

481. The value of Enron's investments declined in the Fall of 00, and the amounts Talon owed Enron under the "hedge" increased, which was a problem due to Talon's inability to pay Enron the amount owed. Enron was required by GAAP to record a charge against income based on Talon's credit deficiency. To avoid recording a loss on Talon's inability to pay, on 10/30/00, Enron entered into a "costless collar" on the approximately 7.6 million Enron shares and stock contracts in Talon. The "collar" provided that if Enron stock fell below $81, Enron would pay Talon the amount of any loss. If Enron stock increased above $116 per share, Talon would pay Enron the amount of any gain. If the stock price was between the floor and ceiling, neither party was obligated to the other. This collar, which protected Talon's credit capacity against possible future declines in Enron stock, was only entered to avoid recognition of a loss. Even so, the value of Enron's investments was rapidly declining, so Talon's credit capacity was still in jeopardy.

(ii) Raptors II and IV

482. Enron and LJM2 established two more Raptors – known as Raptor II and Raptor IV – that were very similar to Raptor I. Both Raptors II and IV received only contingent contracts to obtain a specified number of Enron shares. These Raptors were intended to, but did not, engage in valid derivative transactions with Enron.

483. Just as it had done with Talon in Raptor I, Enron paid Raptor II's SPE, "Timberwolf," and Raptor IV's SPE, "Bobcat," $41 million each for share-settled put options.[8] In this case, Enron was using the put option merely as a way to funnel $41 million to LJM2 via Timberwolf and Bobcat. Just like Raptor I, the put options were settled early, and each of the entities then distributed approximately $41 million to LJM2. These distributions meant that both Timberwolf and Bobcat were available to engage in derivative transactions with Enron.

484. Just like Raptor I, Enron entered into costless collars on the Enron stock contracts in

[8] A put option grants, for a premium (the option price), the right to sell at a specified strike price a specific number of shares by a certain date, which protects the buyer from a decline in the stock price.

Timberwolf and Bobcat to provide credit capacity support to the Raptors. As in the case of Raptor I, this collaring was inconsistent with the premise on which the stock contracts had been discounted when they were originally transferred to Timberwolf and Bobcat. The collars, however, effectively lifted the restriction.

(iii) Raptor III

485. Raptor III was a variation of the other Raptor transactions, but with an important difference. It was intended to hedge a single large Enron investment in The New Power Company ("New Power"), later named New Power Holdings. Instead of holding Enron stock, Raptor III held the stock (or warrants) of the very company whose stock it was intended to hedge – New Power. If the value of New Power stock decreased, the vehicle's obligation to Enron on the hedge would increase in direct proportion. At the same time, its ability to pay Enron would decrease. Raptor III was thus the derivatives equivalent of doubling-down on a bet on New Power. This supposed hedge fell apart almost immediately, as the stock of New Power decreased sharply after its IPO in 10/00.

486. Although the IPO of New Power was a success, the stock's value immediately began to deteriorate. Within a week, the share price had dropped below the offering price. By mid 11/00, New Power stock was trading below $10 per share. This had a double-whammy effect on Porcupine: its obligation to Enron on its hedge grew, but at the same time its New Power stock – the principal, and essentially only, asset with which it could pay Enron – fell in value.

487. New Power was a power delivery company formed by Enron, which owned 75% of it by the time of its IPO. Enron sold a portion of its holdings to an SPE, known as Hawaii 125-0 ("Hawaii"), that Enron formed with the participation of CIBC. Enron's basis in the New Power holdings was zero so Enron recorded large gains in connection with the sales, and then entered into total return swaps under which Enron retained most of the economic risks and rewards of the holdings it had sold, meaning Enron would have to reflect any gains or losses on its income statement. To "hedge" this exposure, Enron once again used the Raptor structure.

488. As with the other Raptors, LJM2 contributed $30 million to Raptor III's SPE "Porcupine." LJM2 was to receive its specified return of $39.5 million before Porcupine could enter into derivative transactions with Enron. It received the return of $39.5 million in only one week by

transferring 24 million shares of New Power stock to Porcupine at $10.75 per share, right before the IPO at $21 per share. The same day as the IPO, Porcupine declared a distribution to LJM2 of $39.5 million, giving LJM2 its specified return and permitting Porcupine to enter into a hedging transaction with Enron. Enron and Porcupine immediately executed a total return swap on 18 million shares of New Power at $21 per share. As a result, Enron improperly recorded an accounting gain related to the Hawaii transactions of approximately $370 million in the 4thQ 00.

(iv) Raptors Restructuring

489. Enron manipulated its results as part of restructuring the Raptors such that it improperly recorded increases to its equity and assets rather than reversing income that had previously been recorded improperly. By 11/00, Enron had entered into derivative transactions with Raptors I, II and III with a notional value of over $1.5 billion. Enron internally calculated its net gain (and the Raptors' corresponding net loss) on these transactions to be slightly over $500 million. Enron could recognize these gains – offsetting corresponding losses on the investments only if the Raptors had the capacity to make good on their debt to Enron. Since they did not, Enron was required to record a "credit reserve," reflecting a charge on its income statement. Enron improperly did not record the loss as it would defeat the very purpose of the Raptors, which was to shield Enron's financial statements from reflecting the change in value of its merchant investments.

490. In the 1stQ 00, the credit capacity of the Raptors continued to decline. To avoid taking the charge to reflect the $500 million credit reserve, defendants restructured the Raptors. During the 1stQ 01, Skilling told employees that fixing the Raptors' credit capacity problem was one of the Company's highest priorities.

491. The restructuring transaction, which was made effective as of 3/26/01, consisted of two principal parts: a cross-collateralization of the Raptors and an additional infusion of Enron stock contracts. The restructuring allowed Enron to record only a $36.6 million credit reserve loss for the 1stQ 01, rather than the $504 million loss Enron was required to record pursuant to GAAP.

492. Enron sold 30 million shares of its stock to Raptors II and IV in exchange for those entities increasing their payables to Enron (and Enron's receivables from them) by $850 million.

Enron improperly recorded an increase to notes receivable and to equity rather than offsetting the notes against equity as required by GAAP.

493. Enron had also improperly accounted for the Enron shares sold in 4/00 to Talon (Raptor I), in exchange for a $172 million promissory note, as an increase to "notes receivable" and to "shareholders' equity." This increased shareholders' equity by $172 million in Enron's 2ndQ, 3rdQ and 4thQ 00 financial reports. Enron made similar entries when it sold Enron stock contracts in 3/01 to Timberwolf and Bobcat (Raptors II and IV) for notes totaling $828 million. This accounting treatment increased shareholders' equity by a total of $1 billion in Enron's 1stQ and 2ndQ 01 financial reports. GAAP, as set forth in EITF No. 85-1, Classifying Notes Received for Capital Stock, requires that except in very rare circumstances, notes received in payment for stock should be recorded as a reduction in shareholders' equity:

> The SEC requires that public companies report notes received in payment for the enterprise's stock as a deduction from shareholders' equity. Task force members confirmed that the predominant practice is to offset the notes and stock in the equity section. However, such notes may be recorded as an asset if collected in cash prior to issuance of the financial statements.

494. In the 2ndQ 00 and the 1stQ 01, Enron issued $1.2 billion in common stock in exchange for a note receivable to capitalize Raptors I-IV. Notwithstanding the basic requirement that such transactions should be accounted for as a reduction in shareholders' equity, Enron recorded the notes receivable as assets. Enron has admitted that its 00 financial statements included overstated assets of $172 million for notes receivable that should have been recorded as an offset to equity and that, "as a result of these errors, shareholders' equity and notes receivable were overstated by a total of $1 billion in the unaudited financial statements of Enron at March 31 and June 30, 2001."

495. In mid-9/01, Enron terminated the Raptors, paying LJM2 approximately $35 million. The returns to LJM2 were ***not*** for a risk taken, but rather for a service provided: LJM2 lent its name to a vehicle by which Enron could circumvent GAAP. The losses Enron incurred on its merchant investments were not hedged in any accepted sense of that term. The losses were merely moved from Enron's income statement to the equity section of its balance sheet. As a practical matter, Enron was hedging with itself.

(3) Other SPEs Used by Enron to Conceal Debt

496. Enron also concealed, with the help of its lawyers and the banking defendants, billions of dollars more in debt by using other SPEs.

(a) Firefly. Firefly was used in 98 and 99 to acquire the Elektro utility in Brazil. *See* ¶¶605-606. JP Morgan had loaned approximately $1.25 billion to Enron for this purchase. This debt would have hurt Enron's credit ratings, so Enron worked discreetly with CS First Boston to structure the Firefly SPE, by which Enron moved $435 million in debt off its balance sheet.

(b) JV-Company. JV Co. was an SPE formed to monetize a 4thQ 99 energy service outsourcing transaction with Owens - Illinois. JV Co. became the service provider and Enron (EES) became the guarantor. Enron was then able to recognize $10.3 million in 4thQ earnings from the transaction and move $24 million in capital expenditures off of its books.

(4) Osprey Trust and Marlin Trust

497. Enron also manipulated its results by treating transfers of assets to a related entity as sales rather than as loans, including energy related projects and dark-fiber broadband. Osprey and Marlin were structured transactions which helped Enron keep debt off its books. These deals had price triggers which created obligations on Enron's part once its price dropped to a certain level. These transactions were a significant part of the reason Enron failed. Osprey was an investor in Whitewing with which Enron did numerous sales transactions to generate income. Whitewing itself had 75 subsidiaries which were used by Enron to generate income and conceal debt.

498. These transactions, which occurred throughout 00, permitted Enron to not only report sales revenue but also to conceal debt. Enron, with the participation of CitiGroup, CS First Boston and Deutsche Bank arranged the partnerships which made Enron appear more profitable than it was. Enron promised to issue stock if the partnerships assets of Osprey and Marlin turned out to be worth less than promised. These guarantees were a huge liability, which Enron did not report on its balance sheet. These guarantees also involved triggers which would require additional shares to be used if Enron's stock dropped below a certain point. The put or trigger insured the SPE underwriters and securities holders that if Enron stock declined to the trigger price the credit of the SPE would be restored by a new infusion of Enron stock (or equivalent cash). If Enron did not shore up the amount of its stock in the SPE to cover the decline in value of Enron stock, the SPE would

be liquidated and the contents would return to the Enron balance sheet. The trigger prices read like a scaled or tiered device whereby CS First Boston and the other banks which participated in the SPEs would have their risks hedged as Enron's stock price declined.

499. The assets and investments which were transferred to Whitewing were the product of Enron's day-to-day businesses, including energy, natural gas, electricity, oil, coal, paper and pulp, interests in power plants, interest in pulp and paper plants, interests in gas pipelines, electricity transmission and distribution lines, and unlit (dark) fiber-optic cable and conduit.

500. According to former Enron employees, it was well known within Enron that many of these assets decreased in value by the second half of 00. Furthermore, top management, including Skilling, knew of the decline, by way of a daily 2-3 page report, which detailed positions in assets held by the Company. Despite this knowledge, Enron failed to record charges to reflect the liabilities Enron had incurred and continued to record income from transactions with these entities.

501. Pursuant to GAAP, as set forth in SFAS No. 125, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities, transfers of financial assets with continuing involvement should not be considered sales of all or part of the assets unless certain conditions are met. Otherwise, they should be considered secured borrowings. Accounting for transfers of financial assets as sales should occur when the transferor has surrendered control over the transferred assets. According to SFAS No. 125, the transferor has surrendered control over transferred assets if all three of the following conditions are met:

1. The transferred assets have been isolated from the transferor (*i.e.,* they are ***beyond the reach of the transferor and its creditors***).

2. One of the following is met:

   a. The transferee obtains the unconditional right to pledge or exchange the transferred assets.

   b. The transferee is a qualifying special-purpose entity and the holders of beneficial interests in that entity have the unconditional right to pledge or exchange those interests.

3. The transferor does not maintain ***effective control*** over the transferred assets either through an Offering that obligates the transferor to repurchase or redeem the assets before their maturity or through an Offering that entitles the transferor to repurchase or redeem transferred assets that are not readily obtainable.

If these conditions are met, the transfer is accounted for as a sale to the extent that consideration other than beneficial interests[9] in the transferred assets is received in exchange.

502. SFAS No. 125, requires that the transferred assets be beyond the reach of the transferor (Enron). In contrast, the Osprey offering stated that during the term of the senior notes, Whitewing expected to hold, participate in and dispose of various designated assets. Indeed, all the above activities, among others, were carried out by the General Partner, Egret I LLC, Enron's wholly owned subsidiary. McMahon was a manager of Egret until he resigned in 5/00. Enron, through its wholly owned subsidiary Egret, had sole discretion in valuing the assets that entered into Whitewing.

503. SFAS No. 125 also requires that the transferred assets be bankruptcy remote. By contrast, the Osprey offering provided: "There is the possibility that if Enron were to become a debtor in a case under the United States Bankruptcy Code, a bankruptcy court might ***recharacterize*** Enron's obligation to make a payment to the Share Trust as being equivalent to an obligation to purchase the Enron Shares from the Share Trust.... [I]f the Share Trust asserted a claim against Enron ... a bankruptcy court might subordinate part or all of that claim to other claims against Enron."

504. Enron, in fact, never surrendered control as required by SFAS No. 125. For example according to the Osprey offering documents: (1) Egret was granted the right ***to make all decisions regarding valuation of assets*** (this allowed Enron great latitude to manipulate the value of the assets); and (2) the General Partner was responsible for the management and operations of Whitewing. As holder of the managing member interest in Whitewing Management LLC, Egret could appoint the officers of the General Partner.

505. Accordingly, the accounting for the transfers of assets to Whitewing should not have been accounted for as sales, as opposed to loans, and Enron's improper accounting was false and misleading. Indeed, as discussed above: (1) the transferred assets were never beyond Enron's reach;

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[9] Beneficial interests are defined as rights to receive all or a portion of specified cash inflows to a trust or other entity (including senior and subordinated shares of interest, principal, or other cash inflows to be "passed-through" or "paid-through," premiums due to guarantors, and residual interests).

(2) the transferred assets were not bankruptcy remote; and (3) Enron never relinquished effective control of the assets.

B. Enron Failed to Disclose Related-Party Transactions

506. In order for Enron's accounting scheme to work, the parties involved had to be controlled by Enron. But this control and affiliation had to be concealed. Accordingly, the Enron Defendants caused Enron's financial statement disclosures to be materially false and misleading during the Class Period because they failed to disclose Enron's related-party transactions as required by GAAP. Defendants knew that if they properly disclosed Enron's related-party transactions as alleged herein, it would uncover Enron's scheme to hide the massive debt it was keeping off its books.

507. Pursuant to GAAP, as set forth in SFAS No. 57, Related Party Disclosures, financial statements are required to include disclosures of material related-party transactions. SFAS No. 57 defines related parties to include the principal owner of an enterprise and its management, as well as their affiliates. SFAS No. 57 requires that companies disclose the following about material related party transactions:

> (a) the nature of the relationship(s) involved; (b) a description of the transactions ... for each of the periods for which income statements are presented, and such other information deemed necessary to an understanding of the effects of the transactions on the financial statements; (c) the dollar amounts of transactions for each of the periods for which income statements are presented; and (d) amounts due from or to related parties as of the date of each balance sheet presented and, if not otherwise apparent, the terms and manner of settlement.

Pursuant to SFAS No. 57, ¶3, related-party transactions cannot be presumed to be carried out on an arm's-length basis.

508. Item 404 of SEC Regulation S-K also sets out the requirements for disclosing related-party transactions in the non-financial statement portions of SEC filings, including proxy statements and the annual reports on Form 10-K. Item 404(a) requires disclosure of, among other things, transactions exceeding $60,000 in which an executive officer of the company has a material interest,

> naming such person and indicating the person's relationship to the registrant, the nature of such person's interest in the transaction(s), the amount of such transaction(s) and, where practicable, the amount of such person's interest in the transaction(s).

The instructions to this section provide:

> The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other and the amount involved in the transactions are among the factors to be considered in determining the significance of the information to investors.

509. According to GAAP, financial statements are complete only when they contain all material information necessary to represent validly the underlying events and conditions. *See* Statement of Financial Accounting Concepts 2, ¶79. Financial statements must disclose the financial effects of transactions and events that already have happened. *See* Statement of Financial Accounting Concepts 1, ¶21.

510. The Enron Defendants failed to disclose Chewco and JEDI as related parties during the Class Period. In fact, no related parties were disclosed in Enron's 97 or 98 10-Ks. Enron's 00 Form 10-K merely stated that it had "entered into transactions with limited partnerships (the Related Party) whose general partner's managing member is a senior officer of Enron." This statement was misleading. There was no disclosure of Fastow as managing member of the general partners of LJM1 and LJM2 or that he received more than $30 million relating to his management and investment activities. This was in violation of the disclosure requirements of SFAS No. 57.

511. The failure to set forth Fastow's compensation from the LJM transactions and the process leading to that decision was a violation of GAAP and SEC rules. Item 404 of Regulation S-K required the disclosure of the amount of Fastow's interest in the transactions. This was not merely an unintentional omission. There was significant discussion, both within Enron management and with outside advisors, about how Enron could avoid disclosing Fastow's compensation from the related parties in the face of clear language in the regulations that such disclosure was required.

512. The "Certain Transactions" sections of Enron's proxy statements in 00 and 01 included disclosures of transactions with the LJM partnerships. Enron described the establishment of LJM1 and LJM2 in its 5/00 proxy statement. Each was described as "a private investment company that primarily engages in acquiring or investing in energy and communications related investments." However, it was impossible for a reader of the proxy statements to understand the nature of the transactions or their significance.

513. The description of LJM1 in the Form 10-Q for the 2ndQ 99 was similar to the one the Company used in the 00 proxy statement, described above. The footnote said that "[a] senior officer of Enron is managing member of LJM's general partner." This footnote did not identify Fastow as the "senior officer of Enron," nor did the financial statement disclosure in any subsequent period. The disclosure concealed Fastow's identity and his compensation from LJM. Substantially the same disclosures were made in the 3rdQ Form 10-Q and in the 99 10-K.

514. In the Form 10-Q for the 2ndQ 00, Enron described the LJM partnerships as follows: "In the first half of 2000, Enron entered into transactions with limited partnerships (the Related Party), whose general partner's managing member is a senior officer of Enron. The limited partners of the Related Party are unrelated to Enron." From the 2ndQ 00 forward, Enron never identified LJM1 or LJM2 by name in the financial statement disclosures.

515. These descriptions were false and misleading. In each of the financial statement footnote disclosures concerning the transactions with LJM, Enron made a false representation designed to reassure investors that the transactions were fair to the Company. Enron stated in the Form 10-Q for the 2nQ and 3rdQ 99 that "[m]anagement believes that the terms of the transactions were reasonable and no less favorable than the terms of similar arrangements with unrelated third parties." The Form 10-Q for the 1stQ 00 read: "the terms of the transactions with related parties were reasonable and are representative of terms that would be negotiated with unrelated third parties."

516. Contrary to the defendants' representations, Enron's transactions with its related parties were not fair to Enron and were not on terms representative of those that could be obtained in arm's-length transactions with third parties. In fact, the transactions with Enron's related parties were grossly unfair to Enron and set up in a manner to permit the Company to pay off key Enron insiders, including Fastow and certain favored investments banks and bankers, for their participation in the scheme, which included arranging the illicit and illegal financial transactions with those related parties on terms that no independent third party would ever have agreed to.

C. Enron's Failure to Make Proposed Audit Adjustments and Reclassifications

517. Enron has also admitted to failing to make proposed audit adjustments and reclassifications it was informed about by Andersen in prior years because it had considered those adjustments "immaterial." In each year, the changes which Enron refused to make would have reduced Enron's net income. Enron has admitted that the proposed adjustment for 97 was $51 million. This represented 48% of net income and 10% of recurring net income. Yet Enron considered this amount to be "immaterial." However, Enron was required to consider the materiality of events in the aggregate. SEC Staff Accounting Bulletin ("SAB") No. 99 states:[10]

> Even though a misstatement of an individual amount may not cause the financial statements taken as a whole to be materially misstated, it may nonetheless, when aggregated with other misstatements, render the financial statements taken as a whole to be materially misleading. Registrants and the auditors of their financial statements accordingly should consider the effect of the misstatement on subtotals or totals. The auditor should aggregate all misstatements that affect each subtotal or total and consider whether the misstatements in the aggregate affect the subtotal or total in a way that causes the registrant's financial statements taken as a whole to be materially misleading.

D. Enron's Restatement Is an Admission the Prior Financial Statements Were Materially False

518. The fact that Enron has restated its financial statements for 97 through the 2ndQ 01 is an admission that the financial statements originally issued were false and that the overstatement of revenues and income was material. Pursuant to GAAP, as set forth in APB No. 20, the type of restatement announced by Enron was to correct for material errors in its previously issued financial statements. *See* APB No. 20, ¶¶7-13. The restatement of past financial statements is a disfavored method of recognizing an accounting change as it dilutes confidence by investors in the financial statements, it makes it difficult to compare financial statements and it is often difficult, if not impossible, to generate the numbers when restatement occurs. *See* APB No. 20, ¶14. Thus, GAAP provides that financial statements should only be restated in limited circumstances, *i.e.*, when there is a change in the reporting entity, there is a change in accounting principles used or to correct an error in previously issued financial statements. Enron's restatement was not due to a change in

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[10] Even though SAB No. 99 was issued in 8/99, after the time Enron and Andersen made these decisions, SAB No. 99 expressed that it did not create new GAAP, but instead reemphasized existing GAAP.

reporting entity or a change in accounting principle, but rather, to misstatements in previously issued financial statements. Thus, the restatement is an admission by Enron that its previously issued financial results and its public statements regarding those results were false and misleading.

519. The restatement of certain issues described above was, however, just the tip of the iceberg. Enron engaged in many other egregious manipulations which were not part of the restatement. As Accounting Malpractice.com noted on 2/22/02:

> Each passing week raises a new concern about not only the original financial reporting but also the veracity of the restatement itself. The emerging question is not whether a more conservative restatement would have reflected smaller profits, but whether a proper restatement would have reflected any profits from 1997 and forward?

E. Enron's Improper Reporting of Broadband Transactions

520. One part of Enron's strategy to enter non-energy markets involved its entry into broadband wherein, through EBS, Enron laid thousands of miles of fiber optic cable. Contrary to defendants' positive statements about the success of Enron's broadband efforts, broadband was a failure for Enron from start to finish. To conceal the failure of this part of the Company's business, the Enron Defendants engaged in several accounting manipulations with respect to broadband, including improper accounting for a deal with Blockbuster, the improper use of mark-to-market accounting for broadband transactions (described in ¶¶533-548) and the improper recognition of income from inflated swaps of fiber optic capacity with other telecom companies. Some of these swaps involved LJM.

(1) Blockbuster

521. In the 4thQ 00 and 1stQ 01, Enron improperly recognized income of $111 million from a sham deal with Blockbuster. In 7/00, Enron announced a partnership with Blockbuster, purportedly to allow customers to choose movies from Blockbuster and watch the movies in Enron's yet to be completed fiber optic telecommunications network. The 20-year deal was just in the initial stages of development (just a pilot project) in late 00, when Enron formed a partnership (EBS Content Systems LLC, or Project "Braveheart"). Enron used Braveheart to improperly record revenue from the Blockbuster deal. As one former employee termed the deal, "the Blockbuster deal was a fraud, and Enron's top management knew it."

522. In order for Enron to accrue revenue under this scheme, it had to be able to consider Braveheart an independent entity. This meant the Enron Defendants had to find an independent party to contribute 3% of the equity in the project. Enron convinced nCube, an entity controlled by Larry Ellison, to contribute $2 million to the Braveheart venture, with the assurance that the $2 million would be returned in early 01. To obtain the rest of the 3%, Enron had to put together a complex arrangement with an entity named SE Thunderbird LLC to invest $1.74 million. CIBC loaned $115.2 million to Braveheart which was used to acquire EBS's interest in the Blockbuster venture. CIBC's loan, however, was secured by Enron's promise of 93% of the cash flow for the first ten years of the project and, in the event the partnership failed to generate enough income to repay CIBC, Enron would repay the full amount of the loan. Due to these guarantees and the lack of any true independent ownership, the independence of the Braveheart entity was a sham from day one. EBS transferred its interest in the Blockbuster deal to Braveheart, which it valued at $124.8 million. This value was completely phony. The figure was purportedly based on projections of future revenue and earnings to be derived from the Blockbuster venture. There was no basis for this projection. When negotiations had begun in 3/00 with Blockbuster, a product development manager asked developers how much it would cost to do VOD per subscriber. They came up with a figure out of thin air – $1.20. There was no basis for the amount. However, it was used to calculate future profits to be derived from the project. Moreover, Blockbuster didn't even have the legal right to distribute the movies in this format.

523. In addition, at the time the deal was announced, Enron was technically unable to do what was promised. Defendant Rice personally told an engineer he was recruiting that "we can't deliver the Blockbuster deal." Cable operators would not cooperate, as they saw this as competition and telephone carriers were less desirable for delivering video into homes. McKinsey Consulting told EBS it would need to spend $1,200-$1,600 per subscriber for equipment to get the VOD to work.

524. The only solution Enron had come up with by late 00 was to load 40 movies on to a Sun Server at each major market location. Then subscribers would have to wait to be downloaded. A set-top box was required and it was a far cry from VOD for anything in Blockbuster's inventory as had been promised. Moreover, by 11/00, the reality was that the Hollywood studios did not want

to give DSL-quality content to Blockbuster. At year end 00, there were only test systems in four cities and the most subscribers (many of whom didn't have to pay) the venture ever had was 1,000 in 3/01.

525. Enron should not have recorded any revenue from the Blockbuster deal because: (i) Braveheart was not independent of Enron; (ii) EBS had not earned the revenue it monetized as there was no way EBS could even provide the service it promised; (iii) the revenue was not realizable (collectible), as most of the customers did not even exist yet and were not likely to pay for the service, and certainly not earned at this point. *See* FASB Statement of Concepts, No. 5, ¶¶83-84; and (iv) EBS improperly used mark-to-market accounting because there was no reasonable basis to estimate future revenue streams.

526. By 3/01, Blockbuster terminated the deal. However, Enron did not write off the improperly reported income until the 3rdQ 01 when it recognized $110.9 million in losses from the Blockbuster deal.

(2) Broadband Trading and Dark Fiber Swaps – Inflated Accounting and Valuation

527. Enron also manipulated its results through broadband trading and dark fiber swaps. Dark fiber is fiber optic cables which had been laid but was not yet "lit," or not yet in use. Enron engaged in swapping capacity of this dark fiber with other telecom companies and recognized income from these swaps. Enron abused this swapping of capacity to manipulate its financial results.

528. Notwithstanding that Enron failed utterly in forgoing relationships with content providers, in creating a platform that could deliver this content, and in completing meaningful sales to end-users, Enron nonetheless found sufficient willing counterparties with which to engage in broadband trading and dark fiber swaps.[11] Many of the trades and swaps were undertaken primarily to give the illusion of trading activity and to report fictitious income. In fact, most of the $120 million in 99 revenue which Enron attributed to broadband was from dark fiber swaps.

[11] In dark fiber swaps, the counterparties agree to lease a portion of another broadband company's fiber optic network in exchange for leasing a portion of that company's network to the counterparty. A broadband trade is the delivery of data content through the fiber optic network.

529. Not only was Enron's accounting for these swaps and trades improper, the actual value of the assets exchanged was greatly overstated. Enron's trading partners were willing to enter into the swaps because they also had excess capacity. The cost of the acquired capacity was booked as an asset while the sale of capacity was reported as revenue such that the financial statements of both companies involved in the swaps were improved by inflating the price. Enron engaged in these transactions with several telecom companies. Swaps and trades were made with Dynegy, Williams, El Paso, Metromedia Fiber, Acrie Networks, Qwest, Level 3, 360 Networks, and Touch America, among other players.

530. As *The New York Times* reported on 3/29/02:

> [O]n Sept. 30, a Sunday and the final day of the third quarter, Qwest signed a deal to pay Enron $308 million for assets that included so-called dark fiber along a route from Salt Lake City to New Orleans. Dark fiber refers to idle network strands that require additional investments in electronic equipment before they can be put into service. In exchange, Enron agreed to pay Qwest $195.5 million for "lit wavelength," or active fiber optic cable services, over a 25-year period; each company exchanged checks for about $112 million around the close of the deal.
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> * * *
>
> The deal enabled Enron to book a sale and avoid recording a loss on the dark fiber assets, whose value in the open market had dropped far below the price on Enron's books.

531. One dark fiber deal was with LJM2. In 6/00, Enron sold dark fiber optic cable for a price of $100 million to LJM2. LJM2 paid Enron $30 million in cash and the balance in an interest-bearing note for $70 million. Despite the fact that the dark fiber was not worth anywhere near $100 million, Enron recognized $67 million in pre-tax earnings in 00 related to the asset sale. Another deal with LJM occurred in the 3rdQ 00 worth more than $300 million. This deal did not follow normal protocol as even network developers and traders did not learn about the deal until after the fact. The sole reason for the deal was for Enron to make its numbers.

532. Additionally, broadband traders actually traded among other Enron entities, and turned a single broadband transaction into eight just to show the Street that the volume of deals was increasing. One former employee commented, "It's more than double accounting. One transaction they break down into four local loop deals, plus two long haul deals, plus two storage deals."

F. Enron's Abuse of Mark-to-Market Accounting

533. To improperly and prematurely accelerate revenue recognition, Enron grossly abused mark-to-market accounting on many of its energy trading contracts and broadband transactions.

534. Under conventional accounting, energy companies record revenue from long-term contracts as the revenue is earned over the contract period. Under mark-to-market accounting however, in certain specified circumstances, revenue to be received under a long-term contract (discounted to present value) may all be recognized up front. Pursuant to GAAP, as set forth in EITF No. 98-10, Accounting for Contracts Involved in Energy Trading Risk Management Activities, a non-derivative energy trading contract is "mark-to-market" with gains and losses included in earnings and separately disclosed in the footnotes. Mark-to-market accounting was used by Enron to recognize the present value of a five-year contract as earnings in a single quarter. Mark-to-market accounting is allowed only where contract revenue streams are predictable and based on historical records of similar transactions. However, the Enron Defendants knew there was no historical track record for many of the transactions to which Enron applied mark-to-market accounting.

535. For example, Enron improperly stretched mark-to-market past the limit by inappropriately applying it to transactions like broadband transactions and its retail/commercial energy demand-side management ("DSM") contracts. DSM contracts bundled various energy-related products and services to customers, including providing power and equipment commodities, and management and consulting services related to a customer's usage of power. While mark-to-market accounting is appropriate under certain circumstances for long-term contracts where the resulting revenue over time is predictable based on a historical record of similar transactions, as in straight commodity transactions such as oil and gas, it was not appropriate for Enron's DSM and broadband contracts. Mark-to-market accounting was inappropriate as no historical track record existed for these deals from which the Company could determine how much of the contract revenue was likely to be recovered over the life of the contract, and the contracts were highly speculative, with indeterminate outcomes. Accordingly, it was unreasonable to book significant amounts of the revenue up-front rather than over time. Additionally, mark-to-market accounting of Enron's DSM contracts was improper because most of the expected revenues were attributable to long-term

services to be provided by Enron (normally booked over time, using the accrual accounting method), with only a small portion attributable to the commodity components for which mark-to-market rules could potentially apply.

536. Because the use of mark-to-market accounting requires the ability to make reasonable estimates of future income streams, longer term contracts such as Enron's introduced more uncertainty into the estimate. The Enron Defendants improperly took full advantage of the fact that contracts that exceed four years could result in a wide range of fair value estimates and thus provide Enron with wide leeway in estimating the value of the contract. The Enron Defendants recorded income from these contracts even though they realized that once the contracts began to be performed, many would become losses because the cost, price and other assumptions were never valid to begin with. To avoid recording losses when it started to look like a deal was about to unfold, Enron would shift the curves – changed the estimate – to compensate for the anticipated loss, further misleading the shareholders. A former employee noted, "shifting the curve and making new deals to bury the losses from the past is constantly the strategy." Another former trader stated: "It was very simple. You just tweaked the assumptions on different variables, which were changed to make the return higher."

537. When Enron employed mark-to-market accounting, the Company calculated a range of revenue and risk possibilities (*i.e.*, a low revenue/low risk model, or a high revenue/high risk model). Enron consistently chose the high revenue/high risk model for nearly every deal, but because Enron moved debt, costs, losses, and liabilities off its balance sheet through SPEs, this accumulation of risk was not disclosed to investors. For example, a former trader in Enron Global Markets was directed by his boss in the 4thQ 00 to show an extra $2 million in trading revenues for the quarter. To do this, they just increased the amount of money on an already booked deal for oil to be delivered in the future using mark-to-market accounting. This was called "moving the curve." This was altering the assumptions used to estimate income on contracts accounted for under mark-to-market. Moving the curve projection just 1% could mean millions in extra income. This abusive practice was common in all trading areas of the Company. One natural gas deal was adjusted in the 4thQ 00 to create income of $20 million. This was reversed in the 1stQ 01. Because most DSM deals were

losing money when their curves were re-marked, Enron had to keep signing new contracts each quarter to show a profit – what a DSM manager described as "feeding the beast."

538. Although mark-to-market created very attractive earnings for Enron, actual cash flow was anemic compared to reported earnings because the cash stream was only coming in incrementally over the life of the contract, or in the case of the assets, not until the asset was actually sold. In some contracts, Enron actually experienced net cash outflows as EES would actually pay customers to win contracts, as alleged herein. To compensate for the insufficient cash flow, Enron devised a Contractual Asset Securitization Holding trust (also referred to as "CASH"), which is essentially the same as factoring receivables. In essence, Enron would sell – or monetize – its various contracts to third parties, typically banks, and would then transfer these cash payments to the banks as Enron received the regularly scheduled payments from the counterparties.

539. Because Enron was recognizing earnings for long-term contracts in a single quarter when a contract was signed, it forced Enron to close more and more long-term deals every quarter in order to maintain profitability and growth. But doing this forced Enron into ever more aggressive and riskier postures, culminating in huge accumulations of off-balance-sheet debt, contingent liabilities (such as the LJM and Raptor partnership transactions) and, by early 01, greatly diminished opportunities to re-finance and re-structure old deals and create new deals because Enron had effectively saturated the capital markets with its transactions in 97, 98, 99 and 00.

(1) Eli Lilly and Other Improper Transactions

540. One example of Enron's improper abuse of mark-to-market accounting was its accounting for a demand side energy deal with Eli Lilly (a company of which Lay was a board member), in which Enron improperly accelerated $44 million in income.

541. On 2/26/01, Enron proudly announced a $1.3 billion, 15-year agreement between Eli Lilly and EES, a subsidiary of Enron, in which EES agreed to provide energy and business-related services to Eli Lilly. What Enron improperly failed to disclose however, was that to win the contract, Enron had to pay and invest $168 million up-front, and that Enron knew it would lose money on the deal. The contract called for Enron to pay Lilly $50 million up-front to get the deal,

spend another $94 million out of its own pocket to upgrade Lilly's facilities, and spend another $24 million to hire and train Lilly's employees.

542. Despite the fact that Enron managers knew that the Lilly contract would actually lose money, Enron recognized approximately $44 million of the energy supply portion of the contract as revenue, by inappropriately employing mark-to-market accounting, in the quarter the deal was signed. In fact, as *The Washington Post* reported on 2/18/02:

> Eli Lilly and Co., the Indianapolis pharmaceutical manufacturer, signed a $1.3 billion contract in February 2001 turning all its energy requirements over to Enron for 15 years. But Enron paid Eli Lilly $50 million upfront to win the deal, according to a former senior executive of Enron.
>
> Eli Lilly spokesman Ed West confirmed that Enron had made an advance payment but would not disclose the amount for business confidentiality reasons. "We looked at it as Enron backing up their words with cash," he said.
>
> ***Such upfront payments were not unusual, said Glenn Dickson, a former EES director of asset operations. "It was fairly common on the really big deals to pay the customer, to lose money, in effect, on the contract, whether you were paying the customer or losing money you were charging less than it really cost."***
>
> ***What made it all work, Dickson said, was a form of accounting in which the company counted future projected earnings as current income. "It as huge amounts of money that covered up those cash outlays," he said.***

543. Enron had no legitimate basis for the $44 million figure and the assumptions used to arrive at that figure were not supportable. Indeed, the projected savings promised to customers, along with EES's profits based on estimated savings, were not being realized. However, because these deals were commoditized, utilizing unrealistic projections and accounted for by inappropriately using mark-to-market, Enron was able to improperly book huge, illusory profits up-front on the Lilly contract and many other EES deals.

544. Additional ESS contracts that improperly accelerated revenue include the Enron DSM contract with J.C. Penney, that had losses of $60 million, the IBM deal, which was a significant loss for Enron from the outset, and the CitiGroup contract, which was known at its inception to cost Enron millions in losses. Additionally, in a 4thQ 99 EES deal with Owens Illinois, EES recognized a multi-million dollar profit when the deal closed, even though it was known this deal would lose money for EES. In fact, it is impractical or impossible for Enron to estimate profitability on energy contracts extending beyond four years because of the variability in all the factors related to these

contracts. However, this variability is what allowed Enron to manipulate their assumptions to achieve a predetermined, but unreachable profit level and then record the associated and equally unreasonable revenues by improperly employing mark-to-market accounting.

545. Enron violated GAAP by improperly recognizing revenues up-front on EES contracts when among other things, it had no historical basis that would allow it to make reasonable estimates of future income streams and the contracts were highly speculative, with indeterminate outcomes.

(2) Enron's Improper Use of Mark-to-Market Accounting for Broadband Deals

546. The use of mark-to-market accounting for broadband transactions was particularly improper because it involved service contracts (which services had not yet been provided) rather than income from commodity components. More problematic was the fact that Enron could not reasonably estimate the amount (if any) of future revenue streams to be derived from the contracts.

547. Besides the Blockbuster deal, another example of Enron's improper use of mark-to-market accounting for broadband deals involved a transaction with Rice University. The Rice University deal was a $14 million deal over 10 years in which EBS was to provide broadband to Breimen University in Germany, a sister university to Rice. Enron recognized all $14 million up front using the mark-to-market accounting method during the 2ndQ and 3rdQ 00, instead of the accrual accounting method as required by GAAP. To secure the deal with Rice, Lay made a $5 million donation to Rice for an "endowment." More specifically, Enron gave Rice University money to build a wing in order to close the deal. The deal allowed Breimen to cancel at any time – and it did cancel in early 01. Thus, the revenue stream was neither earned, nor collectible at the time of recognition.

548. It was commonly known within EBS that mark-to-market accounting for broadband was inappropriate because broadband was not a proven market. It was also well known that Lay and Skilling wanted this aggressive revenue recognition to "incentivize the sales guys."

(3) Manipulation of Earnings from Merchant Assets

549. During the Class Period, Enron issued false and misleading financial statements that materially overstated the value of its holdings in various portfolio companies ("Merchant Assets") by mischaracterizing many of its Merchant Assets as having readily determinable values.

550. Enron had a division called Assets and Investments, which, among other things, involved the building of power plants around the world, operating them, selling off pieces of them, and investing in debt and equity securities of energy and technology-related businesses. Enron had great discretion over the results it reported within its Merchant Assets area, according to a 3/01 article in *Fortune*,

> "This [was] an enormous earnings vehicle, which [could] often be called upon when and if market conditions require[d]," noted UBS Warburg analyst Ron Barone.... "[Others were] concerned they [were] liquidating their asset base and booking it as recurring revenue, especially in Latin America, " said analyst Andre Meade at Commerzbank ....

551. Enron recognized pretax gains from sales of merchant assets and investments totaling $756 million, $628 million, and $136 million in 99, 98, and 97. Much of these gains were improperly defined as having a readily determinable value such that unrealized gains could be recorded as income.

552. However, GAAP, as set forth in SFAS No. 115, Accounting for Certain Investments in Debt and Equity Securities, requires companies to record unrealized gains and losses on investments in securities that do not have readily determinable values as a ***separate component of stockholders' equity***. SFAS No. 115, ¶127. Only unrealized holding gains and losses for ***trading securities***[12] that are readily determinable values shall be included in current earnings.

553. Under SFAS No. 115, the fair value of an equity security is ***readily determinable*** if sales prices or bid-and-ask quotations are currently available on a securities exchange registered with the SEC or in the over-the-counter market, provided that those prices or quotations for the over-the-counter market are publicly reported by the National Association of Securities Dealers Automated Quotations system or by the National Quotations Bureau. Restricted stock does not meet this definition.

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[12] Securities that are bought and held principally for the purpose of selling them in the near term.

554. Enron falsely recorded its Merchant Assets as if they all had readily determinable values. This was not the case. For example, an internal report called "Enron Net Works Investment Table" lists, among other things, the following investments:

Name of Company	Comments	Stock Restrictions
Acta Technology, Inc	Not publicly traded	Restricted securities
Financial Settlement Matrix.com	Not publicly traded	Restricted securities
PentaSafe Security Technologies, Inc.	Not publicly traded	Restricted securities
Solo Energy Corporation	Not publicly traded	Restricted stock

555. Indeed, none of the above had readily determinable values as defined under SFAS No. 115. Therefore, Enron's investments with changes in fair value should have been recognized as unrealized gains and losses and reported net of applicable income taxes in a separate component of stockholders' equity and not current earnings.

556. Enron also improperly valued its Merchant Assets. In order to meet earnings expectations Enron would: (1) manipulate the original assumptions; (2) utilize inconsistent valuation approaches; or (3) establish arbitrary milestones. Indeed, CFOs from each of the Enron cells, (Enron North America had approximately 100 cells), would receive a report indicating the mark-to-market values of their respective Merchant Assets. Each cell was expected to contribute to Enron's earnings. If there was an earnings shortfall, the team leader would have his or her team reassess its mark-to-market valuations in order to meet its required earnings contribution.

(4) Quaker Oats

557. Under one of its "bundled contracts," EES agreed to supply 15 Quaker plants with their energy needs, from natural gas and electricity to workers who would maintain boilers and pipes and procure spare parts. Enron guaranteed Quaker it could save $4.4 million from its 99 energy bill. Enron accounted for the contract under mark-to-market even though almost all the profits projected for the Quaker deal were derived from services, not commodities. Enron used what it called "revenue allocation." The net effect of this highly complex treatment was to redefine as commodities some of the money Quaker was paying for services and therefore create more profits than Enron could

book up front. Enron created a new category called "allocated revenues." These were based not on what Quaker had historically paid for energy commodities and its service contracts, but on figures that Enron claimed reflected the open market value of the commodities and services. This revaluation made a significant difference to the reported worth of the contract. Enron would have earned only a small margin supplying gas and power to Quaker based on the original revenue figures it used to calculate the deal. These activities could have actually been loss-making with Quaker's annual discount. Instead, revenue allocation allowed the Company to claim an immediate hefty profit on the deal. Altogether the Company recorded mark-to-market $85 million in services profits from a dozen deals, including Quaker, that should have been recognized over the term of the contract. In some cases, those profits came from such services as changing light bulbs and air conditioning filters.

G. Phony Forward Sales Contract Transactions with Banks

558. The Enron Defendants also engaged in deceptive transactions with certain banking defendants to disguise loans to the Company as hedging or derivative transactions.

(1) Mahonia Transactions with JP Morgan

559. For instance, Enron and JP Morgan used Mahonia, a Jersey company, and related companies to arrange approximately $2.2 billion of "back to back" transactions between 12/97 and 12/00. Specifically, Enron Natural Gas Marketing Corp. or Enron North America Corp., as sellers, entered into six separate agreements characterized as "forward sales contracts" that purported to provide for the delivery of crude oil and natural gas over a 4-to-5 year period (the "Forward Sale Contracts") with either Mahonia or Mahonia Gas (collectively "Mahonia"), as purchasers. In reality, these were loans to Enron disguised as hedging contracts. As the *Houston Chronicle* later noted:

> As Enron's troubles mounted, the Houston company eventually turned to Mahonia as a sort of surrogate bank, these people say, using it to raise at least $2 billion in financing over the years.
>
> For J.P. Morgan, the arrangement was lucrative - at least at first. The bank received as much as $100 million in revenue.
>
> * * *
>
> The Mahonia arrangement - which J.P. Morgan hadn't disclosed to investors until last month's suit - represents just a sliver of the many complicated ventures

> Enron participate in. But unlike the hundreds of partnerships Enron constructed on its own to keep debt off its books, this venture was conceived, launched and operated by J.P. Morgan. Though many Wall Street firms helped finance Enron - acting as traditional lenders, underwriters and advisors - the fact that J.P. Morgan set up the partnership suggests that Wall Street may have played a more active role in the Enron scandal.

560. The forward sales contract was a sham. First, Enron never intended to deliver the subject crude oil and natural gas as evidenced by the fact that it did not enter into contracts with suppliers to "hedge" its obligations for delivery of the crude oil and natural gas required to be delivered under the terms of the forward sales contracts, which it would have done in the ordinary course of business if actual deliveries of crude oil and natural gas had been contemplated. Second, Mahonia did not enter into contracts with third parties for the delivery of the oil and gas to be supplied by Enron under the terms of the forward sales contracts, which contracts were secured by surety bonds, reflecting that it never in fact intended to take delivery of crude oil and natural gas from Enron. Third, Mahonia was not listed as a firm transportation customer of any of the pipelines at which the natural gas deliveries were to have been made under the forward sales contracts relating to the delivery of the natural gas at the delivery points specified in such forward sales contracts, notwithstanding its express representation and warranty that it had the capacity and intended to take delivery of the natural gas to be delivered under such forward sales contracts and that it was acquiring such natural gas in the ordinary course of business.

561. On the very same day, Enron entered into an agreement with an entity named Stoneville Aegean Limited ("Stoneville") to purchase from Stoneville the identical quantities of gas that Enron was that same day agreeing to sell to Mahonia, to be delivered to Enron on the very same future dates as Enron was supposed to deliver the same quantities of gas to Mahonia. Moreover, both Mahonia and Stoneville – offshore corporations set up by the same company, Mourant du Feu & Jeune – have the same director Ian James, and the same shareholders, Juris Ltd. and Lively Ltd. Finally, whereas Mahonia agreed in its contract with Enron to pay Enron $330 million for the gas on 12/28/00, Enron in its agreement with Stoneville, agreed to pay Stoneville $394 million to buy back the same quantities of gas on the same delivery schedule, but with the $394 million to be paid at specified future dates – the equivalent of a 7% loan.

562. In a valid prepaid forward sales contract, the purchaser wants to secure a long-term supply of the natural gas, because (1) it needs the natural gas in connection with its own operations or (2) it is a marketing company with customers to whom it can sell the natural gas at a profit. In either case, the purchaser wants delivery of the natural gas and is exposed to price risk (the risk that the market price of the natural gas during the month of delivery under the pre-paid agreement will be less than the pre-paid price made by the purchaser). Here, however, JP Morgan assumed no economic risk in price changes of the natural gas because it (or its related companies) was simultaneously buying and selling the same quantities of gas, at pre-arranged prices to the same party (Enron). Thus, since the market price of gas and/or the existence of gas was irrelevant to JP Morgan – the transaction represented a loan, rather than a pre-paid forward sales contract.

563. On 12/7/01, the insurer's requested that Mahonia and JP Morgan provide information to verify that the surety bonds secured actual forward sales contracts for which there was actual deliveries of oil and natural gas. To date, JP Morgan has refused to provide any of the requested information. U.S. District Judge Jed S. Rakoff in Manhattan has cited evidence in a 3/2/02 ruling that appears to show that Enron agreed to purchase $394 million in gas from an entity called Stoneville Aegean Ltd. on the same day it agreed to sell the same quantities of gas to Mahonia. The court could not possibly grant judgment to J.P. Morgan because "'taken together, then, these arrangements now appear to be nothing but a disguised loan.'"

564. Enron overstated revenues and earnings before taxes by recording contracts worth approximately $2.2 billion of "back to back" transactions between 12/97 and 12/00 by recording loans received from JP Morgan as forward sales contracts. As *The New York Times* noted on 2/19/02:

> The transaction records, many of which were held overseas and have never before been disclosed, indicate that many of the trades would not have involved any delivery of gas; experts said the pattern of trading suggested the purpose of the deals was to disguise bank loans.
>
> In all, Enron took advantage of accounting rules to avoid reporting as much as $3.9 billion in loans on its balance sheet in the decade before its collapse last fall, thus improving its financial picture in the eyes of credit rating agencies and Wall Street.

(2) Prepaid Swaps with CitiGroup and CS First Boston

565. From late 99 through early 01, CitiGroup loaned Enron $2.4 billion in a series of transactions disguised as prepaid swaps. In a swap, two parties trade the future returns on investments over a set period of time. For example, one party might pay a small amount to receive a fixed interest rate on a corporate bond in lieu of uncertain gains on the same corporation's stock. The counterparty accepts the payment and swaps the return on the bond for the return on the stock. Neither party actually needs to hold the underlying assets, as long as the payments are made. Typically, neither party in a swap exchange receives all the agreed payments up front.

566. In these transactions, though, CitiGroup paid an estimate of the fair value of its portion of the swaps – hundreds of millions of dollars each time – immediately. Enron was obliged to repay the cash over five years, though its payments might have varied with market conditions. The transactions, though technically derivative trades known as prepaid swaps, perfectly replicated loans.

567. CS First Boston also lent Enron money using trades in derivatives. In 00, the bank gave Enron $150 million to be repaid over two years. Enron's payments would vary with the price of oil. As *The New York Times* noted on 2/17/02:

> If Enron had in fact disclosed all the money as debt, then credit rating agencies, industry analysts and investors would have known earlier on that the company was riskier than it appeared.
>
> Partly because of the way the loans were accounted for, the company reported a surge in its hedging activity, accomplished using financial contracts called derivatives, during its last few years. When pressed about the increase by skeptical analysts, Enron officials said the numbers reflected hedges for commodities trades, not new financing, the analysts said.
>
> "They'd always tell us, 'Don't worry about that, it's just hedging activity,'" said John E. Olson, the research director at Sanders Morris Harris who was one of the first analysts to challenge Enron's practices.
>
> * * *
>
> Technically, the transaction was a swap. But because CS First Boston paid Enron up front, the transaction took on the characteristics of a loan – a reality noted by the bank. "It was like a floating-rate loan," said Pen Pendleton, a CS First Boston spokesman. "We booked the transaction as a loan."
>
> Enron's balance sheet told a different story. The company posted the banks' loans as "assets from price risk management" and possibly, to a far lesser extent, as accounts receivable, said Charlie Leonard, a spokesman for Andersen. The

> repayments that Enron owed the banks were listed as "liabilities from price risk management" and possibly a small amount as accounts payable, Mr. Leonard said.
>
> * * *

568. In fact, Enron, with the participation of CitiGroup and CS First Boston, was manipulating its debt-to-equity ratios and reducing the amount of debt that was reported on Enron's balance sheet by mischaracterizing the loans.

(3) Connecticut Resources Transaction

569. Another example of a disguised loan Enron entered into was a 3/01 deal with the Connecticut Resources Recovery Authority ("CRRA") and Connecticut Light and Power Company ("CL&P").

570. As *The New York Times* described the deal on 2/22/02:

> Last March, the authority paid Enron $220 million, ostensibly to take over a contract from a local utility to buy the authority's trash-generated steam electricity. In exchange, Enron – though it never actually transported or sold the electricity – agreed to pay the authority nearly $2.4 million a month, through the contract's expiration in 2012.
>
> * * *
>
> As for Enron, [Richard] Blumenthal said in an interview yesterday that its "motive was to have a quick $220 million, which it certainly did not book as a liability." He added that the deal "fits the pattern" of many other transactions that Enron made in the months before it collapsed, borrowing money in deals that made little long-term financial sense.
>
> * * *
>
> In essence, his report concluded, Enron did nothing in return for the money it received from the Connecticut agency except promise to pay it back, with interest. "This $220 million was an infusion of cash when Enron needed it," he said.

571. Enron, CRRA and CL&P had entered into various agreements which provided that CL&P would fund a $220 million buy-down of an 85 electric purchase agreement for output from the electric generation facility. CL&P paid the $220 million directly to Enron Power Marketing, Inc. ("EPMI"), an Enron subsidiary, which EPMI was to repay to CRRA in monthly installments similar to an unsecured loan at an imputed annual rate of 7% over the life of the contract. EPMI nominally took on certain additional obligations to buy and sell energy to or from CRRA and to deliver power

to CL&P. However, EPMI assumed no real performance obligations or risks for the production, sale or purchase of electric energy or steam.

572. Specifically, Enron or EPMI's involvement consisted of an agreement to make payments to CRRA, at the beginning of each month through 5/31/12, irrespective of CRRA's performance under any of its agreements with EPMI.

573. Enron's financial statements for the quarters ended 3/31/01, 6/30/01, and 9/30/01 were false and misleading because the transaction described above was in fact a loan and not an energy contract for which revenue could be recognized. The reality was that EPMI was an incidental party to the production, purchase and sale of electricity or steam from CRRA to CL&P. For instance: (1) the price of power purchased by EPMI was exactly the same as the price of power which it paid; (2) invoicing each month related to power purchases was initiated by CRRA billing EPMI, which in turn billed CL&P and was timed to allow for EPMI to make payment to CRRA one day following EPMI's receipt of payment from CL&P – essentially a wash transaction leaving Enron or EPMI with only the obligation to make its required monthly payments under the two agreements. Enron's improper accounting of the CRRA loan resulted in an overstatement of revenues and earnings before taxes due to booking contracts worth approximately $220 million.

574. The accounting for these transactions violated GAAP which requires that financial statements represent the true nature of transactions. *See* FASB Statement of Concepts No. 2, ¶78.

H. Enron Violated GAAP in Accounting for Long-Term Construction Contracts

575. Enron used non-recourse debt to finance a wide array of its plant building projects over the years. By using non-recourse debt, Enron relied on a variety of contracts with an assortment of third parties, as well as the tax benefits of the underlying assets, to establish a reliable cash flow that would support the financing. These contracts, rather than the general credit of Enron and other owners, provided the credit for the financing. In fact, the lenders typically agreed not to seek repayment of the debt by Enron and the other owners, who would have no liabilities except to the extent of any obligations Enron and the owners undertook pursuant to any project contracts, such as operating agreements and throughput contracts. Enron, as the owner of the project, could

achieve off-balance-sheet (non-consolidation) accounting only if the debt was non-recourse to it and it owned 50% or less of voting control.

576. By accounting for these projects on a non-consolidated basis, Enron International, a subsidiary of Enron, could recognize as revenue, approximately 5% of contract value for construction services provided to Enron.

577. However, according to former employees, to inflate reported revenues, Enron International improperly recognized revenue in connection with many of these projects, by recognizing 10% of the construction services contract value as revenue upon signing. Some of the projects identified include, but are not limited to:

Project Name	Description	Contract Value	Date Started
Cuiaba Integrated Energy Project	A 480-megawatt, combined-cycle natural gas power plant in Cuiabá, Brazil.	$400 million	1998
Sarlux Power Project	A 551-megawatt Sarlux combined cycle gasification power plant on the island of Sardinia in the Mediterranean Sea.	$550 million	1997
Elektrocieplownia Nowa Sarzyna Project	A 116-megawatt power plant in southeastern Poland, a natural gas-fired, cogeneration plant.	$120 million	1998
Enron Piti Power Project	Enron constructed an 80-megawatt baseload, slow-speed diesel plant in Piti, Guam under an Energy Conversion Agreement with the Guam Power Authority.	$110 million	First half of 1997

578. Enron International accounted for its long-term construction contracts under the percentage-of-completion method. The percentage-of-completion method recognizes income as ***work progresses*** on the contract. The method is based on an estimate of the income earned to date, less income recognized in earlier periods. Estimates of the degree of completion usually are based on one of the following (*See* ARB No. 45, ¶4):

- The relationship of costs incurred to date to expected total costs for the contract.
- Other measures of progress toward completion, such as engineering estimates.

In addition, during the early stages of a contract, all or a portion of items such as material and subcontract costs may be excluded if it appears that the results would produce a more meaningful allocation of periodic income.

579. Enron's accounting for long-term construction projects was false and misleading, resulting in an overstatement of revenues and earnings during the Class Period. Indeed, recognizing 10% of the contract value as revenue at signing before any work had been completed was in direct violation of GAAP.

I. Enron's Improper Snowballing of Costs on Unsuccessful Bids

580. During 97 and 98, Enron improperly capitalized, rather than expensed, costs associated with unsuccessful bids for projects. The project bid costs were then improperly included in bid costs for future projects. These capitalized costs were ultimately written off in the 1stQ 99, but to cloak the true nature of the writedown, the writedown was attributed to a "change in accounting."

581. Enron International repeatedly deferred capital expenditures, including developer, financing, and promotional fees, that were incurred on failed project proposals. Former directors and vice presidents watched for more than five years – between 93 and 97 – while these deferred expenses were accumulated – a practice known company-wide by accounting and finance personnel as "snowballing" – and very few write-offs were taken. Costs for South African projects involving oil and gas reserves, pipelines, and a plant designed to convert ore into another form of energy, and projects in China, among others, were snowballed quickly – the cash burn rate was as much as ***one million dollars a month***. Quarter after quarter, year after year, Enron International "got pressure from corporate about meeting earnings," which made even a hint about write-downs – even when it was clear that the proposed project would never go forward – very unpopular at the end of a reporting period. Consequently, the snowball grew exponentially – so large that an international accounting officer told Enron CAO Causey that a writedown had to be taken because so many proposals were no longer even arguably viable. But this appropriate assessment ran counter to corporate directives by Causey, who, at Skilling's direction, routinely responded that "corporate didn't have room" to take a writedown – reduce the snowball – because doing so would bring Enron's

earnings below expectations. By 97, years past when start-up and proposal costs should have been written off, Enron had deferred a $100-million snowball on some 75 projects, including those in Central and South America, and the Dabhol power plant in India, while the cash-burn rate – virtually all deferred – dwarfed the revenue return. This practice was improper. In fact, internal Enron accountants who knew it was improper and were involved in "snowballing" were worried about doing it. In the 1stQ 99, Enron recorded an after-tax charge of $131 million purportedly to reflect the initial adoption (as of 1/1/99) of two new accounting pronouncements, including Statement of Position 98-5 ("SOP" 98-5), Reporting on the Costs of Start-Up Activities, which requires that costs for all start-up activities and organization costs be expensed as incurred. Enron misled investors by claiming the charge was primarily related to the adoption of SOP 98-5.

582. The above disclosures were false and misleading, because the charge was not related to SOP 98-5, but to write-off costs associated with unsuccessful bid expenses that had accumulated over the past several years and had been improperly recorded as assets on the balance sheet instead of as expenses.

J. Enron's Improper Accounting for Long-term Assets - Investments

583. During the Class Period, Enron also falsified its financial statements by failing to record losses for the impairment of certain of its long-term assets and investments, including its long-term construction projects.

584. GAAP, as set forth in SFAS No. 121, requires that companies review long-lived assets to determine if the assets are impaired. SFAS No. 121, ¶¶5-6:

> 5. The following are examples of events or changes in circumstances that indicate that the recoverability of the carrying amount of an asset should be assessed:
>
> a. A significant decrease in the market value of an asset
>
> b. A significant change in the extent or manner in which an asset is used or a significant physical change in an asset
>
> c. A significant adverse change in legal factors or in the business climate that could affect the value of an asset or an adverse action or assessment by a regulator
>
> d. An accumulation of costs significantly in excess of the amount originally expected to acquire or construct an asset

> e. A current period operating or cash flow loss combined with a history of operating or cash flow losses or a projection or forecast that demonstrates continuing losses associated with an asset used for the purpose of producing revenue.
>
> 6. If the examples of events or changes in circumstances set forth in paragraph 5 are present or if other events or changes in circumstances indicate that the carrying amount of an asset that an entity expects to hold and use may not be recoverable, the entity shall estimate the future cash flows expected to result from the use of the asset and its eventual disposition. Future cash flows are the future cash inflows expected to be generated by an asset less the future cash outflows expected to be necessary to obtain those inflows. If the sum of the expected future cash flows (undiscounted and without interest charges) is less than the carrying amount of the asset, the entity shall recognize an impairment loss in accordance with this Statement. Otherwise, an impairment loss shall not be recognized; however, a review of depreciation policies may be appropriate.

(Footnote omitted.)

585. GAAP, as set forth in SFAS No. 115, requires that a loss be recorded for impairment in investments when the impairment is other than temporary. SFAS No. 115, ¶16, states in part:

> For individual securities classified as either available-for-sale or held-to-maturity, an enterprise shall determine whether a decline in fair value below the amortized cost basis is other than temporary. For example, if it is probable that the investor will be unable to collect all amounts due according to the contractual terms of a debt security not impaired at acquisition, an other-than-temporary impairment shall be considered to have occurred. If the decline in fair value is judged to be other than temporary, the cost basis of the individual security shall be written down to fair value as a new cost basis and the amount of the write-down shall be included in earnings (that is, accounted for as a realized loss).

586. During the Class Period, contrary to GAAP, Enron failed to adequately reflect the deterioration in the value of the its investments in long-term assets and in its broadband assets and content services business. In fact, the assets were not worth anywhere near what Enron reported in its financial statements.

587. As a result of these factors, the Enron Defendants knew that the assets would not provide the benefits estimated when they were acquired, but in order to report inflated earnings to investors, did not take required writedowns as per SFAS No. 121.

588. On 10/16/01, Enron belatedly announced that it was writing off $1 billion in assets. The release stated:

> Non-recurring charges totaling $1.01 billion after-tax, or $(1.11) loss per diluted share, were recognized for the third quarter of 2001.

* * *

Enron's results in the third quarter of 2001 include after-tax non-recurring charges of $1.01 billion, or $(1.11) per diluted share, consisting of:

– $287 million related to asset impairments recorded by Azurix Corp. These impairments primarily reflect Azurix's planned disposition of its North American and certain South American service-related businesses;

– $180 million associated with the restructuring of Broadband Services, including severance costs, loss on the sale of inventory and an impairment to reflect the reduced value of Enron's content services business; and

– $544 million related to losses associated with certain investments, principally Enron's interest in The New Power Company, broadband and technology investments, and early termination during the third quarter of certain structured finance arrangements with a previously disclosed entity.

589. In fact, these and other long-term assets were impaired long before Enron recorded these write-offs.

(1) Azurix

590. In 98, Enron had acquired Wessex Water in the United Kingdom. This acquisition formed the basis for a new water subsidiary – Azurix. Mark-Jusbasche was named CEO of Azurix. Azurix has been struggling almost since its inception. Azurix later invested in other water plants, including in Argentina. Its business plan was to acquire and operate or manage public water and wastewater facilities that are being privatized worldwide. However, Enron created this purported worldwide water business without adequate feasibility studied and without a detailed business plan. The Company stumbled and was never able to compete effectively in bidding wars against such huge multinational rivals as Vivendi and Suez Lyonnaise des Eaux. Wessex Water had been expected to be the main revenue source for Azurix but results were disappointing after regulators forced the company to cut prices by 12%, leaving Azurix without its main source of cash. In 99, one-third of Azurix was sold in a public offering underwritten by Deutsche Bank and Bank America. After initially increasing, the shares plummeted.

591. It was clear by 00 that Azurix had overpaid for a $489 million franchise to supply water services in Buenos Aires, Argentina. The Argentina investment was troubled from the beginning as promised new infrastructure was not provided by the government. In 11/00, Azurix had been fined in Argentina for negligence which left customers without water for five days. In 00, Mark-Jusbasche left the Company in part due to disappointing financial results at Azurix. In the

4thQ 00, Enron had to record an after-tax charge of $326 million to reflect Enron's portion of impairments recorded by Azurix. In late 00, Enron had announced plans to take Azurix private – which it did in 3/01 for $327.5 million. This amount was booked as an asset, but due to the problems with Azurix's business, defendants knew it was impaired from the time of acquisition, if not before. Yet Enron failed to record a charge.

592. The situation did not improve during 01. Enron was planning extensive layoffs at Azurix, as the business was not at all successful. However, in order to overstate earnings, in early 01, Enron failed to take any charges for the impairment until the 3rdQ 01, when it recorded a charge of $287 million.

593. Enron also failed to disclose its obligations associated with Azurix. Atlantic Water Trust was formed in 98 by Enron to purchase part of Azurix. Atlantic Water Trust was capitalized in part by Marlin Water Trust which was capitalized by $915 million in debt and $125 million in equity. The debt was supported in part by Enron stock. If Enron's stock dropped below $34.13 per share, Enron was in default and was obligated to make up the difference. Enron failed to adequately disclose this obligation.

(2) Broadband Services

594. As noted above, Enron had engaged in phony transactions involving broadband, leaving it with assets on its books which were impaired and could not be reasonably expected to provide economic benefit to the Company, particularly since mid-00 when it became clear that there was a glut of broadband capacity. Nonetheless, the Enron Defendants failed to make adequate and timely writedowns to reflect the impairment, as required by SFAS No. 121.

595. In fact, the costs Enron capitalized for broadband services were not recoverable as the Company never could develop an intelligent network. The broadband operating system was a complete fiction and never developed beyond the conceptual stage. Enron by 12/31/00, most of the network was still dark and not functioning. By 12/31/00, Enron only had enough capacity to reach 47,000 customers. Yet Enron failed to record charges for impairment until the end of the Class Period.

(3) TGS

596. TGS was a partnership with Shell in which Enron owned 35%. The partnership owned a gas pipeline in Argentina. Enron carried the investment at $500 million on its books but it was worth far less than that. When it attempted to sell the investment in 00 it could not find a buyer, yet Enron did not record an impairment charge for the loss.

(4) The New Power Company

597. New Power, as noted in ¶¶485-488, became an impaired asset which defendants went to great lengths to keep off of Enron's financial statements. As the investment deteriorated from the amount the Enron Defendants had marked it up to, no impairment was recorded as Enron used its own stock's value to act as an illusory hedge. In this way, Enron was able to avoid taking a huge writedown of $544 million until the end of the Class Period.

(5) India-Dabhol Power Plant Project

598. In the early 90s, as economic reforms were opening up India's economy, Enron Development became involved in building a 2015 megawatt gas-fired combined cycle power project near Dabhol, India. However, the construction costs resulted in such huge cost overruns such that to ever recover its investment, Enron would have to charge electricity rates so far in excess of existing rates in the region that such rates would never be collected. Consequently, the valuation of Dabhol was grossly inflated and should have been written down as alleged below. Originally, the first phase was to begin construction in 94 and begin commercial operation in early 97. The second phase was to begin construction in 95. The project was dogged with problems from the beginning. In 95, after $300 million in work had been completed, the project was halted due to political changes in India. Enron had to agree to lower the rates it would charge for power once it was online to get it started again. However, even by 02, the project was still not finished.

599. By late 01, Enron and its partners had invested more than $1 billion in building Dabhol, but these costs were not recoverable. The problem was that the rates envisioned for consumers in India were several times higher than other rates in the country. Additionally, Enron continued to have regulatory/political problems in finalizing the project.

600. As *The Wall Street Journal* subsequently reported:

> Enron arrived in India in the early 1990s after a wave of economic reforms started prying open [India's] protected economy. Dabhol Power Corp. [Enron's struggling project which shut down earlier this year] has been dogged by controversy almost from the start and has emerged as an icon of the challenges facing foreign investors here. In the past year, its ***only*** customer, the Maharashtra State Electricity Board SEB, stopped buying electricity from Dabhol, saying its rates were too high. The plant shut down and Dabhol took steps toward terminating its contract with the []SEB.

601. By year-end 00, Enron reported a $693 million investment in Dabhol, representing a 50% interest in the project. The Enron Defendants improperly failed to record an impairment charge as required by SFAS No. 121, because doing so would have been a de facto admission that the project was a failure, and would have adversely affected earnings.

602. Ultimately, as Enron has sought to sell its interest in Dabhol, buyers demanded as much as a 70% discount from Enron's reported equity to buy its interest. Enron's failure to properly report the value of Dabhol artificially inflated the Company's earnings and assets during the Class Period.

(6) Nicaragua and Puerto Rico

603. Enron had projects during the Class Period in Nicaragua and Puerto Rico that also employed aggressive accounting to keep debt, losses, and expenses off the books and contingent liabilities out of its financial reporting. One complex project involved Enron and the Nicaraguan government, in which Enron brokered a financing agreement between Marid (a U.S. government financing entity) and the national government of Nicaragua whereby Nicaragua could purchase power either from or through Enron with the borrowed funds. Enron guaranteed the Nicaraguan government's loan from Marid, stating that if the Nicaraguans defaulted, Enron would buy back a barge that the Nicaraguans had used as collateral. While the barge's collateral value had been reported at approximately $50 million, its actual market value was nowhere near that amount. As a result, Enron would not be able to recover its costs in acquiring the barge when the time came to liquidate this asset.

604. Enron's accounting for its gas pipeline in Puerto Rico is also highly questionable. The pipeline actually blew up in 00 and accordingly, should have been written off or reported as an impaired asset. Instead, to avoid the negative impact the $13 million writedown would have on

earnings, Enron put a fiber optic system where the pipeline was located (which flooded the Puerto Rican market for broadband). Enron constructed this fiber optic system in Puerto Rico in order to avoid the write-off and to book earnings through certain "contractual terms." This was structured by Rice, who was personally managing deals in Puerto Rico, Mexico and other emerging countries.

(7) Brazil

605. Enron also misstated its investments in projects in Brazil, including in electricity distributor Electricidade e Servicos SA ("Elektro"). In 7/98, Enron had paid $1.2 billion for a controlling stake in Elektro. It was a high price for the interest since Enron had been forced to outbid 17 other bidders, and represented a 98.9% premium over the minimum price. In 2/99, Enron purchased additional shares of Elektro for some $300 million. Elektro was carried at $1.7 billion on Enron's books. JP Morgan helped Enron make these purchases receiving some $2 million in M&A advisory fees on the transactions.

606. However, Elektro did not perform well and generated huge losses. By mid-00, Enron was shopping for a buyer for its interest in Elektro as part of "Project California" and was offering its interest for $1.0 billion. This offer to sell at $1.0 billion was an admission that Elektro's value of $1.7 billion on Enron's books was now wildly overvalued. Despite this knowledge, Enron failed to make timely and adequate accruals for the impairment in its investment in Elektro. The Company transferred part of its Elektro interest in Whitewing and attempted during 01 to sell its Elektro holdings for $700 million. It is now clear that Enron will only be able to sell its Elektro holdings if it offers a substantial discount to even that price.

(8) PromiGas

607. PromiGas was a public Columbian company that held interests in a pipeline Enron had a 42% interest in, which the Company purchased in 98. Enron carried the investment on its books at $80 million. Then, each quarter Enron would purchase additional stock to drive up the share price until it was worth $123 million. Enron recorded income from the increase in value of PromiGas. Enron did not record the impairment in this investment when it declined in value and eventually had to transfer it to Whitewing when it could not unload it.

(9) Enron's Phony Sales to EOTT

608. In order to report favorable 2ndQ 01 results, Enron entered into a phony transaction with Enron Oil Transportation and Trade ("EOTT"), an entity in which Enron was the one-third owner and general partner. Enron had an interest in Project Timber, a methanol and MTBE (gasoline additive) refinery south of Houston. Unfortunately, the refinery had a huge environmental liability. MTBE is water soluable and is a potential carcinogen.

609. Enron had been trying to sell Project Timber for six years by 6/01, but the best price it had been offered was $50 million. Nevertheless, on 6/29/01, Enron sold it to EOTT for $200 million. EOTT agreed to the terms because Enron guaranteed it would purchase all the MTBE the plant produced and would cover any liability. Enron improperly recognized $117 million on the sale, more than a third of 2ndQ 01 earnings. This was improper because the revenue was not realizable and did not result from an arm's-length transaction. It was essentially a total return swap and should not have been recognized as revenue. Enron did not disclose that it recognized earnings from this transaction, nor its liabilities under the contract.

K. Enron's Financial Statements Violated GAAP

610. Due to these accounting improprieties, the Company presented its financial results and statements in a manner which violated GAAP, including the following fundamental accounting principles:

(a) The principle that interim financial reporting should be based upon the same accounting principles and practices used to prepare annual financial statements was violated (APB No. 28, ¶10);

(b) The principle that financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit and similar decisions was violated (FASB Statement of Concepts No. 1, ¶34);

(c) The principle that financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and effects of transactions, events and circumstances that change resources and claims to those resources was violated (FASB Statement of Concepts No. 1, ¶40);

(d) The principle that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources entrusted to it was violated. To the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability to prospective investors and to the public in general (FASB Statement of Concepts No. 1, ¶50);

(e) The principle that financial reporting should provide information about an enterprise's financial performance during a period was violated. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance (FASB Statement of Concepts No. 1, ¶42);

(f) The principle that financial reporting should be reliable in that it represents what it purports to represent was violated. That information should be reliable as well as relevant is a notion that is central to accounting (FASB Statement of Concepts No. 2, ¶¶58-59);

(g) The principle of completeness, which means that nothing is left out of the information that be necessary to insure that it validly represents underlying events and conditions was violated (FASB Statement of Concepts No. 2, ¶79); and

(h) The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered was violated. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (FASB Statement of Concepts No. 2, ¶¶95, 97).

611. Further, the undisclosed adverse information concealed by defendants during the Class Period is the type of information which, because of SEC regulations, regulations of the national stock

exchanges and customary business practice, is expected by investors and securities analysts to be disclosed and is known by corporate officials and their legal and financial advisors to be the type of information which is expected to be and must be disclosed.

ENRON'S FALSE AND MISLEADING STATEMENTS IN ITS 10-Ks AND REGISTRATION STATEMENTS

612. Enron's Registration Statements, used to sell securities that were purchased during the Class Period, incorporated by reference Enron's 10-K reports ("Offering Documents") for the Class Period offerings of Enron's securities:

Registration Dates for Enron Offerings During the Class Period

Date of Offering	Effective Date of Registration Statement	Description of Offering	10-K Incorporation
7/7/98	12/31/97	Notes	Registration Statement and Prospectus incorporates the 96 10-K Future filings incorporated in the Registration Statement include the 97 10-K
11/24/98	12/31/97	Notes	Registration Statement incorporates the 96 10-K Future filings incorporated in the Registration Statement include the 97 10-K
02/11/99	02/05/99	Common Stock	Registration Statement and Prospectus incorporate the 97 10-K
05/19/99	02/05/99	Notes	Registration Statement and Prospectus incorporate the 97 10-K Future filings incorporated in the Registration Statement include the 98 10-K
08/10/99	07/23/99	Notes	Registration Statement and Prospectus incorporate the 98 10-K

Date of Offering	Effective Date of Registration Statement	Description of Offering	10-K Incorporation
05/00	02/05/99	Notes	Registration Statement incorporated 97 10-K; Prospectus incorporates the 99 10-K Future filings incorporated in the Registration Statement include the 98 and 99 10-Ks.
07/18/01	06/01/01	Resale of Zero Coupon Convertible Notes	Registration Statement and Prospectus incorporate the 00 10-K

613. These Offering Documents were false and misleading due to, among other things, the incorporation by reference of Enron's 10-Ks for 97-00. As noted in ¶¶418-611, these 10-Ks contained Enron's admittedly false financial statements for 97-00. These financial statements understated Enron's debt by billions of dollars and overstated its earnings by hundreds of millions of dollars. These documents also included false and misleading financial ratios and other materially false statements. For example, the Offering Documents for the 7/7/98 offering of $500 million in notes was false due to the misrepresentation of Enron's reported ratio of earnings to fixed charges of 2.70 for the three months ended 3/31/98. This figure was materially false and misleading due to Enron's failure to consolidate Chewco and JEDI as required by GAAP, as detailed herein. The Registration Statement for the 7/7/98 and 11/24/98 offerings also incorporated the 10-Q for the 3rdQ 97, which reported that EES had incurred a loss of $64 million for the nine months ended 9/30/97. This amount understated the actual losses incurred by EES due to the overvaluation of Enron's EES contracts and abuse of mark-to-market accounting as detailed herein.

614. The 12/31/97 Registration Statement, which incorporated Enron's Form 10-K for the year-ended 12/31/96, also reported that Phase I of Enron's Dabhol plant was to begin commercial operations in 12/98. This was false and misleading because cost overruns on the Dabhol project and problems with political and regulatory officials, which had occurred by 12/31/97, ensured that the plant would likely never begin commercial operations on the terms represented and, if begun, commercial operations would result in huge losses because to break even Enron would have to charge

its only customer (the Indian state government) four times the price other power generators were charging to supply electricity energy in order to recoup Enron's investment.

615. The Registration Statements also incorporated by reference all documents filed pursuant to §13(a) of the 1934 Act prior to the respective offerings, including Enron's subsequently filed 10-Ks, which misrepresented Enron's financial results, including earnings, the debt-to-equity ratio, total debt, and shareholder equity, by failing to consolidate non-qualifying SPEs, as required by GAAP and numerous other accounting misstatements, as described in ¶¶418-611. The subsequently filed 10-Qs were also incorporated by reference, and contained unaudited financial statements which were false and misleading as described therein. Enron has admitted these financial results were materially false. The 12/31/97 Registration Statement, for instance, incorporated the 97 10-K since it was issued prior to the 7/7/98 and 11/24/98 notes offerings. The 97 10-K misstated and understated the loss incurred by EES for 97, reported as $107 million, due to the overvaluation of the EES contracts and abuse of mark-to-market accounting, as detailed herein.

616. The Offering Documents also made false and misleading statements about Enron's financial-risk management and credit risk, concealing the substance, nature, and effect of the straw transactions Enron was entering with the bankers. Contrary to the house of cards defendants had created in Enron, the Offering Documents gave the impression that Enron had hedged risk in its earnings and equity and thus Enron's finances were secure and its stock price sound.

617. The lawyers who wrote the Offering Documents and the banks who sold Enron's securities to the public via those Offering Documents were in a unique position to know that the statements made concerning Enron's financial risk management and credit risk in the Offering Documents for the securities offerings that they underwrote were false and misleading. Together they structured the underlying deals and the banks acted as counterparties to Enron's bogus hedging transactions through the LJM partnerships and the Raptors. Accordingly, not only did the banks know that Enron was leveraging billions in its own stock in bogus hedging transactions, they also quantified the financial and credit risk to Enron in structuring the hedging transactions and through value-at-risk, stress-testing, and scenario analyses. The banks also determined Enron's financial and credit risks in determining trigger points at which Enron would have to deposit its stock into the

Raptors to maintain credit support for the risks which Enron ultimately bore in the bogus hedging transactions. Indeed, as of the execution date of each LJM2/Raptor transaction, Enron's financial and credit risks were quantified and qualitatively assessed by the banks.

A. False and Misleading Statements About Enron's Capitalization

618. Enron's Offering Documents for its securities offerings during 00-01 contained false and misleading about Enron's disclosures capitalization. For instance, the Registration Statement for Enron's zero coupon convertible notes, filed 6/01/01, incorporated the following disclosure:

> Enron is a party to certain financial contracts which contain provisions for early settlement in the event of a significant market price decline in which Enron's common stock falls below certain levels (prices ranging from $28.20 to $55.00 per share) or if the credit ratings for Enron's unsecured, senior long-term debt obligations fall below investment grade. The impact of this early settlement ***could*** include the issuance of additional shares of Enron common stock.

Enron's other Offering Documents for securities offerings during 00-01 incorporated the same disclosure with either the same prices indicated or lower prices.

619. The purported disclosure was false and misleading because it misrepresented or concealed the nature, substance and effect of the "provisions for early settlement." ***First***, if Enron's stock price declined below the stated price levels, then Enron ***had*** to issue more shares – as it did in the Raptors – ***and the risk of this event was imminent. Second***, the so-called disclosure concealed that in Enron's bogus hedge transactions Enron bore the ultimate risk of the so-called hedges – Enron was actually hedging with itself, not really hedging – and thus was ***multiplying, not reducing its risk.*** None of these matters were disclosed. The bankers and Vinson & Elkins knew the undisclosed facts – ***they were the ones that created the transactions containing the triggers. And it was well known by them that if Enron's stock price hit those triggers it would decimate Enron because of the quantity of shares that Enron would have to issue to bear the risk of the bogus hedges.***

620. ***Third,*** the Offering Documents failed to disclose that "early settlement" could grossly dilute Enron's common stock as it did in the case of the bogus hedging transactions – "early settlement" was an imminent and highly negative risk. ***Fourth,*** the Offering Documents did not disclose that the triggers concerning LJM2/Raptors transactions were, in fact, massive credit support for Enron's bogus hedging transactions. ***Fifth***, the Offering Documents concealed the magnitude of

the credit support, which in the case of the LJM2/Raptors transactions alone amounted to over $2 billion. And ***sixth***, the range of the triggers was materially misrepresented as well: the LJM2/Raptors transactions ranged from $57.50 to as high as $83 per share, which would have signaled much higher risk if the true price range and nature, substance and effect of the triggers were disclosed. Moreover, the cost to Enron just to maintain the credit support represented by the undisclosed triggers was approximately $500 million as of 4/02/01.

621. The true effect of "early settlement" and the undisclosed triggers was that Enron was betting over 100 million shares of its own stock against market volatility and was ***multiplying, not reducing, the Company's risk.*** To disclose this about the LJM2/Raptors' triggers (among others) would mean revelation of the fact that Enron's hedging activities were not only bogus – the risk had not been truly hedged – but also that the purported hedging transactions had actually increased the risks to Enron, not reduced them. The banks, Vinson & Elkins and Kirkland & Ellis had structured and prepared the documents for the bogus hedging transactions. Simply stated, ***those on the inside knew that the stock price issuance triggers were toxic for Enron***.

622. For example, in a 6/01 meeting between Enron managers and two CS First Boston managing directors – six weeks before the filing of the Registration Statement for Enron's zero coupon convertible notes – CS First Boston discussed with Enron its amazement at the statements Enron was making in light of the undisclosed dire circumstances presented by the triggers in Enron's bogus hedging transactions. At that time, CS First Boston's managing directors stated, "How can you guys keep doing this?" – referring to Enron's repeated statements to the market that its stock was undervalued. CS First Boston's managing directors continued that even at $40 per share, Enron's stock was still overvalued in their view: ***"Do employees actually believe it's worth what management is saying?"*** (At that time, Enron's stock was trading at approximately $48.50.) The CS First Boston managing directors added, ***"You guys are at a critical price point right now,"*** referring to the bogus Raptors hedges, and stated that if Enron's stock continued to fall, that would cause Raptor to unwind and the massive credit support provided by Enron to come due. CS First Boston's managing directors asked the Enron managers, "Do you know how much off-balance sheet debt you [Enron] have?" When the Enron replied that they thought it was around one to two billion

dollars, CS First Boston's managing directors stated, "***Try eight to 12 billion ... if Enron's stock hits $20 a share ... you guys are gonna be fucked."***

623. It is obvious these misstatements misled market sophisticates for when, in 3/01, Skilling indicated to analysts in response to Enron's equity issuance plans that Enron had some financing vehicles "with *de minimus*" share issuance requirements, no analyst, money manager, or investor challenged this statement as incorrect or inconsistent with Enron's prior disclosures in that regard.

B. False and Misleading Statements About Enron's Financial Risk Management

624. Enron's Offering Documents for its securities offerings in 00-01 contained other false and misleading statements about Enron's purported Financial Risk Management. These statements gave the false and misleading impression that Enron had greatly reduced the risk in its stock through a series of sophisticated risk-management techniques and risk analyses, and falsely quantified the components of market risk to which Enron was subject. The defendants also stated that Enron managed the components of its market risk (*e.g.,* commodity-price risk, interest-rate risk, foreign-currency exchange-rate risk, and equity risk) and its credit risk. Nothing was further from the truth. Enron had materially compromised, if not altogether destroyed, its Financial Risk Management through its bogus hedging transactions, as the banks and Vinson & Elkins knew then because they had structured and prepared the documents for the bogus hedging transactions. Indeed, the banks, using the same risk analyses as Enron, concluded Enron's market risk was materially greater than that stated.

625. For example, the Offering Documents for Enron's zero coupon convertible notes, filed 7/18/01, incorporated from Enron's 00 10-K the following:

> FINANCIAL RISK MANAGEMENT
>
> * * *
>
> ***Enron has performed an entity-wide value at risk analysis of virtually all of Enron's financial instruments, including price risk management activities and merchant investments.*** Value at risk incorporates numerous variables that could impact the fair value of Enron's investments, including commodity prices, interest rates, foreign exchange rates, equity prices and associate volatilities, as well as correlation within and across these variables.

> The value at risk for equity exposure discussed above is based on J.P. Morgan's RiskMetrics (TM) approach.

Enron's other Offering Documents for securities offerings during 00-01 contained the same language.

626. This disclosure was false and misleading. Enron had not done an "entity-wide value at risk analysis" and it had not analyzed its equity exposure because, as the banks knew, the results of the value-at-risk analysis, or "VaR," did not reflect the Company's leveraging of its equity in 99-01. For example, the banks' VaR, stress-testing and scenario analyses for risk management/risk measurement produced results materially different than the results presented in the discussion of Enron's Financial Risk Management in Enron's Offering Documents for the securities offerings in 00-01. For example, in Enron's Offering Documents in 01, at a minimum, the results of the VaR did not reflect the massive amount of derivative securities trades that the banks had engaged in with Enron in negotiating and structuring the LJM/Raptors transactions and in participating as LJM2 investors. The derivatives trades Enron executed through LJM2 and the Raptors, in its bogus hedging transactions, with over $2 billion notional principal, destroyed Enron's Financial Risk Management because those trades leveraged Enron's own equity to extreme multiples. As a matter of market risk, these transactions were so dangerous to Enron that, internally, the banks referred to the trades or the risk they presented as ***"toxic waste" or "toxic."***

627. Enron's Offering Documents for the Company's securities offerings in 01 also incorporated "Non-Trading Market Risk" in the Financial Risk Management discussion which did not account for the leveraging of Enron's own stock in the LJM2/Raptors bogus hedging transactions. This resulted in a material understatement of Enron's Non-Trading Market Risk. In particular, the Equity category of Enron's Non-Trading Market Risk indicated $7 million for 00, meaning that in 00 there was a 5% chance that on any day Enron would lose $7 million in the event of a severe negative change in Enron's equity exposure. ***This indicated minimal risk***. This statement was materially false and misleading. ***Enron's leveraging of its own stock in the LJM2/Raptors bogus hedging transactions in 00 alone increased Enron's equity risk materially higher than what was represented – approximately $100 million instead of $7 million – resulting from a severe negative change in Enron's equity exposure***. The banks, in particular, knew this from their own risk

analyses and because they negotiated, structured and acted as counterparties to Enron's bogus hedging transactions through LJM2 and the Raptors, and participated as LJM2 investors.

C. False and Misleading Statements About Enron's Price Risk Management Activities and Financial Instruments

628. The Offering Documents for Enron's securities offerings in 00-01 made numerous misrepresentations concerning the Company's credit risk. Enron's credit risk was materially misstated and the impression was given that Enron had minimized its credit risk. In truth, Enron had leveraged billions of dollars of its own stock as credit support for the purported third parties that it was dealing with in Enron's bogus hedging transactions through the LJM partnerships and the Raptors. The bankers and Vinson & Elkins knew this because Enron provided the credit support such that it was the one ultimately bearing all the risk of the hedges in Enron's bogus hedging transactions through the LJM partnerships. The Banks in particular knew this because, as counterparties, they were the ones that required the credit support in the bogus hedging transactions. Vinson & Elkins also knew because the hedged statements were prepared and reviewed by the lawyers and Vinson & Elkins gave opinions on them.

629. For example, the Offering Documents for Enron's zero coupon convertible notes, filed 7/18/01, incorporated the following:

> Credit risk relates to the risk of loss that Enron would incur as a result of the nonperformance by counterparties pursuant to the terms of their contractual obligations. Enron maintains credit policies with regard to its counterparties that management believes significantly minimize overall credit risk. These policies include an evaluation of potential counterparties' financial condition (including credit rating), collateral requirements under certain circumstances and the use of standardized agreements which allow for the netting of positive and negative exposures associated with a single counterparty.
>
> * * *
>
> Enron does not anticipate any material impact to its financial position or results of operations as a result of nonperformance of third parties on financial instruments related to non-trading activities.

These statements were incorporated in Enron's Offering Documents for its securities offerings in 00-01. The 00 10-K, incorporated in Offering Documents in 01, further represented that Enron's total reserves for credit were only $452 million as of year-end 00.

630. The statements above were false and misleading. Enron's credit exposure in 00 due to the LJM2/Raptors transactions ***alone*** – over $250 million – was not reflected in the reserves. In 01 Enron's credit exposure due to the LJM2/Raptors transactions, alone, was over $500 million as of 4/01 and $1 billion as of 7/01. And, contrary to what was represented, Enron, its banks and Vinson & Elkins did anticipate a material impact to the Company's financial position due to Enron's credit exposure. Indeed, from the fall of 00 to 01, Enron's stock price was spiraling downward, piercing equity issues, and triggering massive credit exposure to the Company. The house of cards was crumbling before the eyes of those who engaged and participated in constructing it, so that they could protect hundreds of millions of dollars of fees, commissions and other charges.

D. False and Misleading Statements About EBS and the EIN

631. Enron's Registration Statements also made false statements about Enron's EBS business, including the EIN. For example, Enron's 99 10-K, which was incorporated into Offering Documents, stated that "the Enron Intelligence Network (EIN) ... currently connects to most major U.S. cities ...," and "the EIN allows Enron to provide high quality delivery services for content providers."

632. This was false because EBS had no "intelligent" network then – and never did. The EIN – which Enron defined as its network of fiber-optic lines connected by pooling points, at which bandwidth could be metered and directed, and the internally developed Broadband Operating System ("BOS") – was ***never*** completed. Although Enron had access to miles and miles of fiber-optic cable, only a tiny fraction of the lines were lit and connected at pooling points in the U.S.

633. More importantly, Enron's BOS, which was to regulate the flow of bandwidth through Enron's fiber network – was a complete fiction. Enron publicly extolled a software application called InterAgent, which it inherited through its Modulus acquisition as the cornerstone of its unique BOS – the purported intelligence behind the EIN. In reality, InterAgent was only a small piece of what was essential to develop the successful operating system that Enron represented it had. InterAgent was a communications software application – commonly called middleware – that enabled other applications to communicate with BOS. In fact, constructing an operating system

around InterAgent was akin to building a car around a muffler – while a necessary component of the finished product, a muffler was a non-sensical component around which to build the product.

634. In spite of this illogical approach, Enron persisted in claiming that InterAgent was the "special sauce" that made the BOS work. In the end, ***InterAgent served no function in the BOS or the EIN*** for two reasons. ***First***, for InterAgent to work required an operating system into which it could connect. Enron's BOS was to be that operating system, ***but BOS never developed beyond the concept stage***. ***Second***, all Enron ever had resembling the BOS and the EIN were miles and miles of fiber – a little lit, but predominantly dark – some Sun Microsystems and Windows Media Player servers, and the InterAgent software. But Enron was unable to assemble this into a broadband system and make it work.

635. By spring 99, EIN development had "deteriorated into chaos," as stated by a co-author of Enron's broadband business plan, and by 10/99 EBS was "in crisis mode." Simply stated, Enron's representation that EIN "***currently connects to most major U.S. cities***" was a lie.

636. Enron's 00 10-K, later incorporated in Offering Documents, extolled the progress of the EIN's development:

> During 2000 Enron Broadband Services ***substantially completed the Enron Intelligence Network ("EIN")***, a high capacity, global fiber optic network which through pooling points can switch capacity from one independent network to another and create scalability.
>
> * * *
>
> At December 31, 2000, the EIN included ***25 pooling points of which 18 were in the U.S.*** and one each in Tokyo, London, Brussels, Amsterdam, Paris, Dusseldorf, and Frankfurt, allowing the EIN to ***connect to most major U.S. cities*** and a large number in Europe.
>
> * * *
>
> Enron's Broadband Operating System ***provides the intelligence to the EIN and connects to both physical and software network elements***. Enron's broadband operating system enables the EIN to: (i) provision bandwidth in real time; (ii) control quality and access to the network for internet service providers; and (iii) control and monitor applications ***as they stream over the network*** to ensure quality and avoid congested routes. ***Enron's broadband operating system automates the transaction process*** from the order's inception to electronic billing and funds transfer. As a result, ***the EIN allows Enron to provide high quality content delivery services for content providers*** and to contract for firm bandwidth delivery commitments to support Enron's bandwidth intermediation business.

* * *

> Enron ***provides premium broadband delivery services*** for media and entertainment, financial services, general enterprise and technology companies. The ***transportation of media-rich content, including live and on-demand streaming video, over the EIN*** significantly enhances the quality and speed to end-users from that provided by the public internet.

* * *

> In implementing Enron's network strategy, Broadband Services is constructing the Enron Intelligent Network, a nationwide fiber optic network that consists of both fiber deployed by Enron and acquired capacity on non-Enron networks and is ***managed by Enron's Broadband Operating System software***.... Enron's bandwidth-on-demand platform ***allows delivery of high-bandwidth media-rich content such as video streaming, high capacity data transport and video conferencing***.

637. These statements were false when made because the EIN and the underlying BOS never worked. An internal EBS document showing data as of 12/00 reflected that only 3 U.S. cities – Las Vegas, Los Angeles, and New York – and London had pooling points that were running/operating by the end of the year, and pooling-point equipment installed in other cities was ***not yet operational because the equipment in each of those cities had not yet been connected to a network-operations center***, which was required before the pooling-point equipment could transmit bandwidth beyond that location.

638. The 12/00 internal document also reflects that the 3 U.S. locations were deemed operational only because of Enron's 5/00 acquisition of Warp Speed, a California software company that had MetaRouter, a software application capable of regulating bandwidth capacity and supply-on-demand at pooling points. Enron used Warp Speed's MetaRouter software in conjunction with third-party operating systems on the few hundred Sun Microsystems and Windows Media Player servers it had purchased, which Enron had to do because the BOS never worked.

639. Thus, by 12/31/00 – 12 months after Enron's top insiders had represented to analysts that Enron had 13 operating pooling points and that the EIN was the solution to the Internet's limitations – most of Enron's fiber-optic network was dark and not operating. In truth, Enron could not even make a broadband connection between Portland and Seattle, and was using ISPs to carry content that it represented to be transmitted by EIN's video-streaming.

E. False Statements Regarding EES

640. Enron's Offering Documents also incorporated by reference statements about EES which were included in 10-Qs and 10-Ks. Enron's 1stQ 01 10-Q stated that EES, which included commodity and energy-asset management and services contracts, had 1stQ 01 revenues of $693 million and income of $40 million, which was a dramatic improvement over 1stQ 00 revenue of $314 million and income of $6 million. The 10-Q stated the increase in EES revenues was "primarily ... a result of long-term energy contracts originated in 2001 and the growth of energy services' European operations." These numbers were materially false and misleading because the revenue and income for both 1stQ 00 and 1stQ 01 were overstated due to overvaluation of the EES contracts and Enron's abuse of mark-to-market accounting as detailed herein.

641. Likewise, in Enron's 00 10-K, Enron reported income for EES of $165 million, which was a huge increase over the reported $68 million loss in 99, and attributed 00 revenue and gross-margin increases – $2.8 billion and $331 million, respectively, compared to 99 – primarily to long-term contracts originated in 00 and the increase in value of the EES contract portfolio. Enron's 99 10-K stated that EES was a "nationwide provider of energy outsourcing products and services to business customers," including energy management services directly to commercial and industrial customers to reduce total energy costs, and reported EES total revenue of $1.8 billion. These numbers were materially false and misleading due to Enron's failure to consolidate non-qualifying SPEs as required by GAAP and other accounting manipulations, as described in ¶¶418-611.

INVOLVEMENT OF THE BANKS

A. General

642. Wall Street underwriters play an extremely important – indeed indispensable role – in protecting investors in public companies and ensuring that public companies and those associated with public companies comply with their obligations of full, fair and complete disclosure when selling securities to the public.

> By associating himself with a proposed offering, an underwriter impliedly represents that he has made such an investigation in accordance with professional standards. Investors properly rely on this ***added protection which has a direct bearing on their appraisal of the reliability of the representations in the prospectus***. The underwriter who does not make a reasonable investigation is derelict in his responsibilities to deal fairly with the investing public.

In re Richmond Corp., 41 SEC 398, 406 (1963). In *Chris-Craft Indus. v. Piper Aircraft Corp.*, 480 F.2d 341, 370 (2d Cir. 1973), the Second Circuit stated:

> Self-regulation is the mainspring of the federal securities laws. ***No greater reliance in our self-regulatory system is placed on any single participant in the issuance of securities than upon the underwriter***. He is most heavily relied upon to verify published materials because of his expertise in appraising the securities issue and the issuer, and because of his incentive to do so. He is familiar with the process of investigating the business condition of a company and possesses extensive resources for doing so. Since he often has a financial stake in the issue, he has a special motive thoroughly to investigate the issuer's strengths and weaknesses. ***Prospective investors look to the underwriter – a fact well known to all concerned and especially to the underwriter – to pass on the soundness of the security and the correctness of the registration statement and prospectus***.

In *Escott v. Barchris Constr. Corp.*, 283 F. Supp. 643, 697 (S.D.N.Y. 1968), the court emphasized the importance of independent verification by underwriters:

> The purpose of Section 11 is to protect investors. To that end the underwriters are made responsible for the truth of the prospectus. If they may escape that responsibility by taking at face value representations made to them by the company's management, then the inclusion of underwriters among those liable under Section 11 affords the investors no additional protection. To effectuate the statute's purpose, the phrase "reasonable investigation" must be construed to require more effort on the part of the underwrites than the mere accurate reporting in the prospectus of "data presented" to them by the company. It should make no difference that this data is elicited by questions addressed to the company officers by the underwriters, or that the underwriters at the time believe that the company's officers are truthful and reliable. ***In order to make the underwriters' participation in this enterprise of any value to the investors, the underwriters must make some reasonable attempt to verify the data submitted to them. They may not rely solely on the company's officers or on the company's counsel. A prudent man in the management of his own property would not rely on them***.

Finally, in *Feit v. Leasco Data Processing Equip. Corp.*, 332 F. Supp. 544, 582 (E.D.N.Y. 1971), the court stated that underwriters

> are expected to exercise ***a high degree of care in investigation and independent verification of the company's representations***. Tacit reliance on management assertions is unacceptable; the underwriters must play devil's advocate.

The banks named as defendants in this action grossly violated these duties in their dealings with Enron.

643. The banks named as defendants evolved into their present structures in anticipation of and after the repeal of the Glass-Steagall Act in 99, which allowed financial enterprises again to offer ***both*** commercial and investment banking services – a practice which had been outlawed for over 60 years. Combined investment and commercial banking activities were outlawed by Congress due to the abuses arising from such combined activities during the 20s, which contributed to the fraudulent behavior of Wall Street and culminated in the great stock market crash of 29. As will be seen below, this recombination contributed to the banks' involvement in the scheme to defraud Enron investors. On 3/25/02, *Business Week* wrote:

> After the stock market crashed in 1929, Congress hauled in Wall Street bosses to explain how bankers helped companies inflate earnings for a decade through complex structures. Congress scrutinized bank practices for years, then passed the Glass-Steagall Act, splitting commercial banks from brokerages. That checked the Street's temptation to monkey with clients' finances while flogging their stock.
>
> Now Congress needs answers from Wall Street's chiefs again. Congress repealed Glass-Steagall in 1999, under pressure from bankers ***who swore they would manage such conflicts of interests. They would erect so-called Chinese Walls that forbade sharing information between those selling a company's stock and those arranging its financing***.
>
> ***But the Chinese walls are porus. Bankers ignore them when it's convenient: They take analysts on road shows of investment-banking clients – their way of making it clear they don't want downgrades of those companies***. The walls also provide cover for bankers, who let analysts push a client's stock even when they know the company is in trouble. That's why analysts recommended Enron to the end, though the bankers behind its complex financing knew it was on the skids.

644. According to the *Miami Herald* on 3/19/02:

> ***Banks Tangled in Fall of Enron***
>
> * * *
>
> They are the titans of Wall Street, possessing pedigrees that date to the founding of America and wealth greater than many nations.

* * *

Empowered by the massive deregulation of financial services they zealously sought, New York's investment banks created their masterpiece in Enron, providing every conceivable product and service.

They lent it money, often without collateral. They sold its securities to an unsuspecting public. They wrote rosy, inaccurate analyst reports.

They were pivotal players in the mysterious offshore partnerships that ultimately brought Enron down.

Wearing so many hats was unthinkable a generation ago, when laws kept the banking, brokerage and insurance industries separate. Deregulation changed all that, particularly in 1999 when the Depression-era Glass-Stegall Act was repealed....

* * *

Enron was such a lucrative customer that virtually every Wall Street firm had a relationship with it.

645. On 2/26/02, *Dow Jones News Service* ran a story headlined: "***Next Stop On Enron Express: Wall Street***." It noted the "***long gravy train of stock and bond offerings that Enron sent the Streets' way over the past decade***." It also discussed:

[T]he now-infamous LJM2 partnership set up by Enron's former chief financial officer, Andrew Fastow. It's been well-documented now ... that high-powered finance firms such as CS First Boston, Merrill Lynch, JP Morgan and Citigroup, were lured into the LJM2 partnership by the promise of potentially rich returns and the chance to get an inside peek into Enron's mysterious deals.

* * *

... ***Wall Street – which got rich touting Enron – is still acting as if it has nothing to answer for in the Enron mess***.

So far, most Wall Street institutions have said little about the Enron debacle, issuing either blanket "no comments," or denying any responsibility for the company's collapse. CS First Boston, which underwrote more than $4.5 billion in Enron stock and bond offerings – roughly 20% of Enron's total underwriting work since 1990 ... has refused to say anything whatsoever. Merrill Lynch, which lined up investors for Fastow's LJM2 partnership and underwrote more than $4 billion in stock and bond offerings for Enron, has been a bit more talkative – ***but only to say it's utterly blameless***.

* * *

Between them, Citigroup and J.P. Morgan served as lead manager on more than $20 billion in syndicated bank loans to Enron over the past decade, with Citigroup also underwriting more than $4 billion in stock and bond offerings for the company ....

... Wall Street has plenty of explaining to do. Jonathan Kord Lagemann, a securities lawyer and former general counsel for a brokerage firm, says the Enron affair exposes

> the "enormous conflict of interest" inherent in these firms' efforts to be three things at one time: underwriter, corporate analyst and stock seller. To start, there's the obvious issue of whether pressure from their firms caused 10 of the 14 research analysts who followed Enron to keep recommending the stock to investors, even as the company was racing toward bankruptcy. A related issue is whether the analysts knew or should've known just how dire the situation was at Enron, since many of them work for firms that were invested in the partnerships that played a critical role in Enron's off-balance-sheet transactions.

646. One of the primary vehicles utilized by defendants to falsify Enron's financial condition and results during the Class Period was a partnership called LJM2, which was secretly controlled by Enron and was used to help create numerous SPEs (including the infamous Raptors) with which Enron engaged in illusory transactions to artificially inflate Enron's profits while concealing billions of dollars in debt that should have been on Enron's balance sheet. LJM2 was a privately held entity created by Enron with the help of Merrill Lynch, Andersen, Vinson & Elkins and Kirkland & Ellis at year-end 99. They knew, because LJM2 was going to be principally utilized to engage in transactions with Enron where Enron insiders (Fastow, Kopper and Glisan) would be on both sides of the transactions, that the LJM2 partnership would be extremely lucrative – virtually guaranteed to provide huge returns to LJM2's partners. In fact, Fastow's dual role by which he could self-deal on behalf of the partnership with Enron's assets was so important ***that investors in LJM2 were assured that they did not have to make any additional capital contributions if Fastow's dual role ended***. As a result, Enron and Merrill Lynch decided that in raising the money to fund LJM2, they would ***allow certain favored investment banks and/or high-level officers of those investment banks to invest in LJM2 because they knew the investment was virtually guaranteed to produce extremely good returns***. In fact, the offering memorandum for the LJM2 partnership by which Merrill secured investors into the partnership – ***which was not a public document*** – contained a virtual invitation to benefit from the insider self-dealing transactions that LJM2 would engage in. It stressed the ***"unusually attractive investment opportunity"*** resulting from the partnership's connection to Enron. It emphasized Fastow's position as Enron's CFO, and that LJM2's day-to-day activities would be managed by Enron insiders Fastow, Kopper and Glisan. It explained that ***"[t]he Partnership expects that Enron will be the Partnership's primary source of investment opportunities"*** and that it ***"expects to benefit from having the opportunity to invest in Enron-***

generated investment opportunities that would not be available otherwise to outside investors." The Private Placement Memorandum ("PPM") specifically noted that Fastow's ***"access to Enron's information pertaining to potential investments will contribute to superior returns." In addition, investors were told that investors in a similar Fastow controlled partnership (JEDI) that had done deals with Enron like the ones LJM2 would do had tripled their investment in just two years***! In short, the non-public offering memorandum was an invitation to join in the benefits of self-dealing transactions with Enron. To the extent that Enron's bankers and the top executives of those banks were permitted to invest in LJM2, ***this was a reward to them for their ongoing participation in the scheme***.

647. It was indispensable that LJM2 be formed before year-end 99 because of the need to use it as a vehicle to fund new SPEs to deal with Enron to create huge profits for Enron in the 4thQ 99 so it could meet and exceed its forecasted 99 earnings. However, as had been the case with Chewco at year-end 97, there was tremendous time pressure and Merrill Lynch could not raise the money from outside investors in LJM2 in time to fund LJM2 by year-end 99 with sufficient capital to enable it to do the desperately needed transactions with Enron. So, in an extraordinary step, Enron's banks and bankers (JP Morgan, CIBC, CitiGroup, Deutsche Bank, CS First Boston, Lehman Brothers and Merrill Lynch), knowing that LJM2 was going to be an extraordinarily lucrative investment, ***put up their money early – on or about 12/22/99 – virtually 100% of the monies needed to initially fund LJM2, i.e., many times more than their allocated shares***. This money (about $14 million), plus a $65 million loan from JP Morgan, provided sufficient funding to enable Enron to engage in the Whitewing, CLO, Nowa Sarzyna Power Plant, MEGS natural gas and Yosemite certificates deals from 12/22-29/99, SPEs funded by LJM2 – transactions that generated millions in phony profits for Enron, just before year-end 99, and moved hundreds of millions of dollars of debt off Enron's balance sheet. Then, after LJM2 was fully funded in early 00 and other investors' money flowed into LJM2, the banks' "over-funding" in 12/99 was adjusted for in the subsequent capital contributions to LJM2. The reason the banks put up virtually all the money to fund LJM2 in 12/99 was that they knew Enron doing the 99 year-end deals with the LJM2 SPEs was indispensable to avoiding Enron reporting a very bad 4thQ 99 and year-end 99 – which would have caused its stock

to plunge and impaired the continued viability of the Enron Ponzi scheme from which they were all benefitting.

648. The blatant self-dealing by Enron's banks has not gone unnoticed:

> Many institutional investors declined to buy into LJM2 because of Fastow's conflict of interest. But some of the world's biggest institutions took a piece. Among them ***were Citigroup, Credit Suisse Group, Deutsche Bank, JP Morgan, and Lehman Brothers.***
>
> ***What were they thinking? Much of the world's financial community turned out to be willing enablers of Enron. No wonder "Wall Street credibility" is fast becoming an oxymoron. Investors are angry*** ....

Business Week, 2/11/02.

> ***It is increasingly clear that Wall Street has known for years that many corporations had wildly exaggerated earnings, but it didn't tell the investing public. Some on the Street may be guilty of worse. Take the case of Enron Corp. and Merrill Lynch & Co. Merrill executives helped create the LJM2 Enron partnership and attracted institutional investors. As many as 100 of Merrill's own top executives put their personal money into the deal. Why? Because Enron's chief financial officer, Andrew S. Fastow, would run it, and he promised enormous returns.... Fastow's glaring conflict of interest, which should have stopped the Merrill executives, actually acted as an incentive to them: "A. Fastow's dual role creates advantages for the fund and Enron," said the Merrill Lynch prospectus sent to a select group of potential investors.***

Business Week, 2/11/02.

Vast LJM2 Returns Lured Partners

> The ... confidential LJM2 promotion ***promised returns of 30 percent or more a year, and promoters suggested the actual returns could be even higher***. Fastow, for example, estimated in confidential reports to the LJM2 partners obtained by *The Washington Post* that rates of return on investments ***with Enron reached as high as 2,500 percent***.
>
> Enron's closeness to LJM2 was reinforced not just by Fastow's role, but by an appearance by Enron then-President Jeffrey Skilling at an LJM2 partnership meeting in the fall of 2000.
>
> In a Feb. 6, 2001 letter to investors, Fastow recounted a successful year with "deal flow higher than originally expected" and the projected returns "***far in excess of the targeted 30%***."
>
> The partnership still had nearly $400 million in assets in early January ....

The Washington Post, 3/22/02.

> Citigroup ... structured some of the deals to remove poorly performing assets from Enron's balance sheet ....

* * *

> Dozens of Wall Street firms were involved in financing Enron's rapid rise, selling its stock and bonds, arranging acquisitions and, later, putting together the off-the-book deals that masked Enron's true financial condition. In doing so, these firms earned tens of millions of dollars in fees and put billions of dollars of Enron securities into the market.
>
> They helped Enron on the way up and on the way down. As Enron's downward spiral began, Wall Street firms – among them CS First Boston, Citigroup and Deutsche Banc Alex. Brown – helped finance Enron's side partnerships that removed lagging assets from the company's balance sheet. ***In these deals, the banks arranged partnerships that allowed Enron to appear more profitable than it actually was and then sold several billions of dollars in bonds backed by Enron stock***.
>
> In other cases, dozens of banks and brokerage firms were approached about investing in Enron side partnerships and were shown confidential documents disclosing the extent of Enron's off-balance-sheet deals [which were] not shared with Enron shareholders or clients of these Wall Street firms.
>
> ***One of these firms was Merrill Lynch, the nation's largest retail broker, which was the underwriter of a partnership called LJM2***, Other LJM2 investors – all of whom had more information about Enron's finances than Enron shareholders – ***were Citigroup ... an investment group affiliated with Morgan Stanley Dean Witter; and a group of Merrill Lynch executives***.

The New York Times, 2/19/02.

649. Not only did these favored investors in LJM2 get a promise of superior returns after LJM2 was formed – they actually ***witnessed*** and ***benefitted from*** a series of extraordinary payouts from the Raptor SPEs which LJM2 controlled over the next two years – securing hundreds of millions of dollars in distributions from the Raptors to LJM2 and ***then to themselves*** – cash generated by the illicit and improper transactions Enron was engaging in with the Raptors to falsify its financial results. Thus, the banks and bankers who were partners in LJM2 ***were not only knowing participants in the Enron scheme to defraud, they were direct economic beneficiaries of it. And these payments from LJM2 were on top of the huge advisory fees***, underwriter fees, interest and loan commitment fees these banks were already getting from Enron.

650. In analyzing potential borrowers who seek commercial loans or credit facilities, banks are required to perform extensive credit analysis of the borrower after obtaining detailed financial information from it. Not only is this required by the internal procedures of ***each*** of the banks named as defendants, but because a bank's commercial lending activities are subject to governmental regulation and oversight, it is required to perform such analysis, and to have in its files documentation that this type of detailed credit analysis occurred. Included in this credit analysis is

a detailed review of the borrower's actual and contingent liabilities, its liquidity position, any equity issuance obligations it may have which could adversely affect its shareholders' equity, any debt on which the borrower may be potentially liable, even if not on the borrower's books directly, the quality of the borrower's earnings and the borrower's actual ***liquidity***, including sources of funding to support repayment of any loans. In addition, when each bank named as a defendant made large loans to or committed itself to credit facilities for a corporation, it was required to closely monitor the company by frequently reviewing its financial condition and ongoing operations for any material changes and insist that top financial officers of the borrower keep it informed of the current status of the borrower's business and financial condition. As a result, each of the banks named as defendants obtained and retained extremely detailed information concerning the actual financial condition of Enron throughout the Class Period and was aware that the actual condition of Enron's business, its finances and its financial condition was far worse than was being publicly disclosed by Enron, or as described or disclosed in each of the bank analyst reports on Enron.

651. Each of the banks named as defendants knew:

(a) Enron had set up the LJM2 vehicle with the help of Merrill Lynch so that Enron could use SPEs funded by that vehicle to engage in non-arm's-length self-dealing transactions which would enrich the investors in the LJM2 partnership and, at the same time, permit Enron to generate artificial profits and conceal its true debt level by moving billions of dollars of debt off its balance sheet and onto the balance sheet of LJM2's SPEs;

(b) Enron was also engaging in similar non-arm's-length transactions with another limited partnership and associated SPE known as Chewco, which was also permitting Enron to artificially inflate its reported earnings while moving large amounts of debt off its balance sheet;

(c) Enron's actual financial condition and results from operations were far worse than what was being publicly disclosed or presented: (i) because Enron was falsifying its financial results and misusing and abusing mark-to-market accounting, Enron's profitability was far less than publicly reported; (ii) because Enron was improperly moving debt off its balance sheet and onto the balance sheets of entities it secretly controlled, Enron's true debt level and leverage was much higher than what was being publicly presented; and (iii) because of the foregoing, Enron's liquidity and

creditworthiness were far worse than publicly known and its financial condition much more leveraged and precarious than was being disclosed to public investors;

(d) Enron had entered into a number of transactions with secretly controlled SPEs, which would require Enron to issue millions of shares of Enron common stock. If Enron's common stock fell below trigger prices ranging from $83-$19 per share, the debt of the SPEs with which Enron was doing business would not, in fact, be non-recourse to Enron as represented but, in fact, would become and be recourse to Enron if, as and when Enron's credit rating was lowered – something each of the banks named as defendants knew would occur if, as and when Enron's true financial condition became public or became known to the rating agencies.

B. Involvement of JP Morgan

652. JP Morgan is a banking enterprise which had an extensive and extremely close relationship with Enron. During the Class Period, JP Morgan provided commercial banking and investment banking services to Enron, helped structure or finance one or more of Enron's illicit partnerships or SPEs, and helped Enron falsify its financial statements and misrepresent its financial condition by hiding almost $4 billion in debt that should have been on Enron's balance sheet, while its securities analysts were issuing extremely positive – and false and misleading – reports on Enron, extolling its business success, the strength of its financial condition and its prospects for strong earnings and revenue growth. In return for JP Morgan's participation in the scheme, on top of the huge underwriting and consulting fees, interest payments, commitment fees and other payments, JP Morgan received from Enron and related entities, top executives of JP Morgan were permitted to personally invest at least $25 million in the lucrative LJM2 partnership as a reward to them for orchestrating JP Morgan's participation in this fraud.

653. JP Morgan's relationships with Enron were so extensive that top officials of the bank constantly interacted with top executives of Enron, *i.e.*, Lay, Skilling, Causey, McMahon or Fastow, on an almost daily basis throughout the Class Period, discussing Enron's business, financial condition, financial plans, financing needs, partnerships, SPEs and Enron's future prospects. JP Morgan actively engaged and participated in the fraudulent scheme and furthered Enron's fraudulent course of conduct and business in several ways. It participated in loans of over $4 billion to Enron

during the Class Period. JP Morgan also helped raise over $2 billion from the investing public for Enron via the sale of securities during the Class Period. It helped structure and finance certain of the illicit SPEs and partnerships Enron controlled which were primary vehicles utilized by Enron to falsify its reported financial results. It engaged in transactions with Enron to disguise loans to Enron and help Enron falsify its true financial condition, liquidity and creditworthiness.

654. In interacting with Enron, JP Morgan functioned as a consolidated and unified entity. There was no so-called "Chinese Wall" to seal off the JP Morgan securities analysts from the information which JP Morgan obtained rendering commercial and investment banking services to Enron. Alternatively, even if some restrictions on the information made available to JP Morgan's securities analysts existed, those unilateral and self-serving actions are insufficient to prevent imputation of all knowledge and scienter possessed by the JP Morgan legal entity, as its knowledge and liability in this case is determined by looking at JP Morgan as an overall legal entity.

655. JP Morgan acted as an underwriter (or reseller) of billions of dollars of Enron securities. For instance:

DATE	SECURITY
10/97	$100 million 6-5/8% Enron notes
5/98	35 million shares Enron common stock at $25 per share
7/98	$500 million 6.40% and 6.95% Enron notes
2/99	27.6 million shares Enron common stock at $31.34 per share
2/01	$1.9 billion Enron zero coupon convertible notes

656. In addition, JP Morgan acted as underwriter of billions of dollars of other Enron-related securities. For instance:

DATE	SECURITY
10/00	27.6 million shares of New Power at $21 per share
7/01	$1 billion Marlin Water Trust-II and Marlin Water Capital-II 6.19% and 6.31% notes

657. During the Class Period, JP Morgan was also one of the principal lending banks to Enron, acting with CitiGroup as a lead bank on Enron's main credit facilities, loaning over a billion

dollars to Enron, while helping to syndicate over $4 billion in bank loans to Enron or related entities. For instance:

DATE	TRANSACTION
5/98	$500 million loan to JEDI
8/98	$1 billion credit line to back up Enron commercial paper
8/98	$1 billion loan to finance purchase of Brazilian electricity distribution company
11/98	$250 million Enron credit line
8/01	$3 billion credit line to back up Enron commercial paper
11/01	$1 billion secured Enron credit line

658. JP Morgan's $1 billion and $3 billion commercial paper back-up credit facilities for Enron were extremely significant. They enabled Enron to stay liquid by helping Enron maintain its access to the commercial paper market where it could borrow billions to finance day-to-day operations, while JP Morgan pocketed huge commitment fees on the back-up credit line.

659. In addition, JP Morgan helped arrange approximately $1.5 billion in loans (loaning part of the money and syndicating the rest) to help Enron finance the illicit Sequoia, Choctaw, Cherokee and Cheyenne SPE/partnerships and the JEDI partnerships, essential and integral parts of Enron's scheme to conceal its true debt level by moving billions of dollars of debt off its books and onto the books of SPEs it secretly controlled, while improperly recognizing millions of dollars of profits on transactions with those SPEs.

660. JP Morgan was willing to engage and participate in the ongoing fraudulent scheme because such participation created enormous profits for JP Morgan as long as the Enron scheme continued in operation – something that JP Morgan was in a unique position to cause to occur. While JP Morgan was lending hundreds of millions to Enron and syndicating hundreds of millions of additional loans, it was receiving huge fees and interest payments for those loans and syndication services. However, JP Morgan was limiting its own risk in this regard, as it knew that with either its help or the help of other banks which were part of the scheme, so long as Enron maintained its investment-grade credit rating and continued to report strong current period financial results and

credibly forecast strong ongoing revenue and profit growth, Enron's access to the capital markets would continue to enable Enron to raise hundreds of millions, if not billions, of dollars of fresh capital from public investors which would be used to repay or reduce Enron's commercial paper debt and the loans from JP Morgan to Enron so that the Enron Ponzi scheme could continue. In fact, the proceeds of Enron's securities offerings during the Class Period underwritten by JP Morgan or other investment banks were utilized to repay Enron's existing commercial paper and bank indebtedness, including indebtedness to JP Morgan. Thus, throughout the Class Period, JP Morgan was pocketing millions of dollars a year in interest payments, syndication fees and investment banking fees by engaging and participating in the Enron scheme to defraud and stood to ***continue*** to collect these huge fees on an annual basis going forward so long as it helped perpetuate the Enron Ponzi scheme, while its top executives or managing directors pocketed huge returns on their investment in LJM2 – returns created by the very manipulative devices and transactions that were hiding Enron's debt and artificially inflating its profit.

661. During 00-01, JP Morgan had another motive to keep the Enron Ponzi scheme going. JP Morgan was obtaining millions of dollars by writing hundreds of millions of dollars of "***credit default puts***" on Enron's publicly traded debt securities, especially Enron's zero coupon convertible notes, which JP Morgan helped Enron sell in 01. These "puts" required JP Morgan to make good on Enron's publicly traded debt if Enron defaulted within a given time period, exposing JP Morgan to potentially large losses. Thus, JP Morgan wanted to help Enron keep its financial condition looking strong and its investment and credit rating in place so Enron's access to the credit and capital markets would continue.

662. In addition, JP Morgan also engaged and participated in the scheme to defraud by the additional actions set forth below. First of all, the Registration Statements and Prospectuses for the Enron securities sales where JP Morgan was one of the lead underwriters contained false and misleading statements – ***which are statements made by JP Morgan as an underwriter*** – including false interim and annual financial statements, and false statements concerning the structures of and Enron's relationship to SPEs and related parties, as well as the value and condition of Enron's business operations and assets. JP Morgan has liability for its participation in Enron's 2/99 27.6

million share common stock offering and for its resale of Enron zero coupon convertible notes on and after 7/18/01.

663. In addition, throughout the Class Period, JP Morgan ***issued*** analysts' reports on Enron which contained false and misleading statements concerning Enron's business, finances and financial condition and prospects, including, but not limited to, those dated 6/9/99, 7/15/99, 9/23/99, 11/26/99, 1/21/00, 2/9/00, 5/3/00, 5/15/00, 7/3/00, 7/19/00, 9/15/00, 9/27/00, 3/13/01, 3/23/01, 5/18/01, 6/15/01, 7/10/01, 7/12/01, 8/15/01, 8/17/01, 10/17/01, 10/20/01, 10/23/01 and 11/2/01, as pleaded herein. ***These were all statements by JP Morgan*** to the securities markets which helped artificially inflate the trading prices of Enron's publicly traded securities. Keeping Enron's stock price inflated was also important to JP Morgan as it knew that if the stock price fell below various "trigger" prices, Enron would be required to issue millions of additional Enron shares, which would reduce Enron's shareholders' equity by hundreds of millions, if not billions, of dollars, endanger its investment-grade credit rating, likely cut off its access to the capital markets, and thus endanger the ongoing scheme from which JP Morgan and its top partners were profiting.

664. In addition to its own direct liability for making false and misleading statements, JP Morgan also engaged and participated in and furthered the fraudulent scheme by helping to finance or otherwise participate in manipulative devices and illicit transactions with Enron which it knew would contribute materially to Enron's ability to continue to falsify its financial condition. During the Class Period, JP Morgan and Enron engaged in fraudulent transactions utilizing an entity which JP Morgan secretly controlled, known as Mahonia Ltd., located in the Channel Islands between England and France. These transactions, which involved over $5 billion, were structured to appear as natural gas futures contracts, *i.e.*, commodity trades, between Enron and the Mahonia entity, which JP Morgan actively controlled. However, these transactions were contrivances. The parties to those transactions never intended in fact to close out any of the natural gas futures contracts. These transactions were, in reality, disguised loans from JP Morgan to Enron, a contrivance JP Morgan created to get cash to Enron to boost its apparent liquidity while concealing over $3.9 billion in debt that should have been reported on Enron's balance sheet.

665. JP Morgan knew these transactions were manipulative devices and contrivances and that, given the true financial condition of Enron, there was a risk Enron would default and JP Morgan would suffer a loss. Therefore, JP Morgan attempted to protect itself against such loss by insuring the contracts. When Enron went bankrupt, JP Morgan attempted to collect on the insurance. However, the insurance carriers that issued surety bonds covering the "commodities trades" between JP Morgan-controlled entities and Enron have refused to pay JP Morgan's losses, asserting the trades ***were fraudulent and used to conceal what were, in fact, loans from JP Morgan to Enron***. According to a Federal District Court opinion denying JP Morgan's attempt to force the insurance companies to honor the surety bonds:

> [U]nbeknownst to the Sureties at the time they issued the Bonds, the Contracts between Mahonia and Enron were part of a fraudulent arrangement by which simple loans to Enron by plaintiff's predecessor, the Chase Manhattan Bank ("Chase"), were disguised as sales of assets. Specifically, they allege that Chase lent Mahonia the money used to pay Enron on the Contracts, and that, at the very time Enron was contracting to sell to Mahonia future deliveries of gas and oil, Enron was secretly contracting to repurchase the very same gas and oil from one or more entities commonly controlled with Mahonia, at a price equal to what was owed by Mahonia to Chase on the loan. The net effect was simply a series of loans from Chase to Enron; but by disguising them as sales of assets, Enron could book them as revenue while Chase and Mahonia could, among other things, induce the Sureties to issue Bonds that would effectively guarantee repayment of the loans – something the Sureties were otherwise forbidden to do under applicable New York law (which here governs).
>
> * * *
>
> ... [D]efendants have offered substantial evidence that, even while plaintiff was moving with alacrity to obtain summary judgment, defendants were repeatedly rebuffed in their informal attempts to obtain the information regarding the underlying transactions needed to confirm (or refute) defendants' theory.
>
> * * *
>
> ... [D]efendants have managed to obtain some important evidence that ... the six underlying Contracts here in question [were] entered into between Enron and Mahonia on December 28, 2000 .... [O]n that very same day, Enron entered into an agreement with an entity called Stoneville Aegean Limited ("Stoneville") to purchase from Stoneville the identical quantities of gas that Enron was that same day agreeing to sell to Mahonia, to be delivered to Enron on the very same future dates as Enron was supposed to deliver the same quantities of gas to Mahonia....
>
> The fact that Enron would be simultaneously buying from Stoneville the very gas it was selling to Mahonia becomes even more suspicious when considered in light of the further evidence adduced by defendants to the effect that both Mahonia and Stoneville – offshore corporations set up by the same company, Mourant & Company – have the same director, Ian James, and the same shareholders....

> What, finally, turns suspicion to reasonable inference is defendants' further evidence that, whereas Mahonia agreed in its Contract with Enron to pay Enron $330 million for the gas at the moment of contracting (December 28, 2000), Enron, in its agreement with Stoneville, agreed to pay Stoneville $394 million to buy back the same quantities of gas on the same delivery schedule – but with the $394 million to be paid at specified future dates....
>
> ***Taken together, then, these arrangements now appear to be nothing but a disguised loan*** ....

J.P. Morgan Chase Bank v. Liberty Mutual Ins. Co., No. 01 Civ. 11523, Opinion and Order (S.D.N.Y. Mar. 5, 2002) (Rakoff, J.).

666. On 3/5/02, *Dow Jones* reported:

> A federal judge denied J.P. Morgan [Chase's] request for an immediate ruling in its dispute with insurers over nearly $1 billion in bonds on Enron Corp. oil and gas contracts.
>
> * * *
>
> The insurers recently claimed in court filings that J.P. Morgan may have deliberately camouflaged bank loans to Enron as commodity transactions. The bank's actions would have helped Enron disguise debts, the insurers claim.
>
> * * *
>
> The insurers made commitments in the form of surety bonds of about $1.1 billion, of which JP Morgan's share is about $965 million. The bonds guaranteed that Enron would deliver natural gas and oil to the bank's Mahonia Ltd. energy-trading affiliate.
>
> In rejecting J.P. Morgan's request for summary judgment, Judge Rakoff cited evidence that appears to show that Enron agreed to ***purchase $394 million in gas from an entity called Stoneville Aegean Ltd. on the same day it agreed to sell the same quantities of gas to Mahonia***.
>
> ***The judge said Mahonia and Stoneville seem to be offshore corporations controlled by the same director, Ian James, and the same shareholders. The fact that the entities appear linked makes the Enron transactions "even more suspicious" he wrote***.
>
> ***The court "could not possibly grant judgment" to J.P. Morgan because "taken together, then, these arrangements now appear to be nothing but a disguised loan***," the judge ruled.

667. These phony commodity transactions were overseen and manipulated by Mark Shapiro, a senior credit officer at JP Morgan, who kept other top JP Morgan officials informed of the status of these multi-billion dollar transactions. These transactions were frequently entered into ***just before quarter- or year-end so that they would enable Enron to keep debt off its balance sheet***

by disguising it as commodities trades, thus keeping Enron's debt level down, helping to maintain its investment grade credit rating, and allowing the Enron Ponzi scheme to continue.

668. JP Morgan's conduct in this regard was intentional, as JP Morgan had utilized this same artifice some years earlier in connection with Sumitomo Trading Company and its apparent trading in copper futures which in fact were transactions virtually identical to those utilized with Enron, utilized in the Sumitomo situation to conceal what were, in fact, loans.[13] In fact, ***it was JP Morgan that came up with the idea of utilizing the disguised commodity trades to conceal the true extent of Enron's debt and provided this part of the scheme to Enron, creating a synergistic situation where Enron's interests were directly served by permitting it to hide approximately $3.9 billion in loans to it, while permitting JP Morgan to profit by charging excessive interest rates and fees for its role in putting together these phony transactions in the Channel Islands***.

669. JP Morgan also actively engaged and participated in the Enron fraudulent scheme by helping it structure and finance the critical LJM2 partnership. In this regard, as a reward for its participation, JP Morgan executives were permitted to invest $25 million in LJM2 to facilitate the financing of that critical vehicle through Chemical Investors, Inc., J.P. Morgan Partners and 60 Wall Street Fund L.P. They ***put their own money up early – on or about 12/22/99*** – so LJM2 would have the cash to fund four SPEs to do deals with Enron at year-end 99 to create huge profits for Enron so it could meet its 99 profit forecasts. ***And JP Morgan was a main bank lender to the LJM2 partnership itself – providing a $65+ million credit line*** to that entity that provided the debt financing LJM2 needed to enable it to form and finance several SPEs – including the Raptors – with which Enron engaged in manipulative devices and transactions to inflate its reported profits, while improperly moving billions in debt off Enron's balance sheet and into the SPEs.

670. During the Class Period, JP Morgan knew that Enron was falsifying its publicly reported financial results and that its true financial condition was much more precarious than was publicly known. It obtained this knowledge due to its access to Enron's internal business and

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[13] JP Morgan was sued by Sumitomo for its wrongdoing in this regard and paid $125 million to settle the charges.

financial information as Enron's lead lending bank, as well as its intimate interaction with Enron's top officials which occurred on virtually a daily basis.

671. In late 11/01, JP Morgan and CitiGroup were desperately trying to arrange the sale of Enron to Dynegy so they could split a $90 million fee and so Enron would not go bankrupt, which they knew would lead to suits over, and investigations into, their prior deals with Enron – which they knew would be highly embarrassing and could expose them to massive liability to third parties and subordination of their creditor claims against Enron. Their scheme could not succeed without keeping Enron's investment-grade credit rating in place until the sale to Dynegy could be completed. So, on or about 11/8/01, Rubin, the Vice Chairman of CitiGroup and Harrison, the Chairman of JP Morgan, called Moody's – a key rating agency – and pressured Moody's to keep Enron's investment grade credit rating in place until JP Morgan and CitiGroup could complete the sale of Enron to Dynegy. However, despite the efforts of Enron and JP Morgan to conceal Enron's true financial condition from Dynegy and get Dynegy to agree to acquire Enron, the due diligence efforts of Dynegy and its investment bankers uncovered that the true financial condition of Enron was far worse than had ever been disclosed publicly to date and that Enron had been engaged in a wide-ranging falsification of its financial statements over the several prior years. Thus, Dynegy refused to acquire Enron and Enron went bankrupt.

672. An example of the lengths to which JP Morgan was prepared to go to continue the Enron fraud was the *Unicredito Italiano v. JPM Chase and Citigroup* case. In the *Unicredito* case, CitiGroup and JP Morgan misrepresented to Unicredito (an Italian bank) that there has been no changes in Enron's financial condition as of 10/25/01, causing Unicredito to fund a $22 million credit facility for Enron.

673. Thus, JP Morgan is directly liable to the Class for making false and misleading statements in Registration Statements and Prospectuses utilized by Enron and JP Morgan to raise billions of dollars of new capital for Enron, for false and misleading statements in analysts' reports written and issued by JP Morgan, which helped to artificially inflate the trading price of Enron's publicly traded securities, as well as for its knowing participation in a fraudulent scheme, course of

conduct and course of business of Enron, which operated to defraud purchasers of Enron's publicly traded securities during the Class Period.

C. Involvement of CitiGroup

674. CitiGroup is a financial services enterprise that provided both commercial banking and investment banking services to Enron, helped to structure and finance one or more of Enron's illicit partnerships or SPEs and helped it conceal billions of dollars of debt from Enron's balance sheet, while its securities analysts were issuing extremely positive – but false and misleading – reports on Enron extolling its business success, the strength of its financial condition and its prospects for strong future earnings and revenue growth. In addition to the huge underwriting, advisory and transactional fees, and interest and commitment charges CitiGroup was receiving from Enron and related entities, in return for and as a reward for CitiGroup's participation in the scheme, CitiGroup or certain CitiGroup executives were permitted to invest $15 million in the very lucrative LJM2 partnership.

675. CitiGroup's relationships with Enron were so extensive that senior executives at CitiGroup constantly interacted with top executives of Enron, *i.e.*, Lay, Skilling, Causey, McMahon or Fastow, on almost a daily basis throughout the Class Period, discussing Enron's business, financial condition, financial plans, financing needs, its partnerships, SPEs and Enron's future prospects. CitiGroup actively engaged and participated in the fraudulent scheme and furthered Enron's fraudulent course of conduct and business in several ways. It participated in loans of over $4 billion to Enron during the Class Period, helped Enron raise over $2 billion from the investing public via the sale of securities during the Class Period, helped it structure and finance certain of the illicit SPEs and partnerships Enron controlled which were a primary vehicle utilized by Enron to falsify its reported financial results, and engaged in transactions with Enron to disguise loans to Enron and thus enable Enron to falsify its true financial condition, liquidity and creditworthiness.

676. In interacting with Enron, CitiGroup functioned as a consolidated and unified entity. There was no so-called "Chinese Wall" to seal off the CitiGroup securities analysts from the information which CitiGroup obtained in rendering commercial and investment banking services to Enron. Alternatively, even if some restrictions were placed on the information made available to

CitiGroup's securities analysts, that unilateral and self-serving action is insufficient to prevent the imputation of all knowledge (and scienter) possessed by the CitiGroup legal entity, as its knowledge and liability in this case is determined by looking at CitiGroup as an overall legal entity.

677. CitiGroup acted as an underwriter for Enron securities. For instance:

DATE	SECURITY
11/93	8 million shares Enron capital 8% preferred shares at $25 per share
7/94	3 million shares 9% Enron capital preferred shares at $25 per share
1/95	$150 million 8-1/2% Enron notes
5/95	$150 million 7-1/8% Enron notes
9/95	$50 million 6-3/4% Enron notes
12/95	$210 million Enron exchangeable notes
11/96	8 million shares 8.3% Enron capital preferred shares at $25 per share
1/97	6 million shares Enron Capital Trust II 8-1/8% Preferred Securities at $25 per share
8/97	$150 million 6.5% Enron notes
11/97	$300 million 6.45% Enron notes
9/98	$250 million Enron floating-rate notes
2/99	27.6 million shares Enron common stock at $31.34 per share
8/99	$222 million 7% Enron exchangeable notes
5/00	$500 million Enron notes
2/01	$1.9 billion Enron zero coupons convertible notes

678. In addition, CitiGroup acted as underwriter of Enron-related securities. For instance:

DATE	SECURITY
2/00	$240 million 8.75% Yosemite Enron-linked securities

679. In 10/00, CitiGroup also served as a lead underwriter in the sale of 27.6 million shares of New Power stock in its IPO at $21 per share via a false and misleading prospectus. By taking New Power public and creating a market value for its shares, CitiGroup enabled Enron through a bogus transaction with a SPE controlled by LJM2 to record a huge $370 million 4thQ 00 profit on

the purported "gain" in value on the 13.6 million shares and 42.1 million warrants of New Power which Enron continued to hold. As CitiGroup knew, this transaction was critical to Enron generating a huge $300+ million profit in its 4thQ 00 via a non-arm's-length transaction with LJM2 and an LJM2 SPE.

680. In addition, during the Class Period, CitiGroup was one of the principal lending banks to Enron, acting with JP Morgan as lead bank on Enron's main credit facilities, loaning hundreds of millions of dollars to Enron itself and helping to syndicate over $4 billion in bank loans to Enron. For instance:

DATE	TRANSACTION
6/01	$600+ million loan for Dabhol power project
7/01	$582 million loan to Enron
8/01	$3 billion Enron credit facility to back up commercial paper
11/01	$1 billion secured loan to Enron
5/98	$500 million loan to JEDI

681. During the Class Period, CitiGroup took unusual steps to mitigate its credit exposure to Enron because of its knowledge that Enron's true financial condition was much more precarious than publicly disclosed and that Enron was falsifying its true financial condition and financial results. To try to insulate itself from the losses it faced due to Enron's true financial condition and fraudulent course of business, CitiGroup created securities that functioned like an insurance policy for its credit exposure to Enron. If Enron remained solvent and strong, buyers of the securities would receive a steady return, but if Enron was unable to pay its bank debt, CitiGroup would stop paying the return, keep the investors' principal and instead give them Enron's now worthless or impaired debt. The securities which covered CitiGroup's potential losses from Enron totaled $1.4 billion and were issued from 8/00 to 5/01. CitiGroup set up paper companies in the Channel Islands (where JP Morgan had commodities trading transactions with Enron to disguise loans to it), the first in 8/00 and three more in 5/01, which offered five-year notes. The companies sold investors a type of credit derivative called credit-linked notes. If the notes' five-year terms elapsed without incident, CitiGroup would return the investors' principal. But if Enron went bankrupt, CitiGroup would take

possession of the highly rated securities and give the investors unsecured Enron debt instead. The notes worked like an insurance policy: CitiGroup paid a premium in the form of interest payments, and if Enron collapsed, the bank would receive significant compensation in the form of high-quality securities. ***This hedge was CitiGroup's largest against any company in its history. In fact, this hedge was the largest of its kind ever***.

682. ***As Enron's share price began to fall from its all-time high***, it went through the first of its equity triggers. By 5/01, when the bulk of the notes followed, criticism of Enron's accounting, termination of the Blockbuster VOD venture, and concerns over its broadband business caused Enron's stock to fall to a level that would force Enron to issue large amounts of additional Enron stock to its SPEs.

683. CitiGroup was willing to engage and participate in the ongoing fraudulent scheme because such participation created enormous profit for CitiGroup as long as the Enron scheme continued in operation – something that CitiGroup was in a unique position to help occur. While CitiGroup was lending hundreds of millions to Enron and syndicating hundreds of millions of additional loans, it was receiving huge fees and interest payments for those loans and syndication services. However, in addition to the very unusual credit hedging transactions pleaded above, CitiGroup had limited its risk, as it knew that either with its help or the help of other banks which were part of the scheme, so long as Enron maintained its investment-grade credit rating and continued to report strong current period financial results and credibly forecast strong ongoing revenue and profit growth, Enron's access to the capital markets would continue to enable Enron to periodically raise hundreds of millions, if not billions, of dollars of fresh capital from public investors which would be used to repay or reduce Enron's commercial paper debt and the loans from CitiGroup to Enron so that the process could continue. In fact, the proceeds of Enron's Class Period securities sales, including offerings CitiGroup helped underwrite, were utilized in significant part to repay Enron's existing commercial and bank indebtedness, including indebtedness to CitiGroup, while other securities offerings accomplished by Enron utilizing other banks which were participating in the scheme, were also used to repay existing bank indebtedness, including monies owed to CitiGroup. Thus, throughout the Class Period, CitiGroup was pocketing millions of dollars a year in interest

payments, and syndication and investment banking fees by engaging and participating in the Enron scheme to defraud and stood to ***continue*** to collect these huge fees on an annual basis going forward so long as it helped perpetuate the Enron Ponzi scheme.

684. CitiGroup also participated in and furthered the fraudulent scheme by helping to finance or otherwise participate in illicit transactions with Enron which it knew would contribute materially to Enron's ability to continue to falsify its financial condition and thus continue the operation of the Enron Ponzi scheme. From late 99 through early 01, CitiGroup lent Enron $2.4 billion in a series of manipulative devices and transactions – prepaid swaps conducted via CitiGroup's Cayman Island subsidiary called Delta. In a true swap, two parties trade the future returns on investments over a set period of time. One party pays a small amount to receive a fixed interest rate on a corporate bond in lieu of uncertain gains on the same corporation's stock. The counterparty accepts the payment and swaps the return on the bond for the return on the stock. Neither party actually needs to hold the underlying assets, as long as the payments are made. Typically, neither party in a true swap exchange receives all the agreed payments up front. In the Enron transactions, though, CitiGroup paid up front an estimate of the fair value of its portion of the swaps – hundreds of millions of dollars each time – payments made ***immediately. Enron was obliged to repay the cash over five years***. These Delta transactions, though technically derivatives trades known as prepaid swaps, perfectly replicated loans and were, in fact, manipulative devices to disguise what were, in reality, loans. Enron's balance sheet misrepresented these transactions. Enron posted the loans as "assets from price risk management" and as "accounts receivable," admitted Charlie Leonard, a spokesperson for Andersen. The repayments that Enron owed the banks were listed as "liabilities from price risk management" and possibly a small amount as accounts payable, Leonard said.

685. In addition to actively engaging and participating in the scheme to defraud, CitiGroup also made false and misleading statements to the securities markets about Enron. First of all, the Registration Statement and Prospectuses for Enron securities sales where CitiGroup was one of the underwriters contained false and misleading statements – ***which are statements made by CitiGroup as an underwriter*** – including false interim and annual financial statements, and false statements

concerning the structure of and Enron's relationship to SPEs and related parties. CitiGroup is liable under §11 for its participation in the following offerings as a lead underwriter:

8/99 $222 million 7% Enron exchangeable notes

CitiGroup is also liable for its participation in the resale of the Enron zero coupon convertible notes on and after 7/18/01.

686. In addition, throughout the Class Period, CitiGroup ***issued*** analysts' reports on Enron which contained false and misleading statements concerning Enron's business, finances and financial condition and its prospects, including, but not limited to, those dated 10/22/98, 1/27/99, 5/25/99, 7/20/99, 8/20/99, 9/20/99, 10/20/99, 4/12/00, 9/21/00, 3/12/01, 3/22/01, 5/18/01, 6/7/01, 7/13/01, 10/16/01 and 10/91/01, as pleaded herein. These were all statements by CitiGroup to the securities markets which helped to artificially inflate the trading prices of Enron's publicly traded securities. Keeping Enron's stock price inflated was important to CitiGroup as it knew that if the stock price fell below certain "trigger" prices, Enron would be required to issue millions of additional Enron shares which would reduce Enron's shareholders' equity by hundreds of millions, if not billions, of dollars, endangering its investment-grade credit rating, cutting off access to the capital markets and thus endangering the ongoing operations of the scheme from which CitiGroup was profiting.

687. CitiGroup also actively participated in the Enron fraudulent scheme by helping structure and finance the critical LJM2 partnership. In this regard and as a reward for CitiGroup's participation in the scheme to defraud, CitiGroup (or its top executives) were permitted to invest some $15 million to facilitate the financing of that vehicle. They put their money up early – on or about 12/22/99 – so LJM2 would have the cash to fund four SPEs to do deals with Enron prior to year-end 99 to create huge profits for Enron so it could meet its 99 profit forecasts.

688. Finally, in 10/01-11/01, when the Enron scheme began to unravel, as Enron reported a huge 3rdQ 01 loss and restated its 97-01 financial results, CitiGroup worked hand-in-hand with Enron to desperately try to save the Enron enterprise in the hope that by arranging a salvation merger with Dynegy (for which CitiGroup would be paid approximately $45 million in fees) they could prevent the insolvency of Enron and the inevitable investigations and revelations that would follow such insolvency. However, despite the efforts of Enron and CitiGroup to conceal Enron's

true financial condition from Dynegy and get Dynegy to agree to acquire Enron, the due diligence efforts of Dynegy and its investment bankers uncovered that the true financial condition of Enron was far worse than had even been disclosed publicly to date and that Enron had been engaged in a wide-ranging falsification of its financial statements over several prior years. Thus, Dynegy refused to acquire Enron and Enron went bankrupt.

689. During the Class Period, CitiGroup knew that Enron was falsifying its publicly reported financial results and that its true financial condition was much more precarious than was publicly known. It obtained this knowledge due to its access to Enron's internal business and financial information as one of Enron's lead lending banks, as well as its intimate interaction with Enron's top officials which occurred virtually on a daily basis.

690. In late 11/01, JP Morgan and CitiGroup were desperately trying to arrange the sale of Enron to Dynegy so they could split a $90 million fee and so Enron would not go bankrupt, which they knew would lead to suits over, and investigations into, their prior deals with Enron – which they knew would be highly embarrassing and could expose them to liability to third parties and subordination of their creditor claims against Enron. Their scheme could not succeed unless they kept Enron's investment grade credit rating in place until the sale to Dynegy could be completed. So, on or about 11/8/01, Rubin, the Vice Chairman of CitiGroup, and Harrison, the Chairman of JP Morgan, called Moody's – a key rating agency – and pressured Moody's to keep Enron's investment grade credit rating in place until JP Morgan and CitiGroup could complete the sale of Enron to Dynegy.

691. As noted above, in the *Unicredito* case CitiGroup and JP Morgan misrepresented to Unicredito that there had been no changes in Enron's financial condition as of 10/25/01, causing Unicredito to fund a $22 million credit facility for Enron. This was right after Enron had announced $1 billion in charges and written down equity by $1 billion and was just as Enron was in the process of restating transactions, including LJM which CitiGroup was involved in.

692. Thus, CitiGroup is directly liable to the Class for making false and misleading statements in Registration Statements and Prospectuses utilized by Enron and CitiGroup to raise billions of dollars of new capital for Enron, for false and misleading statements in analysts' reports

written and issued by CitiGroup, which helped to artificially inflate the trading price of Enron's publicly traded securities, as well as for its knowing participation in a fraudulent scheme, course of conduct of Enron and manipulative devices and a fraudulent course of business of Enron, which operated to defraud purchasers of Enron's publicly traded securities during the Class Period.

D. Involvement of CS First Boston

693. CS First Boston is a financial services enterprise that had an extensive and extremely close relationship with Enron. During the Class Period, CS First Boston provided both commercial banking and investment banking services to Enron, helped structure and/or finance several of Enron's illicit partnerships or SPEs, and helped Enron falsify its financial statements and misrepresent its financial condition, while its securities analysts were issuing extremely positive – but false and misleading – reports on Enron extolling its business success, the strength of its financial condition and its prospects for strong revenue and earning growth in the future. In addition to the huge underwriting, advisory and transactional fees, interest and commitment charges CitiGroup was receiving from Enron and related entities, in return for CS First Boston's participation in the scheme, CS First Boston executives were rewarded by being permitted to invest at least $22.5 million in the lucrative LJM2 partnership.

694. CS First Boston's relationships with Enron were so extensive that top executives of the firm constantly interacted with top executives of Enron, *i.e.*, Lay, Skilling, Causey, McMahon or Fastow, on almost a daily basis throughout the Class Period, discussing Enron's business, financial condition, financial plans, financing needs, partnerships, SPEs and Enron's future prospects. CS First Boston actively engaged and participated in the fraudulent scheme and furthered Enron's fraudulent course of conduct in several ways. It participated in loans of over $4 billion to Enron during the Class Period. It helped Enron raise over $3 billion from the investing public via the sale of new securities during the Class Period. It helped Enron structure and finance several of the illicit SPEs and partnerships Enron controlled, which were primary vehicles utilized by Enron to falsify its reported financial results, and engaged in transactions with Enron to disguise loans to Enron and help Enron falsify its reported financial condition, liquidity and creditworthiness.

695. In interacting with Enron, CS First Boston functioned as a consolidated and unified entity. There was no so-called "Chinese Wall" to seal off the CS First Boston securities analysts from the information which CS First Boston obtained in rendering commercial and investment banking services to Enron. Alternatively, even if some restrictions were placed on the information made available to CS First Boston's securities analysts, that unilateral and self-serving action is insufficient to prevent the imputation of all knowledge (and scienter) possessed by the CS First Boston legal entity, as its knowledge and liability in this case is determined by looking at CS First Boston as an overall legal entity.

696. CS First Boston acted as underwriter for Enron securities. For instance:

DATE	SECURITY
11/93	8 million shares 8% Enron capital preferred shares at $25 per share
7/94	3 million shares 9% Enron capital preferred shares at $25 per share
11/96	8 million shares 8.3% Enron capital preferred shares at $25 per share
1/97	6 million shares 8-1/8% Enron capital preferred shares at $25 per share
7/97	$200 million 6.75% Enron notes
5/98	35 million Enron common shares at $25 per share
11/98	$250 million 6.95% Enron notes
2/99	27.6 million shares Enron common stock at $31.34 per share
7/01	$1.9 billion Enron zero coupon convertible notes (acted as reseller)

697. CS First Boston also acted as a lead underwriter in the New Power IPO on 10/4/00, selling 27.6 million shares at $21. By creating a trading market for New Power stock and a purported value for that stock, CS First Boston enabled Enron to then record a huge profit ($370 million) on the gain in value of the New Power shares and warrants Enron continued to hold, via a bogus hedge transaction with an SPE controlled by the LJM2 partnership, as detailed elsewhere herein.

698. In 6/99, CS First Boston acted as underwriter in the Azurix IPO, selling 38.5 million shares of Azurix stock at $19 per share. Enron sold 19.5 million shares of Azurix stock in this IPO, getting $370 million in desperately needed new capital.

699. In addition, CS First Boston also acted as underwriter of other Enron-related securities. For instance:

- Osprey Trust/Osprey I Inc. – $1 billion in notes
- Marlin Water Trust/Marlin Water Capital Corp. II – $500 million 6.19% and 6.31% notes
- Azurix – $650 million 10.375% and 10.75% senior notes

700. In addition, CS First Boston acted as advisor to Enron on the sale of Portland General Electric – a $2 billion dollar deal – and helped Enron dispose of its international asset portfolio in the second half of 01, a deal involving $5-$7 billion in assets. CS First Boston also advised Enron on several other merger and acquisition transactions.

701. In addition, during the Class Period, CS First Boston was one of the principal commercial lending banks to Enron, loaning or helping to syndicate over $4 billion in bank loans to Enron. For instance, CS First Boston was involved in the following credit facilities for Enron:

DATE	TRANSACTION
9/98	$1 billion committed line of credit to back up Enron's commercial paper
2/99	$567 million loan to finance Dabhol power project
6/00	$500 million line of credit for Enron Investments PLC, an Enron subsidiary
7/01	$582 million revolving line of credit for Enron
8/01	$3 billion committed line of credit to back up Enron's commercial paper

702. CS First Boston was willing to engage and participate in the ongoing fraudulent scheme because such participation created enormous profits for CS First Boston as long as the Enron scheme could be continued – something that CS First Boston was in a unique position to help occur. While CS First Boston was lending or syndicating hundreds of millions of dollars of loans to Enron, it was receiving huge fees and interest payments for those loans and syndication services. However, CS First Boston was limiting its own risk in this regard as it knew that either with its help, or the help of other banks which were part of the scheme, so long as Enron maintained its investment-grade credit rating and continued to report strong current period financial results and credibly forecast

strong ongoing revenue and profit growth, Enron's access to the capital markets would continue to enable Enron to raise hundreds of millions, if not billions, of dollars of fresh capital from public investors which would be used to repay or reduce Enron's commercial paper debt and the loans from CS First Boston to Enron so that the process could continue. In fact, the proceeds of Enron securities offerings during the Class Period, including those which CS First Boston helped Enron sell, were utilized in significant part to repay Enron's existing commercial paper and bank indebtedness, including indebtedness to CS First Boston, while other securities offerings accomplished by Enron utilizing other banks which were participating in the scheme were also used to repay existing bank indebtedness, including monies owed to CS First Boston. Thus, throughout the Class Period, CS First Boston was pocketing tens of millions of dollars a year in interest payments, and syndication and investment banking fees by engaging and participating in the Enron scheme to defraud and stood to continue to collect these huge fees on an annual basis going forward so long as it helped perpetuate the Enron Ponzi scheme.

703. In addition to the foregoing, CS First Boston actively participated in the scheme to defraud by the additional actions set forth below. First of all, the Registration Statements and Prospectuses for the Enron securities sales where CS First Boston was one of the underwriters contained false and misleading statements – ***which are statements made by CS First Boston as an underwriter*** – including false interim and annual financial statements, and false statements concerning the structure of and Enron's relationship to special purpose entities and related parties, as well as the value and condition of Enron's business operations and assets. CS First Boston is liable for its participation in the following offering as a lead underwriter:

2/99 27.6 million shares Enron stock at $31.34

CS First Boston is also liable for its participation in the resale of the Enron zero coupon convertible notes on and after 7/18/01.

704. In addition, throughout the Class Period, CS First Boston ***issued*** analysts' reports on Enron which contained false and misleading statements concerning Enron's business, finances and financial condition and its prospects, including, but not limited to, those dated 7/6/99, 7/13/99, 9/2/99, 9/22/99, 10/12/99, 11/30/99, 1/18/00, 1/21/00, 2/28/00, 4/13/00, 10/18/00, 2/20/01, 4/17/01,

8/14/01, 8/17/01, 10/19/01 and 10/23/01, as pleaded herein. These were all statements by CS First Boston to securities markets which helped artificially inflate the trading prices of Enron's publicly traded securities. Keeping Enron's stock price inflated was important to CS First Boston as it knew that if the stock price fell below various "trigger" prices, Enron would be required to issue millions of additional Enron shares, which would reduce Enron's shareholders' equity by hundreds of millions, if not billions, of dollars, endangering its investment-grade credit rating, likely cutting off access to the capital markets and thus endangering the ongoing scheme from which CS First Boston was profiting.

705. In addition to its own direct liability for making false and misleading statements, CS First Boston also participated in and furthered the fraudulent scheme by helping to finance or otherwise participate in illicit transactions with Enron which it knew would contribute materially to Enron's ability to continue to falsify its financial condition and thus continue the operation of the Enron Ponzi scheme.

706. CS First Boston, like JP Morgan and CitiGroup, made disguised loans to Enron so that Enron's true credit situation, liquidity and debt levels could be disguised. CS First Boston lent Enron money using trades in derivatives. In 00, CS First Boston gave Enron $150 million to be repaid over two years. Enron's payments would vary with the price of oil. Technically, the transaction was a swap. But because CS First Boston paid Enron up front, the transaction was in fact a loan – a reality admitted by CS First Boston. ***"It was like a floating-rate loan," said Pen Pendleton, a CS First Boston spokesman. "We booked the transaction as a loan."*** Enron's balance sheet misrepresented this transaction. Enron posted the banks' loans as "assets from price risk management" and as "accounts receivable," ***admitted Charlie Leonard, a spokesman for Andersen: The repayments that Enron owed the banks were listed as "liabilities from price risk management" and possibly a small amount as accounts payable, Leonard said***.

707. CS First Boston also knowingly engaged and participated in and, in furtherance of the scheme, helped Enron by creating some of the illicit SPEs which were the primary vehicles by which Enron falsified its financial condition and misrepresented profits. This was done by a group of 10 bankers from CS First Boston who had joined CS First Boston from Donaldson Lufkin & Jenrette

in 98, led by Laurence Nath. Using the euphemism "structured products," Nath and his team structured numerous illicit SPEs to engage in transactions with Enron to improperly boost Enron's reported profits while moving billions of dollars of debt off Enron's balance sheet to the SPEs. These transactions included Marlin, Firefly, Mariner, Osprey, Whitewing, and the infamous Raptors. With CS First Boston's help, Enron sold assets to these entities at inflated prices – prices that Enron never could have obtained in arm's-length transactions with third parties, resulting in phony profits while hiding billions of dollars of debt.

708. Nath and CS First Boston worked very closely with Vinson & Elkins and Andersen to create and document these entities and these transactions. According to a former Enron employee, "***Monetise***" was the buzzword. Everyone was always saying: "'We have to monetise this.'" The quick-fix solution was: "'***We'll sell it to LJM, or to Raptor, or to whatever the partnership of the month was.... They'd pick up the phone and Larry Nath would come down to Houston for a week or two and sit down with the ... accountants and come up with something***.'" Nath would gather with a group from Enron's treasury and global finance departments known inside the Company as "'Fastow's field marshals.'" This group included McMahon, Enron's former treasurer, and Glisan, who took over from McMahon as treasurer.

709. Most of the vehicles that emerged from these meetings contained an unusual feature created by Nath: they held Enron stock in order to comfort lenders and secure an investment grade rating, ***but required Enron to inject more shares into the vehicles if the share price fell to certain "trigger points***" or prices *i.e.*, $83-$19 per share. They could also force their liquidation if Enron's credit rating was downgraded and the debt of the SPEs became recourse to Enron in such circumstances. "'***What I can't believe is that anyone ever got comfortable when you put all of this stuff together. Taken in combination, these partnerships clearly posed a material risk for the company,'" a knowledgeable banker has said***. The trigger points inside the partnerships were a time bomb. "'***There's no question that senior people at CFSB knew what was going on and that it was a house of cards,'" one Enron insider has said. The triggers were discussed by senior Enron executives and senior CS First Boston bankers at a meeting in 7/01, when Enron's stock was in the $40s, according to one person who was present. "'They (the CSFB bankers) said: "If this thing***

hits the $20s, you better run for the hills." There was no question that they knew exactly what lay inside the structures, when the triggers went off – everything. You could almost say they knew more about the company than people in Enron did.'"

710. ***In a 6/01 meeting between an Enron manager and two CS First Boston managing directors, the CS First Boston people made statements showing they had knowledge about the nature and extent of Enron's off-balance sheet-exposure***. During discussions about structuring an off-balance-sheet partnership, the CS First Boston people commented to the Enron manager, "How can you guys keep doing this?" referring to Enron's repeated statements to the market that its stock was undervalued. The CS First Boston people said that even at $40 per share, ***Enron's stock was still overvalued in their view and added, and "Do employees actually believe it's worth what management is saying***?"

711. At the time, Enron's stock was trading at around $48.50. ***The CS First Boston people said that "you guys are at a critical price point right now" and referenced the Raptor deal and said that if Enron's stock continued to fall, that would cause Raptor to unwind and the debt balance to come due. The CS First Boston people asked the Enron manager, "Do you know how much off-balance sheet debt you [Enron] have***?" When the Enron executive said he thought it was around one to two billion dollars, the CS First Boston people said, "***Try eight to 12 billion***." ***They added that if Enron's stock hits $20 a share, things are going to come falling down and "you guys are gonna be fucked***."

712. CS First Boston also actively participated in the Enron fraudulent scheme by helping it structure and finance the critical LJM2 SPE. In this regard, CS First Boston, or senior executives of the firm, invested $22.5 million in equity money to facilitate the financing of that critical vehicle using DLJ Fund Investing Trust Partners and Merchant Capital, thus receiving a reward for engaging in the scheme. They ***put their money up early*** in 12/99 so LJM2 would have the cash to fund four SPEs to do deals with Enron prior to year-end 99 to create huge profits for Enron so it could meet its 99 profit forecasts. CS First Boston also was a major lender to LJM2 via a $120+ million credit line providing financing LJM2 needed to engage in its transactions with SPEs and Enron in order to falsify Enron's results.

713. CS First Boston knew that Enron was falsifying its publicly reported financial results and that its true financial condition was much more precarious than was publicly known. It obtained this knowledge due to its unlimited access to Enron's internal business and financial information as Enron's lead lending bank, as well as its intimate interaction with Enron's top officials which occurred on a virtually daily basis.

714. Thus, CS First Boston is directly liable to the Class for making false and misleading statements in Registration Statements and Prospectuses utilized by Enron and CS First Boston to raise billions of dollars of new capital for Enron, for false and misleading statements in analysts' reports written and issued by CS First Boston, which helped to artificially inflate the trading price of Enron's publicly traded securities, as well as for its knowing participation in manipulative devices, a fraudulent scheme, course of conduct and fraudulent course of business of Enron, which operated to defraud purchasers of Enron's publicly traded securities during the Class Period.

E. Involvement of CIBC

715. Canadian Imperial Bank of Commerce ("CIBC") is a financial institution that had an extensive and extremely close relationship with Enron. During the Class Period, CIBC provided both commercial banking and investment banking services to Enron and helped structure and/or financed one or more of Enron's illicit partnerships or SPEs, and helped Enron falsify its financial statements and misrepresented its financial condition while its securities analysts were issuing extremely positive reports on Enron extolling its business success, the strength of its financial condition and its prospects for strong revenue and earnings growth. In return for CIBC's participation in the scheme, CIBC or its top executives were rewarded by being permitted to invest at least $15 million in the lucrative LJM2 partnership.

716. CIBC's relationships with Enron were so extensive that these individuals constantly interacted with top executives of Enron, *i.e.*, Lay, Skilling, Causey, McMahon or Fastow, on almost a daily basis throughout the Class Period, discussing Enron's business, financial condition, financial plans, financing needs, its partnerships and SPEs and Enron's future prospects. CIBC actively engaged and participated in the fraudulent scheme and furthered Enron's fraudulent course of conduct and business in several ways. It participated in loans of over $3 billion to Enron during the

Class Period. It helped Enron (or entities Enron controlled) raise over $3 billion from the investing public via the sale of securities during the Class Period. It helped Enron structure and finance certain of the illicit SPEs and partnerships Enron controlled which were a primary vehicle utilized by Enron to falsify its reported financial results and engaged in manipulative devices with Enron that helped Enron falsify its reported earnings at least in the 4thQ 00 and 1stQ 01.

717. In interacting with Enron, CIBC functioned as a consolidated and unified entity. There was no so-called "Chinese Wall" to seal off CIBC securities analysts from information which the commercial and investment banking parts of CIBC obtained in the course of rendering their commercial and investment banking services to Enron. Alternatively, even if some restrictions were placed on the information made available to CIBC's securities analysts, that unilateral and self-serving action is insufficient to prevent the imputation of all knowledge (and scienter) possessed by the CIBC legal entity, as its knowledge and liability in this case is determined by looking at CIBC as an overall legal entity.

718. CIBC acted as an underwriter for Enron. For instance:

DATE	SECURITY
11/93	8 million shares of 8% Enron capital preferred shares at $25 per share
7/94	3 million shares of 9% Enron capital preferred shares at $25 per share
1/97	6 million shares of 8-1/8% Enron capital preferred shares at $25 per share
5/98	35 million shares Enron common stock at $25
2/99	27.6 million shares of Enron common stock at $31.34
5/99	$500 million 7.375% Enron notes

719. During the Class Period, CIBC was one of the principal commercial lending banks to Enron. For instance:

DATE	TRANSACTION
11/97	$250 million credit facility for Enron
7/98	$250 million loan to an Enron subsidiary guaranteed by Enron
9/98	$1 billion committed credit facility for Enron to back up commercial paper

8/01	$3 billion committed credit facility for Enron to back up commercial paper

720. In 7/01, CIBC also acted as an underwriter of certain Enron-related securities, *i.e.*, $1 billion 6.31% and 6.19% Marlin Water Trust II and Marlin Water Capital Corp. II notes.

721. CIBC also acted as a lead underwriter in the New Power IPO on 10/4/00, selling 27.6 million shares at $21. By creating a trading market for New Power stock and a purported value for that stock, CIBC enabled Enron to then record a huge profit on the gain in value of the 80 million New Power shares Enron continued to hold, via a bogus hedge transaction with an SPE controlled by the LJM2 partnership as detailed elsewhere herein.

722. CIBC was willing to engage and participate in the ongoing fraudulent scheme because such participation created enormous profits for CIBC as long as the Enron scheme could be continued in operation – something that CIBC was in a unique position to help occur. While CIBC was lending hundreds of millions to Enron and syndicating hundreds of millions of dollars of additional loans, it was receiving huge fees and interest payments for those loans and syndication services. However, CIBC was limiting its risk in this regard as it knew that either with its help or the help of other banks which were part of the scheme, so long as Enron maintained its investment grade credit rating and continued to report strong current period financial results and credibly forecast strong ongoing revenue and profit growth, Enron's access to the capital markets would continue to enable Enron to raise hundreds of millions, if not billions, of dollars of fresh capital from public investors which would be used to repay or reduce Enron's commercial paper debt and the loans from CIBC to Enron so that the process could continue. In fact, the proceeds of the securities offerings which Enron did during the Class Period, including those CIBC helped underwrite, were utilized in significant part to repay Enron's existing commercial paper and bank indebtedness, including indebtedness to CIBC. Thus, throughout the Class Period, CIBC was pocketing millions of dollars a year in interest payments, syndication fees and investment banking fees by participating in the Enron scheme to defraud and stood to continue to collect these huge fees on an annual basis going forward so long as it helped perpetuate the Enron Ponzi scheme.

723. CIBC also actively participated in the scheme to defraud by additional actions set forth below. First of all, in the Registration Statements and Prospectuses for the Enron securities sales where CIBC was one of the underwriters, those Registration Statements and Prospectuses contained false and misleading statements – ***which are statements made by CIBC as an underwriter*** – including false interim and annual financial statements, and false statements concerning the structure of and Enron's relationship to special purpose entities and related parties, as well as the value and condition of Enron's business operations, as detailed herein. CIBC is liable under §11 for its participation in the following offering as a lead underwriter:

5/99 $500 million 7-3/8% Enron notes

724. In addition, throughout the Class Period, CIBC ***issued*** analysts' reports on Enron which contained false and misleading statements concerning Enron's business, finances and financial condition and its future prospects, including, but not limited to, those dated 7/15/98, 10/14/98, 1/25/99, 4/14/99, 7/14/99, 10/7/99, 10/13/99, 1/6/00, 1/18/00, 1/21/00, 4/12/00, 10/19/00, 4/19/01, 8/15/01 and 10/17/01, as pleaded herein. These were all statements of CIBC to securities markets which helped artificially inflate the trading prices of Enron's publicly traded securities. Keeping Enron's stock price inflated was important to CIBC as it knew that if the stock price fell below various "trigger" prices, Enron would be required to issue millions of additional Enron shares which would reduce Enron's shareholder's equity by hundreds of millions if not billions of dollars, endangering its investment-grade credit rating, cutting off its access to the capital markets and thus endangering the scheme.

725. In addition to its own direct liability for making false and misleading statements, CIBC also engaged and participated in and furthered the fraudulent scheme by helping to finance or otherwise participate in illicit transactions with Enron which it knew would contribute materially to Enron's ability to continue to falsify its financial condition and thus continue the operation of the Enron Ponzi scheme. CIBC and Enron engaged in fraudulent transactions utilizing an entity which CIBC and Enron controlled, known as Project Braveheart, a partnership which related to Enron's VOD joint venture with Blockbuster and enabled Enron to improperly report over $110 million in phony profits in the 4thQ 00 and the 1stQ 01.

726. When Enron announced its VOD joint venture with Blockbuster in 7/00, and as it and CIBC described that venture in following months, they were extraordinarily positive about it, assuring investors the Blockbuster VOD venture was a first of its kind, that it validated Enron's broadband content delivery technology and was worth more than $1 billion to Enron. They also extolled the high quality of the EIN, *i.e.*, Enron's fiber optic system.

727. However, behind the scenes Enron and CIBC knew that the VOD project was very risky and was plagued by technical and legal problems that made it likely that it would never advance past a pilot project stage – at least not for a long time. Nevertheless, they worked together so Enron could misuse mark-to-market accounting to improperly accelerate and record over $100 million of profit from the Blockbuster joint venture in current periods, *i.e.*, year-end 00 and the 1stQ of 01, when Enron desperately needed to create profits to cover the true adverse condition of its business. Thus, on 12/28/00, CIBC and Enron formed a partnership – EBS Content Systems LLC - known as project Braveheart. Enron and CIBC assigned an arbitrary and unrealistic value of $124 million to the partnership and CIBC agreed to ***invest*** (not loan) $115 million in the partnership in return for a large up-front fee and the right to receive 93% of Enron's profits from the VOD joint venture over the next 20 years. This enabled Enron to recognize $110 million in profits from this transaction in the 4thQ of 00 and 1stQ of 01.

728. However, this profit recognition was fraudulent as the VOD joint venture was nothing more than a pilot project, and one that was failing at that. The CIBC/Enron partnership was a phony contrivance, as ***Enron had secretly guaranteed CIBC's investment in Braveheart so that CIBC was not a true investor and was not at risk***. CIBC demanded and got its guarantee because it knew that the VOD venture was very troubled and unlikely to succeed and entered into the transaction as an accommodation to Enron to allow Enron to create and report phony profits to falsify its financial condition. To attempt to create the 3% outside equity investor participation necessary to create a "legitimate" SPE, Enron and CIBC got a company called nCUBE (a contractor for Enron on the VOD project) to put $2 million into Braveheart at year-end 00. However, Enron and CIBC secretly promised to return that $2 million right after year-end 00. Creating these phony profits was indispensable to allowing Enron to publicly stress the success of Enron's new Broadband

content delivery business. However, in reality the VOD partnership was an illusion. Enron's technology did not work – it could not deliver the content over its fiber optic network and the test of the system in late 00 was a catastrophic failure. Blockbuster also did not have and could not obtain the legal right to provide the VOD venture content (movies) in digital form because it had not acquired and could not acquire those rights from the movie studios. The VOD venture was abandoned in 3/01 by Enron less than eight months after it started – but Enron ***did not at that time reverse*** the over $110 million in phony profits it had recorded. And because CIBC knew Enron's financial condition was such that it could not honor its secret guarantee to repay CIBC its $115 million investment in Braveheart, CIBC agreed to carry that amount for Enron until later so as to permit the Enron Ponzi scheme to continue.

729. *The Wall Street Journal* has reported on this bogus transaction as set forth below:

A Blockbuster Deal
Shows How Enron
Overplayed Its Hand

Company Booked Big Profit
From Pilot Video Project
That Soon Fizzled Out

"I Just Couldn't Believe It"

When Enron Corp-. and Blockbuster Inc. joined forces in mid-2000, it looked like they were onto something big. The companies announced they would soon be allowing consumers across America to choose from among thousands of movies, including hot new features, sent via ***telephone lines to watch on their TVs at home***.

Announcing the partnership in July 2000, Enron Chairman Kenneth Lay called it the "***killer app for the entertainment industry***."...

It looked like another brilliant move by Enron, already a hero on Wall Street. The Houston company had aligned itself with the nation's leading video retailer. the 20-year deal would ***bring traffic to Enron's fledgling fiber-optic telecommunications network***. And the venture reaffirmed the notion that Enron, already America's preeminent energy trader, would soon be a lucrative middleman for a vast range of other products, as well.

* * *

Enron ... set up an affiliated partnership, code-named Project Braveheart .... Enron obtained a $115.2 million investment in the partnership from ***CIBC World Markets***, the investment-banking arm of Canadian International Bank of Commerce

in Toronto. In return, CIBC received a promise of almost all earnings from Enron's share of the venture ....

The partnership had no separate staff and no assets other than Enron's stake in the venture with Blockbuster, which was barely getting off the ground in late 2000. Still, in an audacious accounting move, ***Enron claimed $110.9*** million in profits from Braveheart in the fourth quarter of 2000 and the first quarter of 2001. That amount sharply limited the overall losses suffered by Enron's ***young broadband- services division in the two periods***.

* * *

"It was nothing but a pilot project," says Blockbuster's Ms. Raskopf. "I don't know how anyone could have been booking revenues." Blockbuster ... never accounted for any financial gain or loss from the short-lived venture, she says.

Project Braveheart was one of dozens of outside partnerships that Enron officials created to burnish the company's financial results at a time when it felt under pressure to show high profit that would justify its soaring stock price, according to current and former company executives....

Enron's current chief financial officer, Jeffrey McMahon, says he had nothing to do with Braveheart or related partnerships. "I'm not going to defend them," he says.

* * *

In exchange for its $115.2 million investment, CIBC was supposed to receive 93% of Braveheart's cash flow for 10 years. ***But Enron made the investment in the embryonic partnership more attractive by promising to repay CIBC the full value of its investment if the partnership failed to be a money maker***.

Three former Enron employees familiar with the partnership deals say that this kind of guarantee was designed specifically to attract investors who otherwise might worry about the viability of the deals. "The banks didn't care about the assets they invested in and that's how it got out of control," says one former Enron employee who helped create some of the partnerships.

* * *

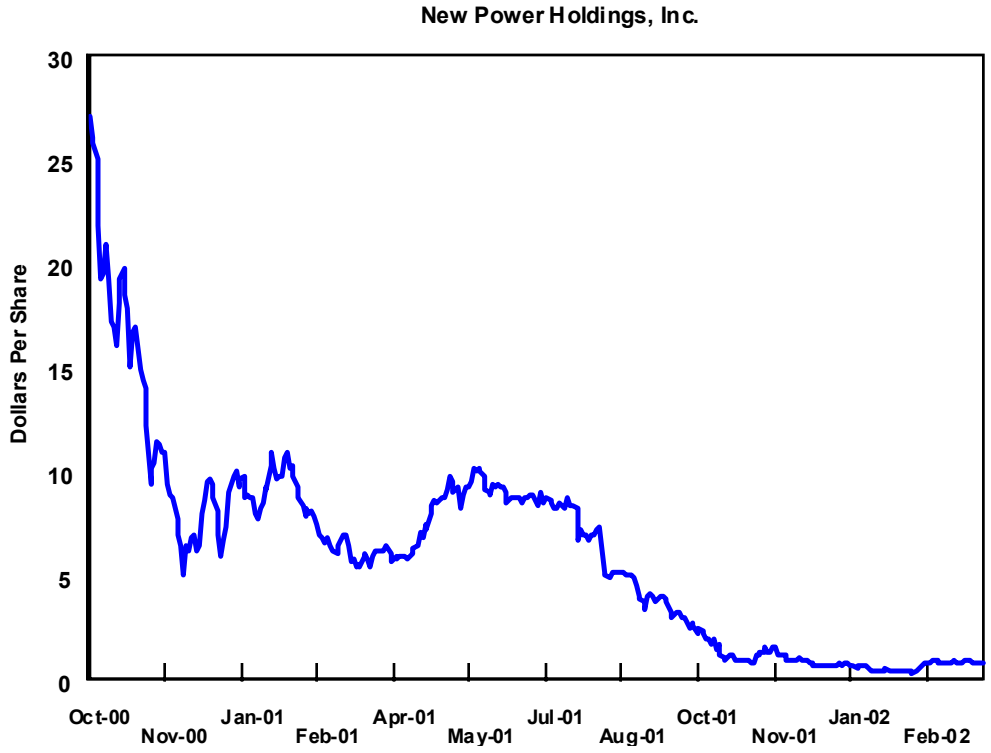
Enron began using Braveheart for accounting purposes in the fourth quarter of 2000. For that period, Enron claimed its ownership of Braveheart resulted in a $53 million profit, even though the Blockbuster venture was only two weeks into its pilot program and not generating any profit at all.

One of the former Enron employees familiar with Braveheart recalls wondering at the time," '***How can they monetize this asset when we're still putting it together?' It didn't make any sense to me***."

In the following quarter, the first of 2001, Enron claimed an additional $57.9 million gain from Braveheart. "***I was just floored," says the former employee. "I mean, I couldn't believe it***."

730. Thus, the active and knowing participation of CIBC in Project Braveheart was an essential part of the scheme and helped artificially inflate Enron's stock to its all time high of $90-3/4 in 8/00.

731. Another example of how CIBC helped falsify Enron's reported results is the New Power transaction, including the New Power IPO, by which Enron improperly recognized $370 million in profits in the 4thQ 00. In 00, Enron controlled and owned millions of shares of New Power stock – then a private company. If Enron could take Enron public, create a trading market in its stock, then Enron could recognize a profit on the gain on its shares by "hedging" that gain via yet another non-arm's-length transaction with a LJM2 entity. In the 4thQ 00, when Enron desperately needed to create profits to perpetuate the Enron Ponzi scheme, Enron and CS First Boston, CitiGroup and CIBC did the huge New Power IPO – 27.6 million shares at $21 per share. Enron continued to hold 13.6 million shares of New Power common stock and warrants to purchase 42 million more shares. Then, together with Vinson & Elkins, Andersen and CIBC, Enron quickly moved to create a huge phony profit using LJM2. Immediately after the New Power IPO, Enron and CIBC created Hawaii 125-0. CIBC (and several other of Enron's banks) made a "loan" of $125 million to Hawaii 125-0, but received a secret "total return swap" guarantee that protected CIBC and the other banks against ***any loss*** from Enron. Enron transferred millions of its New Power warrants to Hawaii 125-0 to "secure" the banks' loan and created a huge $370 million "profit" on the purported gain on the New Power warrants made possible by the New Power IPO. Hawaii 125-0 simultaneously supposedly "hedged" the warrants with another entity created and controlled by Enron called "Porcupine." To supposedly capitalize, LJM2 put $30 million into Porcupine to facilitate the so-called hedge of the New Power warrants, but, one week later, Porcupine paid the $30 million back to LJM2 plus a $9.5 million profit – leaving Porcupine with no assets. During 01, New Power stock fell sharply, as the chart below suggests:



This collapse in New Power's stock turned Enron's huge gain on its New Power stock/warrants into a huge loss early in 01 – a loss of about $250 million – which Enron concealed until 10/01, when Enron shocked the markets by revealing a $600 million loss – which included the reversal of Enron's entire $370 million profit in the New Power transaction.

732. CIBC also actively participated in the Enron fraudulent scheme by helping it structure and finance the critical LJM2 SPE. In this regard, CIBC's top executives were permitted to invest some $15 million in equity money to facilitate the financing of that critical vehicle and ***put their money up early*** – on or about 12/22/99 – so LJM2 would have the cash to fund four SPEs to do deals with Enron at year-end 99 to create huge profits for Enron so it could meet its 99 profit forecasts. LJM2 was an investment that was, as described above, virtually guaranteed to generate huge returns for investors and was really a reward to CIBC for its participation in the scheme.

733. CIBC knew that Enron was falsifying its publicly reported financial results and that its true financial condition was much more precarious than was publicly known. It obtained this knowledge due to its access to Enron's internal business and financial information as one of Enron's

lead lending banks, as well as its intimate interaction with Enron's top officials which occurred virtually on a daily basis.

734. Thus, CIBC is directly liable to the Class for making false and misleading statements in Registration Statements and Prospectuses utilized by Enron and CIBC to raise billions of dollars of new capital for Enron, for false and misleading statements in analysts' reports written and issued by CIBC, which helped to artificially inflate the trading price of Enron's publicly traded securities, as well as for its knowing participation in a fraudulent scheme, course of conduct and fraudulent course of business of Enron, which operated to defraud purchasers of Enron's publicly traded securities during the Class Period.

F. Involvement of Merrill Lynch

735. Merrill Lynch is a huge financial services firm which had an extensive and extremely close relationship with Enron. During the Class Period it provided investment banking services to Enron, helped structure and finance one or more of Enron's illicit partnerships or SPEs, while its securities analysts were issuing extremely positive reports on Enron extolling its business success, the strength of its financial condition and its prospects for strong future earnings and revenue growth.

736. Merrill Lynch's relationships with Enron were so extensive that top executives of the firm constantly interacted with top executives of Enron, *i.e.*, Lay, Skilling, Causey, McMahon or Fastow, on almost a daily basis throughout the Class Period, discussing Enron's business, financial condition, financial plans, financing needs, its partnerships and SPEs and Enron's future prospects. Schyler Tilney was the head of Merrill Lynch's Energy Investment banking operation. Schyler Tilney's wife was a Managing Director of Enron, intimately involved in Enron's EES operations, which provided Tilney with unique access to information about serious problems that were, in fact, afflicting Enron's EES operations. Merrill Lynch actively participated in the fraudulent scheme and furthered Enron's fraudulent course of conduct and business by helping it raise billions of dollars from the investing public via the sale of new securities during the Class Period and helping it structure and finance certain of the illicit SPEs and partnerships Enron controlled which were a primary vehicle utilized by Enron to falsify its reported financial results.

737. In interacting with Enron and rendering the myriad of services to Enron which it did, Merrill Lynch functioned as a consolidated and unified entity. There was no so-called "Chinese Wall" to seal off the securities analysts who worked for Merrill Lynch from the information which the commercial and investment banking parts of Merrill Lynch obtained in the course of rendering their commercial and investment banking services to Enron. Alternatively, even if some restrictions on the information made available to Merrill Lynch's securities analysts existed, that unilateral and self-serving action is insufficient to prevent the imputation of all knowledge (and scienter) possessed by the Merrill Lynch legal entity, as its knowledge and liability in this case is determined by looking at Merrill Lynch as an overall legal entity.

738. Merrill Lynch acted as a lead underwriter for Enron in several public offerings, reaping millions in fees. For instance:

DATE	SECURITY
11/96	8 million shares 8.3% Enron Capital Trust I preferred securities at $25
1/97	6 million shares 8-1/8% Enron Capital Trust II preferred securities at $25 per share
11/97	$200 million Enron reset notes
9/98	$250 million Enron floating-rate notes
2/99	27.6 million shares Enron common stock at $31.34
10/99	$100 million Enron "weather" bonds

Merrill Lynch's relationship with Enron was so extensive that Merrill Lynch underwrote the sale of one-third of Enron's outstanding bond issues.

739. Merrill Lynch was also intimately involved in helping Enron structure Azurix – Enron's purported worldwide water company – and knew that the primary reason Enron had purchased Wessex Water for $2.3 billion was to create an entity, to be taken public, to "compensate" Mark-Jusbasche for losing out in her power struggle with Skilling to become Enron's CEO, that Enron had grossly overpaid for Wessex and that Enron's worldwide water business was very unlikely to succeed, as it had been undertaken without a detailed feasibility study and even without a thorough and well-thought out business plan. Merrill Lynch in 2/00 also acted as a lead underwriter

for the Azurix IPO of 38.5 million shares at $19 per share which raised $370 million in badly needed capital for Enron and later as lead underwriter of over $650 million in 10.375% and 10.75% Azurix senior notes reaping millions of dollars for Azurix.

740. In addition, during the Class Period, Merrill Lynch was intimately involved in creating, structuring and helping to finance one of the primary vehicles of the Enron fraud – the LJM2 partnership. The LJM2 partnership, was an indispensable element to allow the Enron Ponzi scheme to continue in operation. Merrill Lynch, with the help of Vinson & Elkins, Kirkland & Ellis, Andersen and Enron insiders, created and structured the LJM2 partnership. Merrill Lynch acted as the placement agent of the LJM2 partnership units to investors. It did so via a placement memorandum that made clear that Enron would be the "source" of most, if not all, the deals to be done by LJM2, that LJM2's day-to-day activities would be run by three top insiders of Enron, *i.e.*, Fastow, Kopper and Glisan, and that LJM2 would benefit from investment opportunities with Enron that "'***would not be available otherwise to outside investors***'" and this was an "'***unusually attractive investment opportunity***,'" because Fastow's "'***access to Enron's information pertaining to potential investments will contribute to superior returns***.'" In addition, Merrill Lynch told potential investors in LJM2 that in an earlier, similar partnership run by Fastow (JEDI), which also did deals with Enron, investors had tripled their money in two years – a phenomenal return – and assured investors this unique investment opportunity would generate returns of at least 30% per year. This was a blatant offer to the investors to profit from self-dealing transactions with Enron whereby the investors in LJM2 were virtually guaranteed to reap huge returns. In fact, to make clear that the LJM2 investors would always be in a position to benefit from Fastow's ability to arrange self-dealing advantageous transactions for the LJM2 partnership, the investors had the right to make no more capital contributions if Fastow left his dual role with LJM2 and Enron.

741. To reward Merrill Lynch for its participation in the Enron fraudulent scheme, Fastow allowed Merrill Lynch and a large number of top Merrill Lynch executives (including Bayly, Tilney and Thomas Davis, Merrill Lynch's Vice Chairman) to invest almost $22 million in LJM2 in late 99 – investments that were virtually guaranteed to produce huge returns – and put their money up early in 12/99 so LJM2 would have the cash to fund four SPEs to do deals with Enron at year-end 99 to

create huge profits for Enron so it could meet its 99 profit forecasts. Also, Merrill Lynch and Enron's top insiders agreed that since the LJM2 partnership was going to be so lucrative to investors, they would allow other banks (or executives of banks) that were participants in the scheme to invest in LJM2, which, as alleged herein, they did. Finally, Merrill Lynch placed the remaining LJM2 partnership units with highly favored customers of Merrill Lynch, as Merrill Lynch knew that this would be an exceptionally lucrative investment, which Merrill Lynch wanted to provide to some of its best customers to please them and stimulate further profitable business for Merrill Lynch from them.

742. Merrill Lynch knew that LJM2 was not independent of Enron and was to be used and was used to engage in non-arm's-length transactions to boost Enron's reported profits, while improperly keeping debt off its balance sheet via transactions that were not arm's length, were not fair to Enron and on terms that were not representative of terms the transactions could have been done on with independent, unrelated third parties. Merrill Lynch also provided financing to the LJM2 partnership via a $120 million line of credit to provide the financing that LJM2 needed to engage in transactions with SPEs and Enron to falsify Enron's reported results.

743. During 00-01, Merrill Lynch had another motive to keep the Enron Ponzi scheme going. Merrill Lynch was obtaining millions of dollars by writing hundreds of millions of dollars of "***credit default puts***" on Enron's publicly traded debt securities, especially Enron's zero coupon convertible notes. These "puts" required Merrill Lynch to make good on Enron's publicly traded debt if Enron defaulted within a given time period, exposing Merrill Lynch to potentially large losses. Thus, Merrill Lynch wanted to help Enron keep its financial condition looking strong so its access to the credit market would continue.

744. Merrill Lynch was willing to participate in the ongoing fraudulent scheme because such participation would provide enormous profits for Merrill Lynch as long as the Enron scheme could be continued – something that Merrill Lynch was in a unique position to help occur. While Merrill Lynch was helping Enron raise hundreds of millions of dollars, it was receiving huge fees for those services and it and its top executives were positioned to profit personally from the LJM2 vehicle if the Enron Ponzi scheme continued. Merrill Lynch knew that either with its help or the

help of other banks which were part of the scheme, so long as Enron maintained its investment-grade credit rating and continued to report strong current period financial results and credibly forecast strong ongoing revenue and profit growth, Enron's access to the capital markets would continue to enable Enron to periodically raise hundreds of millions if not billions of dollars of fresh capital from public investors which would be used to repay or reduce Enron's commercial paper debt and loans. Thus, throughout the Class Period, Merrill Lynch was pocketing millions of dollars in investment banking and advisory fees by participating in the Enron scheme to defraud and stood to continue to collect these huge fees on an annual basis going forward so long as it helped perpetuate the Enron Ponzi scheme.

745. In addition to the foregoing, Merrill Lynch also actively participated in the scheme to defraud by additional actions set forth below. First of all, in the Registration Statement and Prospectuses for the Enron securities sales where Merrill Lynch was one of the lead underwriters, those Registration Statements and Prospectuses contained false and misleading statements – ***which are statements made by Merrill Lynch as an underwriter*** – including false interim and annual financial statements, and false statements concerning the structure of and Enron's relationship to SPEs, as well as the value and condition of Enron's business operations and assets. Merrill Lynch is liable for its participation in the following offering as a lead underwriter of 27.6 million shares Enron stock at $31.34 in 2/99.

746. In addition, throughout the Class Period, Merrill Lynch ***issued*** securities analysts' reports on Enron or its analysts made statements to the media which contained false and misleading statements concerning Enron's business, finances and financial condition and its future prospects, including, but not limited to, those dated 1/20/99, 3/31/99, 4/13/99, 4/15/99, 7/14/99, 10/12/99 (Donato Eassey, *Bloomberg*), 10/12/99, 1/18/00, 1/24/00, 4/12/00, 4/13/00 (Donato Eassey, *Houston Chronicle*), 10/17/00 and 10/9/01, as pleaded herein. These were statements of Merrill Lynch made to securities markets which helped artificially inflate the trading prices of Enron's publicly traded securities. Keeping Enron's stock price inflated was important to Merrill Lynch as it knew that if the stock price fell below certain "trigger" prices, Enron would be required to issue millions of additional Enron shares which would reduce Enron's shareholders' equity by hundreds of millions

if not billions of dollars, endangering its investment-grade credit rating, cutting off its access to the capital markets and thus endangering Merrill Lynch's ability to do securities underwriting for and other profitable transactions with Enron.

747. In addition to its own direct liability for making false and misleading statements, Merrill Lynch also participated in and furthered the fraudulent scheme by helping to finance or otherwise participate in illicit transactions with Enron which it knew would contribute materially to Enron's ability to continue to falsify its financial condition and thus continue the operation of the Enron Ponzi scheme.

748. By the beginning of the Class Period, Merrill Lynch knew that Enron was falsifying its publicly reported financial results and that its true financial condition was much more precarious than was publicly known. It obtained this knowledge due to its access to Enron's internal business and financial information as one of Enron's main underwriters and financial advisors, as well as its intimate interaction with Enron's top officials which occurred virtually on a daily basis.

749. Thus, Merrill Lynch is directly liable to the Class for making false and misleading statements in Registration Statements and Prospectuses utilized by Enron and Merrill Lynch to raise billions of dollars of new capital for Enron, for false and misleading statements in analysts' reports written and issued by Merrill Lynch, which helped to artificially inflate the trading price of Enron's publicly traded securities, as well as for its knowing participation in manipulative devices, fraudulent scheme, course of conduct and fraudulent course of business of Enron, which operated to defraud purchasers of Enron's publicly traded securities during the Class Period.

G. Involvement of Barclays

750. Barclays is a huge financial services institution that had an extensive and extremely close relationship with Enron. During the Class Period, Barclays provided both commercial banking and investment banking services to Enron, help structure and finance one or more of Enron's illicit partnerships or SPEs, including the critical year-end 97 deal whereby Chewco was formed to buy out an outside investor's interest in JEDI.

751. Barclays's relationships with Enron were so extensive that senior executives at the bank constantly interacted with top executives of Enron, *i.e.*, Lay, Skilling, Causey, McMahon or

Fastow, on almost a daily basis throughout the Class Period, discussing Enron's business, financial condition, financial plans, financing needs, its partnerships and SPEs and Enron's future prospects. Barclays actively engaged and participated in the fraudulent scheme and furthered Enron's fraudulent course of conduct and business by participating in loans to it of over $3 billion during the Class Period, helping it raise almost $2 billion from the investing public via the sale of new securities during the Class Period and helping it structure and finance certain of the illicit SPEs and partnerships Enron controlled which were a primary vehicle utilized by Enron to falsify its reported financial results.

752. Barclays acted as a placement agent and/or reseller with respect to the following public offerings of Enron securities:

DATE	SECURITY
2/01	$1.9 billion zero coupon convertible notes

753. In addition, Barclays underwrote the sale of Enron-related securities. For instance:

2/00	$240 million 8.75% Yosemite Enron linked obligations

754. In addition, during the Class Period, Barclays was one of the principal commercial lending banks to Enron participating in over $3 billion in bank loans to Enron. For instance:

- Barclays was the lead lender on a $2.3 billion debt facility to finance Enron's purchase of Wessex Water in 98.
- Barclays was a co-arranger of a $250 million loan to Enron in 11/97.
- Barclays participated in the 9/98 $1 billion credit facility for Enron as well as the 8/01 $3 billion debt facility for Enron which were used to back up Enron's commercial paper debt.
- Barclays participated in a $250 million revolving credit facility for Enron arranged in 11/98.
- Barclays helped arrange and participated in a $500 million credit facility for JEDI in 5/98.

755. Barclays was willing to participate in the ongoing fraudulent scheme because such participation provided enormous profits for Barclays as long as the Enron scheme could be continued – something that Barclays was in a unique position to help occur. While Barclays was participating in the lending of hundreds of millions of dollars to Enron, it was receiving huge fees. However, Barclays was limiting its risk in this regard as it knew that either with its help or the help of other

banks which were part of the scheme, so long as Enron maintained its investment-grade credit rating and continued to report strong current period financial results and credibly forecast strong ongoing revenue and profit growth, Enron's access to the capital markets would continue to enable Enron to periodically raise hundreds of millions if not billions of dollars of fresh capital from public investors which would be used to repay or reduce Enron's commercial paper debt and the loans from Barclays to Enron so that the process could continue. In fact, the proceeds of almost all of Enron's securities sales during the Class Period, including those where Barclays acted as an underwriter, were utilized in significant part to repay Enron's existing commercial paper and bank indebtedness, including indebtedness to Barclays. Thus, during the Class Period, Barclays was pocketing millions of dollars a year in interest payments, syndication fees and investment banking fees by participating in the Enron scheme to defraud and stood to continue to collect these huge fees on an annual basis going forward so long as it helped perpetuate the Enron Ponzi scheme.

756. Barclays also participated in and furthered the fraudulent scheme by helping to finance or otherwise participate in illicit transactions with Enron which it knew would contribute materially to Enron's ability to continue to falsify its financial condition and thus continue the operation of the Enron Ponzi scheme. In addition to participating in billions of dollars of loans to Enron and to entities associated with the SPEs Enron secretly controlled as pleaded above, during the Class Period, Barclays and Enron engaged in fraudulent transactions utilizing an entity which Barclays secretly controlled, known as Chewco.

757. As detailed elsewhere, at year-end 97, Enron encountered a crisis when the investor in the JEDI partnership, which Enron had been using to do transactions with to generate substantial amounts of profits during 97, as well as move debt off its balance sheet, wanted Enron to arrange to buy out its interest in the JEDI partnership. As this happened very late in 97, and because Enron could not find a legitimate independent third-party investor to come into JEDI or buy out the other investor's interest in JEDI, Enron, Andersen and Vinson & Elkins faced a crisis which, unless solved, would result in Enron being forced to wipe out 40% of the profits it had earlier reported during 97 and put millions of dollars of debt back on its balance sheet with very adverse consequences.

758. So, with the help of Barclays, Enron's insiders quickly structured a new entity called Chewco to buy out the other investor's interest in JEDI. This required that Chewco receive significant bank financing and have independent equity investors which held 3% of Chewco. Barclays agreed to loan $240 million to Chewco on unusually favorable terms, receiving not only high interest rate payments but very significant commitment and lending fees, as well as a guarantee of the loan by Enron. ***In addition, Barclays agreed to make available approximately $11.4 million in what were called "equity loans***" to the purported equity investors in Chewco. However, because Barclays knew those equity investors were, in fact, straw persons controlled by Enron, who did not have any real credit standing, Barclays demanded that Chewco provide a secret $6.6 million cash deposit with Barclays to offset the so-called "equity loans" Barclays had made to those straw persons. ***Thus, Barclays knew the structure of the Chewco partnership was a sham and that, in fact, it was an entity with little or no outside equity in it, which it and Enron had formed for the purpose of preventing a disastrous unwinding or restatement of Enron's previously reported 97 profits and to create a secretly controlled entity that Enron could use going forward to do other non-arm's-length transactions with to generate huge profits and to move billions of dollars of debt off its balance sheet***.

759. Barclays's financing and participation in Chewco was an essential and integral part of Enron's scheme of concealing its true debt levels by moving billions of dollars of debt off its books and onto the books of SPEs it secretly controlled, while improperly recognizing millions of dollars of profits on transactions with those entities. The importance of the Chewco transactions can not be overstated. Later on, when the Enron scheme collapsed and Enron was forced to restate its prior financial results, the impact of its illicit transactions with Chewco were enormous.

760. Barclays knew that Enron was falsifying its publicly reported financial results and that its true financial condition was much more precarious than was publicly known. It obtained this knowledge due to its unlimited access to Enron's internal business and financial information as one of Enron's lead lending bank, as well as its intimate interaction with Enron's top officials which occurred virtually on a daily basis.

761. Thus, Barclays is directly liable to the Class for statements in Registration Statements and Prospectuses utilized by Enron and Barclays to raise billions of dollars of new capital for Enron, for false and misleading statements in analysts' reports written and issued by Barclays, which helped to artificially inflate the trading price of Enron's publicly traded securities, as well as for its knowing participation in manipulative devices, a fraudulent scheme, course of conduct and fraudulent course of business of Enron, which operated to defraud purchasers of Enron's publicly traded securities during the Class Period.

H. Involvement of Lehman Brothers

762. Lehman Brothers is a banking enterprise which had an extensive and extremely close relationship with Enron. During the Class Period, Lehman Brothers provided commercial banking and investment banking services to Enron, helped structure and financed one or more of Enron's illicit partnerships or SPEs and helped Enron falsify its financial statements and misrepresent its financial condition, while its securities analysts were issuing extremely positive reports on Enron extolling its business success, the strength of its financial condition and its prospects for strong earnings and revenue growth. In return for Lehman Brothers' participation in the scheme, top executives of the firm were permitted to invest at least $10 million in the lucrative LJM2 partnership.

763. Lehman Brothers' relationships with Enron were so extensive that top officials of the bank constantly interacted with top executives of Enron, *i.e.*, Lay, Skilling, Causey, McMahon or Fastow, on an almost a daily basis throughout the Class Period, discussing Enron's business, financial condition, financial plans, financing needs, its partnerships and SPEs and Enron's future prospects. Lehman Brothers actively engaged and participated in the fraudulent scheme and furthered Enron's fraudulent course of conduct and business in several ways. Lehman Brothers helped Enron and its related entities raise over $4 billion from the investing public via the sale of securities during the Class Period. It helped it structure and finance certain of the illicit SPEs and partnerships Enron controlled which were primary vehicles utilized by Enron to falsify its reported financial results. It engaged in transactions with Enron to disguise loans to Enron and help Enron falsify its true financial condition, liquidity and creditworthiness.

764. In interacting with Enron, Lehman Brothers functioned as a consolidated and unified entity. There was no so-called "Chinese Wall" to seal off the Lehman Brothers securities analysts from the information which Lehman Brothers obtained rendering commercial and investment banking services to Enron. Alternatively, even if some restrictions on the information made available to Lehman Brothers' securities analysts existed, that unilateral and self-serving action was insufficient to prevent the imputation of all knowledge (and scienter) possessed by the Lehman Brothers legal entity, as its knowledge and liability in this case is determined by looking at Lehman Brothers as an overall legal entity.

765. Lehman Brothers acted as an underwriter for billions of dollars of Enron securities. For instance:

DATE	SECURITY
11/93	8 million shares 8% Enron capital preferred shares at $25 per share
8/97	$150 million 6.5% Enron notes
5/98	35 million shares Enron common stock at $25 per share
5/99	$500 million 7.375% Enron notes
7/98	$500 million 6.40% and 6.95% Enron notes
2/99	27.6 million shares Enron common stock at $31.34 per share
5/00	$500 million Enron notes
2/01	$1.9 billion Enron zero coupon convertible notes

766. In addition, Lehman Brothers acted as underwriter of billions of dollars of other Enron-related securities. For instance:

DATE	SECURITY
10/00	27.6 million shares of New Power at $21 per share
7/01	$1 billion 6.375% and 7.79% Osprey Trust and Osprey I Inc. notes

767. Lehman Brothers was willing to engage and participate in the ongoing fraudulent scheme because such participation created enormous profits for Lehman Brothers as long as the Enron scheme continued in operation – something that Lehman Brothers was in a unique position to help occur. While Lehman Brothers was lending millions to Enron, it was receiving huge fees and

interest payments. However, Lehman Brothers was limiting its own risk in this regard, as it knew that either with its help or the help of other banks which were part of the scheme, so long as Enron maintained its investment-grade credit rating and continued to report strong current period financial results and credibly forecast strong ongoing revenue and profit growth, Enron's access to the capital markets would continue to enable Enron to raise hundreds of millions if not billions of dollars of fresh capital from public investors which would be used to repay or reduce Enron's commercial paper debt and the loans from Lehman Brothers to Enron so that the Enron Ponzi scheme could continue. In fact, the proceeds of Enron's securities offerings during the Class Period underwritten by Lehman Brothers or other investment banks were utilized to repay Enron's existing commercial paper and bank indebtedness. During the Class Period, Lehman Brothers was pocketing millions of dollars in interest payments, syndication fees and investment banking fees by engaging and participating in the Enron scheme to defraud and stood to ***continue*** to collect these huge fees on an annual basis going forward so long as it helped perpetuate the Enron Ponzi scheme.

768. In addition, Lehman Brothers also engaged and participated in the scheme to defraud by the additional actions set forth below. First of all, the Registration Statements and Prospectuses for the Enron securities sales where Lehman Brothers was one of the lead underwriters contained false and misleading statements – ***which are statements made by Lehman Brothers as an underwriter*** – including false interim and annual financial statements, and false statements concerning the structure of and Enron's relationship to SPEs and related parties, as well as the value and condition of Enron's business operations and assets. Lehman Brothers is liable under §11 for the following offerings:

5/99	$500 million 7-3/8% Enron notes
5/00	$500 million Enron notes

769. In addition, throughout the Class Period, Lehman Brothers ***issued*** analysts' reports on Enron which contained false and misleading statements concerning Enron's business, finances and financial condition and its prospects, including, but not limited to, those dated 12/9/98, 4/7/99, 5/7/99, 9/21/99, 10/1/99 (Ted A. Izatt, Lehman Brothers Senior Vice President, quoted in *CFO Magazine*), 1/21/00, 4/13/00, 10/18/00, 3/12/01, 4/18/01, 7/26/01, 8/14/01, 8/15/01, 8/17/01, 10/23/01

and 10/24/01, as pleaded herein. ***These were all statements by Lehman Brothers*** to the securities markets which helped to artificially inflate the trading prices of Enron's publicly traded securities. Keeping Enron's stock price inflated was important to Lehman Brothers as it knew that if the stock price fell below various "trigger" prices, Enron would be required to issue millions of additional Enron shares, which would reduce Enron's shareholder equity by hundreds of millions if not billions of dollars, endanger its investment grade credit rating, likely cut off its access to the capital markets and thus endanger the ongoing scheme from which Lehman Brothers was profiting.

770. Lehman Brothers also actively engaged and participated in the Enron fraudulent scheme by helping it structure and finance the critical LJM2 SPE. In this regard, Lehman Brothers executives were permitted to invest $10 million in LJM2 – a reward to Lehman Brothers for its participation in the scheme – to facilitate the financing of that critical vehicle, ***and to put money up early*** – on or about 12/2/299 – so that Enron could do deals in late 99 to artificially inflate Enron's reported 99 profits.

771. During the Class Period, Lehman Brothers knew that Enron was falsifying its publicly reported financial results and that its true financial condition was much more precarious than was publicly known. It obtained this knowledge due to its access to Enron's internal business and financial information as Enron's lead lending bank, as well as its intimate interaction with Enron's top officials which occurred virtually on a daily basis.

772. Thus, Lehman Brothers is directly liable to the Class for making false and misleading statements in Registration Statements and Prospectuses utilized by Enron and Lehman Brothers to raise billions of dollars of new capital for Enron, for false and misleading statements in analysts' reports written and issued by Lehman Brothers, which helped to artificially inflate the trading price of Enron's publicly traded securities, as well as for its knowing participation in a fraudulent scheme, course of conduct and fraudulent course of business of Enron, which operated to defraud purchasers of Enron's publicly traded securities during the Class Period.

I. Involvement of Bank America

773. Bank America is a huge financial services enterprise that had an extensive and extremely close relationship with Enron. During the Class Period, it provided both commercial

banking and investment banking services to Enron, helped structure and finance one or more of Enron's illicit partnerships or SPEs and helped Enron falsify its financial statements and misrepresent its financial condition, while its securities analysts were issuing extremely positive reports on Enron, extolling its business success, the strength of its financial condition and its prospects for strong earnings and revenue growth. In return for Bank America's participation in the scheme, on top of the huge underwriting and consulting fees and interest payments and commitment fees and other payments Bank America got from Enron and related entities, top executives of Bank America were permitted to personally invest at least $45 million in the lucrative LJM2 partnership as a reward to them for orchestrating Bank America's participation in this fraud.

774. Bank America's relationships with Enron were so extensive that top officials of the bank constantly interacted with top executives of Enron, *i.e.*, Lay, Skilling, Causey, McMahon or Fastow, on an almost a daily basis throughout the Class Period, discussing Enron's business, financial condition, financial plans, financing needs, its partnerships and SPEs and Enron's future prospects. Bank America actively engaged and participated in the fraudulent scheme and furthered Enron's fraudulent course of conduct and business in several ways. It participated in loans of over $4 billion to Enron during the Class Period, helped it raise over $2 billion from the investing public via the sale of securities during the Class Period and helped it structure and finance certain of the illicit SPEs and partnerships Enron controlled, which were primary vehicles utilized by Enron to falsify its reported financial results, and engaged in transactions with Enron to disguise loans to Enron and help Enron falsify its true financial condition, liquidity and creditworthiness.

775. In interacting with Enron, Bank America functioned as a consolidated and unified entity. There was no so-called "Chinese Wall" to seal off the Bank America securities analysts from the information which Bank America obtained rendering commercial and investment banking services to Enron. Alternatively, even if some restrictions on the information made available to Bank America's securities analysts existed, that was insufficient to prevent the imputation of all knowledge possessed by the Bank America legal entity, as its knowledge and liability in this case is determined by looking at that as an overall legal entity.

776. Bank America acted as an underwriter for Enron securities. For instance:

DATE	SECURITY
11/97	$250 million 6.675% Enron notes
5/98	35 million shares Enron common stock at $25 per share
2/99	27.6 million shares Enron common stock at $31.34 per share
5/99	$500 million 7.375% Enron notes
8/99	$222 million 7% Enron exchangeable notes
5/00	$500 million 8.375% Enron notes due 2005
2/00	$1.9 billion Enron zero coupon convertible notes

777. In addition, Bank America acted as underwriter of other Enron-related securities. For instance:

DATE	SECURITY
12/98	$175 million 6% Enron Oil & Gas notes
7/99	27 million common shares Enron Oil & Gas at $20.25 per share
7/01	$1 billion 6.31% and 6.19% senior notes in Marlin Water Trust-II and Marlin Water Capital-II

778. Bank America also acted as a lead underwriter in the Azurix IPO on 10/4/00, selling 38.5 million shares at $19, generating $370 million in fresh capital for Enron, which sold at least 19.5 million shares of Azurix stock in that IPO.

779. During the Class Period, Bank America was one of the principal commercial lending banks to Enron, acting with CitiGroup and JP Morgan on Enron's main credit facilities, participating in over $4 billion in loans and credit facilities to Enron or Enron-related entities. For instance:

DATE	TRANSACTION
9/98	$1 billion Enron credit facility to back up Enron commercial paper
7/01	$582 million project credit facility
8/01	$3 billion Enron credit facility to back up Enron commercial paper
6/02	$457 million loan to finance Dabhol power plant

780. Bank America was willing to engage and participate in the ongoing fraudulent scheme because such participation created enormous profits for Bank America as long as the Enron scheme continued in operation – something that Bank America was in a unique position to help occur. While Bank America was lending hundreds of millions to Enron and syndicating hundreds of millions of dollars of additional loans, it was receiving huge fees and interest payments for those loans and syndication services. However, Bank America was limiting its own risk in this regard, as it knew that either with its help or the help of other banks which were part of the scheme, so long as Enron maintained its investment-grade credit rating and continued to report strong current period financial results and credibly forecast strong ongoing revenue and profit growth, Enron's access to the capital markets would continue to enable Enron to raise hundreds of millions if not billions of dollars of fresh capital from public investors which would be used to repay or reduce Enron's commercial paper debt and the loans from Bank America to Enron so that the Enron Ponzi scheme could continue. In fact, the proceeds of Enron's securities offerings during the Class Period underwritten by Bank America or other investment banks were utilized in significant part to repay Enron's existing commercial paper and bank indebtedness, including indebtedness to Bank America. Thus, throughout the Class Period, Bank America was pocketing millions of dollars a year in interest payments, syndication fees and investment banking fees by engaging and participating in the Enron scheme to defraud and stood to ***continue*** to collect these huge fees on an annual basis going forward so long as it helped perpetuate the Enron Ponzi scheme. Thus, Bank America wanted to help Enron keep its financial condition looking strong so its access to the credit market would continue.

781. In addition to the foregoing, Bank America also engaged and participated in the scheme to defraud by the additional actions set forth below. First of all, the Registration Statements and Prospectuses for the Enron securities sales where Bank America was one of the underwriters contained false and misleading statements – ***which are statements made by Bank America as an underwriter*** – including false interim and annual financial statements, and false statements concerning the structure of and Enron's relationship to SPE and related parties, as well as the value and condition of Enron's business operations and assets. Bank America is liable under §11 for its participation in the following offerings as a lead underwriter:

5/99 $500 million Enron notes

8/99 $222 million Enron exchangeable notes

5/00 $500 million Enron notes

782. In addition, throughout the Class Period, Bank America ***issued*** analysts' reports on Enron which contained false and misleading statements concerning Enron's business, finances and financial condition and its prospects, including, but not limited to, those dated 9/30/99, 10/12/99, 10/15/99, 12/16/99, 1/12/00, 1/18/00, 1/20/00, 4/17/00, 10/17/00, 8/15/01, 8/28/01 and 10/16/01, as pleaded herein. ***These were all statements by Bank America*** to the securities markets which helped to artificially inflate the trading prices of Enron's publicly traded securities. Keeping Enron's stock price inflated was important to Bank America as it knew that if the stock price fell below various "trigger" prices, Enron would be required to issue millions of additional Enron shares, which would reduce Enron's shareholders' equity by hundreds of millions if not billions of dollars, endanger its investment-grade credit rating, likely cut off its access to the capital markets and thus endanger the ongoing scheme from which Bank America was profiting.

783. In addition to its own direct liability for making false and misleading statements, Bank America also engaged and participated in and furthered the fraudulent scheme by helping to finance or otherwise participate in illicit transactions with Enron which it knew would contribute materially to Enron's ability to continue to falsify its financial condition.

784. During the Class Period, Bank America knew that Enron was falsifying its publicly reported financial results and that its true financial condition was much more precarious than was publicly known. It obtained this knowledge due to its access to Enron's internal business and financial information as Enron's lead lending bank, as well as its intimate interaction with Enron's top officials which occurred virtually on a daily basis.

785. Bank America also actively participated in the Enron fraudulent scheme by helping it structure and finance the critical LJM2 SPE. In this regard, Bank America's top executives were permitted to invest some $45 million in equity money to facilitate the financing of that critical vehicle so LJM2 would have the cash to fund four SPEs to do deals with Enron at year-end 99 to create huge profits for Enron so it could meet its 99 profit forecasts. LJM2 was an investment that was, as

described above, virtually guaranteed to generate huge returns for investors and was really a reward to Bank America for its participation in the scheme.

786. Thus, Bank America is directly liable to the Class for making false and misleading statements in Registration Statements and Prospectuses utilized by Enron and Bank America to raise billions of dollars of new capital for Enron, for false and misleading statements in analysts' reports written and issued by Bank America, which helped to artificially inflate the trading price of Enron's publicly traded securities, as well as for its knowing participation in a fraudulent scheme, course of conduct and fraudulent course of business of Enron, which operated to defraud purchasers of Enron's publicly traded securities during the Class Period.

J. Involvement of Deutsche Bank

787. Deutsche Bank is a huge banking enterprise that had an extremely close relationship with Enron. During the Class Period, Deutsche Bank provided commercial banking and investment banking services to Enron, helped structure or finance one or more of Enron's illicit partnerships or SPEs and helped Enron falsify its financial statements and misrepresent its financial condition, while its securities analysts were issuing extremely positive reports on Enron extolling its business success, the strength of its financial condition and its prospects for strong earnings and revenue growth. In return for Deutsche Bank's participation in the scheme, its top executives were permitted to invest at least $10 million in the lucrative LJM2 partnership.

788. Deutsche Bank's relationships with Enron were so extensive that top officials of the bank constantly interacted with top executives of Enron, *i.e.*, Lay, Skilling, Causey, McMahon or Fastow, on almost a daily basis throughout the Class Period, discussing Enron's business, financial condition, financial plans, financing needs, its partnerships and SPEs and Enron's future prospects. Deutsche Bank actively engaged and participated in the fraudulent scheme and furthered Enron's fraudulent course of conduct and business in several ways. It participated in loans of over $2 billion to Enron during the Class Period, it helped it raise over $5 billion from the investing public via the sale of the securities of Enron and Enron-related entities during the Class Period, it helped it structure and finance certain of the illicit SPEs and partnerships Enron controlled which were primary vehicles utilized by Enron to falsify its reported financial results and engaged in transactions with Enron to

disguise loans to Enron and help Enron falsify its true financial condition, liquidity and creditworthiness.

789. In interacting with Enron, Deutsche Bank functioned as a consolidated and unified entity. There was no so-called "Chinese Wall" to seal off the Deutsche Bank securities analysts from the information which Deutsche Bank obtained rendering commercial and investment banking services to Enron. Alternatively, even if some restrictions on the information made available to Deutsche Bank's securities analysts existed, that unilateral and self-serving action was insufficient to prevent the imputation of all knowledge (and scienter) possessed by the Deutsche Bank legal entity, as its knowledge and liability in this case is determined by looking at Deutsche Bank as an overall legal entity.

790. Deutsche Bank acted as an underwriter for billions of dollars of Enron securities. For instance:

DATE	SECURITY
1/97	6 million shares 8-1/8% Enron capital preferred shares at $25 per share
2/99	27.6 million shares Enron common stock at $31.34 per share
2/01	$1.9 billion Enron zero coupon convertible notes

791. In addition, Deutsche Bank acted as underwriter of billions of dollars of other Enron-related securities. For instance:

DATE	SECURITY
7/01	$1 billion 6.31% and 6.19% Marlin Water Trust I and Marlin Water Capital Corp. II notes
9/00	$1 billion 6.375% and 7.797% Osprey Trust and Osprey I Inc. notes

792. Deutsche Bank also acted as a lead underwriter in the Azurix IPO on 6/9/99, selling 38.5 million shares at $19. This offering allowed Enron to sell at least 19.5 million shares of Azurix stock obtaining $370 million of badly needed capital.

793. During the Class Period, Deutsche Bank was also one of the principal commercial lending banks to Enron, acting with CitiGroup as a lead bank on Enron's main credit facilities, loaning

over a billion dollars to Enron, while helping to syndicate over $4 billion in bank loans to Enron or related entities. For instance:

DATE	TRANSACTION
7/98	$252 million Enron loan
8/98	$1 billion Enron credit line to back up commercial paper.
11/98	$582 million Enron credit line
7/01	$650 million Enron credit line

794. Deutsche Bank was willing to engage and participate in the ongoing fraudulent scheme because such participation created enormous profits for Deutsche Bank as long as the Enron scheme continued – something that Deutsche Bank was in a unique position to help occur. While Deutsche Bank was lending hundreds of millions to Enron and syndicating hundreds of millions of dollars of additional loans, it was receiving huge fees and interest payments for those loans and syndication services. However, Deutsche Bank was limiting its own risk in this regard, as it knew that either with its help or the help of other banks which were part of the scheme, so long as Enron maintained its investment grade credit rating and continued to report strong current period financial results and continued to credibly forecast strong ongoing revenue and profit growth, Enron's access to the capital markets would continue to enable Enron to raise hundreds of millions if not billions of dollars of fresh capital from public investors which would be used to repay or reduce Enron's commercial paper debt and the loans from Deutsche Bank to Enron so that the Enron Ponzi scheme could continue. In fact, the proceeds of Enron's securities offerings during the Class Period underwritten by Deutsche Bank or other investment banks were utilized to repay Enron's existing commercial paper and bank indebtedness, including indebtedness to Deutsche Bank. Thus, throughout the Class Period, Deutsche Bank was pocketing millions of dollars a year in interest payments, syndication fees and investment banking fees by engaging and participating in the Enron scheme to defraud and stood to ***continue*** to collect these huge fees on an annual basis going forward so long as it helped perpetuate the Enron Ponzi scheme.

795. In addition, Deutsche Bank also engaged and participated in the scheme to defraud by the additional actions set forth below. First of all, the Registration Statements and Prospectuses

for the Enron securities sales where Deutsche Bank was one of the lead underwriters contained false and misleading statements – ***which are statements made by Deutsche Bank as an underwriter*** – including false interim and annual financial statements, and false statements concerning the structure of and Enron's relationship to SPEs and related parties, as well as the value and condition of Enron's business operations and assets. Deutsche Bank is liable for its participation in Enron's 27.6 million share common stock offering in 2/99 and for its participation in the resale of the Enron zero coupon convertible notes on and after 7/18/01.

796. In addition, throughout the Class Period, Deutsche Bank ***issued*** analysts' reports on Enron which contained false and misleading statements concerning Enron's business, finances and financial condition and its prospects, including, but not limited to, those dated 1/13/99, 1/20/99, 4/13/99, 5/25/99, 7/13/99, 1/28/00, 4/14/00, 5/26/00, 7/25/00 and 9/15/00, as pleaded herein. ***These were all statements by Deutsche Bank*** to the securities markets which helped to artificially inflate the trading prices of Enron's publicly traded securities. Keeping Enron's stock price inflated was important to Deutsche Bank as it knew that if the stock price fell below various "trigger" prices, Enron would be required to issue millions of additional Enron shares, which would reduce Enron's shareholder equity by hundreds of millions if not billions of dollars, endanger its investment grade credit rating, likely cut off its access to the capital markets and thus endanger the ongoing scheme from which Deutsche Bank was profiting.

797. Deutsche Bank also actively engaged and participated in the Enron fraudulent scheme by helping it structure and finance the critical LJM2 SPE. In this regard, Deutsche Bank executives were permitted to invest $10 million in LJM2 to facilitate the financing of that critical once very lucrative vehicle to reward Deutsche Bank for its participation in the scheme and ***put their money up early*** – on or about 12/22/99 – so LJM2 would have the cash to fund four SPEs to do deals with Enron at year-end 99 to create huge profits for Enron so it could meet its 99 profit forecasts.

798. During the Class Period, Deutsche Bank knew that Enron was falsifying its publicly reported financial results and that its true financial condition was much more precarious than was publicly known. It obtained this knowledge due to its access to Enron's internal business and

financial information as Enron's lead lending bank, as well as its intimate interaction with Enron's top officials which occurred virtually on a daily basis.

799. Thus, Deutsche Bank is directly liable to the Class for making false and misleading statements in Registration Statements and Prospectuses utilized by Enron and Deutsche Bank to raise billions of dollars of new capital for Enron, for false and misleading statements in analysts' reports written and issued by Deutsche Bank, which helped to artificially inflate the trading price of Enron's publicly traded securities, as well as for its knowing participation in a fraudulent scheme, course of conduct and fraudulent course of business of Enron, which operated to defraud purchasers of Enron's publicly traded securities during the Class Period.

INVOLVEMENT OF THE LAW FIRMS

A. Involvement of Vinson & Elkins

800. The apparent complicity of Vinson & Elkins in the scheme to defraud Enron investors has received extensive media coverage.

> Vinson & Elkins may have to fight for its reputation because of its close ties to Enron, which has become embroiled in a financial scandal that has culminated in the nation's largest-ever bankruptcy filing.... [T]he Enron scandal is creeping into the vaunted halls of Vinson & Elkins.
>
> From a start in the early 1970s, Enron grew in importance on Vinson & Elkins's client list. By the late 1990s, as Enron muscled its way to an energy trading powerhouse, it became Vinson & Elkins's ***largest client***, accounting for more than 7 percent of the firm's revenues, and helping fuel growth in the firm's securities, corporate and project finance practices. The ties between the firm and Enron were close, and the link was cemented as about 20 Vinson & Elkins lawyers, including recently retired general counsel James V. Derrick, left the firm over the years and accepted jobs in Enron's legal department.

The Recorder, 3/14/02.

> Near the end of Sherron Watkins' extraordinary August memo to her boss, Kenneth Lay, outlining concerns about Enron's accounting practices, ***she cautions against having the company's regular outside counsel Vinson & Elkins investigate the issues she raised***.
>
> "***Can't use V&E due to conflict," she wrote, "they provided some 'true sale' opinions on some of the deals.***"
>
> But Enron did tap Houston-based V&E to handle the investigation. The result was a nine-page letter to Enron's general counsel (and former V&E partner) James Derrick Jr., on Oct. 15 from partner Max Hendrick that, in effect, ***brushed Watkins' concerns aside***....
>
> ***The letter is striking for the narrowness of the investigation, the key people who were not interviewed, and for the way in which it fails to fully probe bombshell allegations*** ....
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> * * *
>
> If V&E downplayed the substance of Watkins' allegations, it clearly realized that Enron's accounting might not stand up well to public scrutiny and could be portrayed very poorly in the press or in shareholder actions. V&E precisely identified the areas in which the company's accounting was most suspect, including the use of Enron stock to capitalize the partnerships, and the recognition of earnings through transactions involving no true third party. These factors, and others, led V&E to conclude that Enron was at "serious risk for adverse publicity and litigation."
>
> ***Despite that, V&E found that none of Watkins' allegations warranted further investigation*** ....

The Daily Deal, 1/17/02.

Just six weeks after Enron Corp. directed its lawyers at Vinson & Elkins to investigate allegations about its secret partnerships, a report came back Oct. 15 ***saying everything was just fine. No need for "further widespread investigation," the lawyers added***.

The very next day, Enron delivered the first in a series of shocks when it slashed shareholder equity by $1.2 billion, partly due to the partnerships. Sixteen days later the board of directors launched their own inquiry, ***which quickly found massive improprieties***. And on Dec. 2, Enron filed for bankruptcy protection.

"Even as the Titanic was sinking, there were certain rooms that were perfectly dry," said Matthew Spitzer, USC Law School dean. "If you asked someone in one of those rooms, 'See any water?,' they'd say no. ***That's the sort of investigation Vinson & Elkins did***."

Los Angeles Times, 3/14/02.

[R]ecent documents released by congressional committees investigating Enron, as well as a scathing report produced by the Enron board's own investigating committee, suggest that [Vinson & Elkins] ***may have been too cozy with its biggest client***.

* * *

In 1997, when Enron launched a new strategy to move debt off its books by using partnerships operated by its own financial officer, it turned to Vinson & Elkins for guidance on how to make the deals work.

Enron's management and board of directors relied heavily on the perceived approval by Vinson & Elkins of how the deals were structured and reported, according to the board's special investigating committee.... [I]t ... said it observed an absence of "objective and professional advice by outside counsel at Vinson & Elkins."

Among the report's allegations:

The law firm was "***consulted frequently***" on the transaction documents for partnership deals that allowed Enron to get around accounting rules. ***The firm accommodated Enron's desire for one partnership, Chewco, to be formed quickly, completing the necessary legal documentation in 48 hours***.

* * *

The firm shared in the failure to disclose the extent to which Enron Chief Financial Officer Andrew Fastow was benefitting from his ownership in the partnerships doing business with Enron.

The firm agreed to investigate the allegations that Watkins raised, even though she said the firm had an inherent conflict of interest. The Powers report, which was released Feb. 1, said that by limiting the scope of the Vinson & Elkins probe, Enron predetermined the outcome: ***No further investigation was merited***.

* * *

Moreover, in one memo to Lay, Watkins said that on Oct. 16 ***she told Joe Dilg, Vinson & Elkins's managing partner, that Enron ought to "come clean and***

admit problems." She said the company should restate its 2000 financial earnings to incorporate the ledgers of the partnerships known as Raptors.

Watkins said Dilg replied, "Are you suggesting that Ken Lay should ignore the advice of his counsel and auditors concerning this matter?"

The Fort Worth Star Telegram, 2/24/02.

Aftershocks from the collapse of Enron Corp. have rocked the energy giant's auditors, bankers – ***and now its attorneys. Houston law firm Vinson & Elkins was the latest to be hit when news broke that it had shrugged off allegations of accounting fraud by whistle-blower Sherron S. Watkins. That's an incendiary revelation, for certain***....

... Most experts agree that V&E's seemingly dismissive attitude about the Watkins allegations – months after the transactions she complained about took place – probably does not meet the standard for either criminal or civil liability. ***But that verdict might be different if it turns out that the firm's attorneys also helped Enron devise some of the complex deals that wound up sinking the company in the first place***.

There are growing indications that may just be the case. In her missive to Enron chairman and CEO Kenneth L. Lay, Watkins suggested that the law firm wrote so-called opinion letters vouching for the legality of some of the deals now under scrutiny. ***And according to two ex-Enron executives contacted by BusinessWeek, Vinson & Elkins played a creative role in structuring and managing some of the company's controversial "special purpose" partnerships. One former executive in the company's Houston office says employees would approach Vinson & Elkins lawyers "and say, 'this thing needs to work. How do we make it work?'" This source adds that the firm also gave Enron advice on how much information it had to disclose about its financial machinations in its 10K and 10Q reports to the SEC***.

... "***Under those fact scenarios, they could have real problems***," says [University of Illinois law professor Ronald D. Rotunda, an expert in legal ethics].

* * *

... And Enron is V&E's single largest customer. ***In 2001, Enron accounted for more than 7% of V&E's $450 million in revenue***. The law firm had several lawyers working virtually full-time on company business, including some permanently stationed in its offices. ***By contrast, Enron contributed less than 1% to auditor Arthur Andersen's revenues***.

... In her letter, Watkins claimed that the firm "***provided some true sale opinions on some of the deals" related to the so-called Condor and Raptor deals.... [T]rue sale opinions are letters that law firms write vouching for the fact that business transactions meet particular legal requirements.*** So, for example, they might certify that title has passed in a particular deal or that it was conducted between two legally independent parties. Such documents would have been important to Enron, since many of its deals took place with partnerships in which it held a large stake.

* * *

According to one former Enron employee, the company might not have been able to pull off many of the transactions now under investigation with Vinson & Elkins's opinion letters. The company "opinion-shopped for what it needed," says this source. "***If it hadn't gotten the opinion letters, it couldn't have done the deals***."

BusinessWeek, 1/28/02.

For weeks, the press and public talked around the edges of the quality of the legal work Vinson & Elkins did for the disgraced and embattled Enron Corp.

Then the Powers report laid it bare.

Prepared by a former enforcement director of the Securities and Exchange Commission, Wilmer, Cutler & Pickering partner William McLucas, the Feb. 1 report on behalf of a special committee of the Enron Corp. board contends that Vinson & Elkins ***was in fact involved in many of Enron's most controversial deals – and was also involved in decisions about how to disclose those deals to the public***.

The document ... sharply criticizes the firm for "***an absence of ... objective and critical professional advice***."

* * *

The Powers report focuses on the formation and activities of Enron's now-infamous partnerships – known as JEDI, Chewco, LJM1, LJM2 and the cluster of entities dubbed the Raptors.

The report's summary of Enron's use of Chewco, LJM1 and LJM2 is particularly damning.

"***Many of the most significant transactions apparently were designed to accomplish favorable financial statement results, not to achieve bona fide economic objectives or to transfer risk***."

It continues, "Other Transactions were implemented – improperly, we are informed by our accounting advisors – to offset losses. They allowed Enron to conceal from the market very large losses resulting from Enron's merchant investments by creating an appearance that those investments were hedged ... when in fact that third party was simply an entity in which only Enron had a substantial economic stake."

The report asserts that these deals "resulted in" Enron overstating its earnings from the third quarter of 2000 through the third quarter of last year by almost $1 billion.

* * *

... ***[T]he report also asserts that Vinson & Elkins played a significant role***.

According to the Powers document, the law firm "***provided advice and documentation" for many of these partnership deals and "assisted Enron with the preparation of its disclosures of related-party transactions in the proxy statements and the footnotes to the financial statements in Enron's periodic SEC filings***."

> Enron's managers and its board "***relied heavily on the perceived approval by Vinson & Elkins of the structure and disclosure of the transactions," the report claims.... [T]he report concludes, the firm "should have brought a stronger, more objective and more critical voice to the disclosure process***."

Legal Times, "Vinson & Elkins Shoots Back," 2/11/02.

> ***Newsweek has obtained confidential legal documents showing that Enron knew about a disastrous accounting error months before mentioning it in a crucial Oct. 16 meeting with investors. And that lawyers probing Sherron Watkins's allegations of accounting irregularities found the error, yet didn't put it in their report***.
>
> A memo written by Max Hendrick III of Vinson & Elkins, Enron's outside law firm, ***shows that Enron's chief accounting officer knew in August that Enron had made a huge mistake accounting for one of its controversial off-the-books partnerships***.... "Causey pointed out that an unfortunate error will require an adjustment to the third quarter [financial] statements" during an Aug. 31 interview, the memo says. "Causey characterizes this as a simple mistake that now requires correction." That "simple mistake" forced a $1.2 billion reduction of Enron's net worth. That reduction – and Enron's failure to produce a quick, clear explanation for it – ***sowed mistrust of all Enron's numbers. That mistrust was a crucial factor in Enron's implosion. So how could V&E not mention the bookkeeping problem in its Oct. 15 report to Enron***?

Newsweek, 2/25/02.

> Lawyers for Andrew Fastow, Enron's former chief financial officer, told investigators that he was not responsible for signing off on the accounts for the controversial private partnerships that brought the company down.
>
> Instead, his attorneys ***pointed the finger at the company's lawyers*** and accountants, ***saying Mr. Fastow relied on them for disclosing and approving any questionable deals***.

Financial Times, 3/20/02.

801. Vinson & Elkins was general corporate counsel to Enron for many years and throughout the Class Period. Enron was Vinson & Elkins's largest client. Vinson & Elkins participated in the negotiations for, prepared the transaction documents for, and structured Enron's LJM and Chewco/JEDI partnerships and virtually all of the related SPE entities and transactions – manipulative devices which falsified Enron's reported profits and financial condition. These manipulations resulted in Enron's massive restatement in 11/01 and collapse into bankruptcy shortly thereafter. Vinson & Elkins knew that these partnership entities and SPE entities were ***not*** independent of Enron and were ***not*** valid SPEs, but rather, were manipulative contrivances being utilized to artificially inflate Enron's reported financial results. Nevertheless, Vinson & Elkins

repeatedly gave "true sale" and other opinions that were false - but were indispensable for those deals to "close," *i.e.*, take place, and the fraudulent scheme to continue. Vinson & Elkins also drafted and/or approved the adequacy of Enron's press releases, shareholder reports and SEC filings (including 10Ks and Registration Statements alleged in this Complaint which Vinson & Elkins knew were false and misleading). Vinson & Elkins also wrote the disclosures regarding the related party transactions, which Vinson & Elkins knew were misleading and concealed material facts concerning those transactions. Finally, during the Summer and Fall of 01, Vinson & Elkins also engaged and participated in covering up the fraudulent scheme and wrongful course of business by conducting a whitewash investigation of what it knew were correct allegations of fraudulent misconduct – which Vinson & Elkins had itself been involved in.

802. Vinson & Elkins's involvement in and knowledge of Enron's manipulative off-balance-sheet transactions was extraordinarily extensive. Vinson & Elkins provided advice in structuring virtually every one of Enron's off-balance-sheet transactions and prepared the transaction documents (including opinions) for deals involving at least the following entities:

Azurix	JEDI	Mahonia Ltd.
Canvasback	JEDI/Big River/Little River	Marengo
CASHCo.	JEDI/Condor	Marlin
Cayco	JEDI/Osprey/Whitewing/Condor	Newco
Condor	JEDI/Whitewing	Osprey
Cortez Energy	JEDI II	Red River
EES	JEDI II/Ontario	Sonoma
Egret	LJM	Sundance
Enron Brazil	LJM/Condor/Raptor	Wessex
Enron Broadband	LJM/Brazil Power Plant	Whitewing
Enron Global Power	LJM2	Yosemite
Firefly	LJM2/Chewco	Yukon
Iguana	LJM2/Raptors I, II, III, IV	

803. A prime example of the depth of Vinson & Elkins's knowledge of, and participation in the fraudulent scheme was the hiding of billions of dollars of debt that should have been on Enron's balance sheet via the Mahonia phony commodities trades – a contrivance involving JP Morgan. Vinson & Elkins issued opinions to Enron, Mahonia and JP Morgan representing that billions of dollars in forward sales contracts of natural gas and oil by Enron were legitimate commodities trades when, in fact, as Vinson & Elkins knew, the trades were bogus – manipulative devices to disguise loans from JP Morgan to Enron so those loans would not have to be shown as debt on Enron's

balance sheet. No physical delivery of product was required or contemplated. Rather, the transactions were disguised loans through Mahonia, an entity set up by and controlled by JP Morgan. Mahonia and the bogus trades were an artifice to allow Enron to keep some $3.9 billion in debt off its balance sheet.

(1) Vinson & Elkins's Role in the SPEs

804. Vinson & Elkins knew that Enron was using phony SPEs to inflate the Company's financial statements because of its role in the formation of, and transactions with, each of those entities. For example, Vinson & Elkins was intimately involved in the last-minute formation of Chewco at year-end 97.

805. In late 97, Enron learned that JEDI had to be restructured, as JEDI's outside investor was going to withdraw. This created a crisis. Because of the involvement of the outside investor in JEDI, JEDI had been treated as independent of Enron and had ***not*** been consolidated into Enron's financial statements and results. Thus, Enron had been able to engage in transactions with JEDI as an independent third party, recognize revenue and profits from those transactions and not carry JEDI's debt on Enron's books. However, in late 97, unless JEDI could be quickly restructured by having a new, independent investor come forward, ***Enron would have to wipe out all of the profitable transactions it had done with JEDI in 97 – 40% of that year's profits – put millions of dollars of JEDI's debt on Enron's balance sheet and lose the ability to generate profits from similar such deals with JEDI or its successor going forward***.

806. However, Enron ***could not find a legitimate buyer for the outside investor's interest*** in JEDI. So Vinson & Elkins along with Enron quickly formed a new entity called Chewco, which Enron and an Enron executive (Kopper) controlled, to buy the outside investor's interest in JEDI. Vinson & Elkins knew Chewco ***did not have an outside equity investor with a 3% stake – the minimum required to enable Chewco or JEDI to be treated as an independent third party. Barclays loaned some $240 million to JEDI (guaranteed by Enron) to allow it to do the deals with Enron necessary to artificially boost Enron's reported results and also loaned the money to two straw parties to provide the funds for the "equity" investment in Chewco. But because the purported equity investors in Chewco were, in fact, "strawmen" for Enron, Barclays required Chewco to***

secretly guarantee the purported "equity" loans Barclays made to the two "strawmen" via a $6.6 million secret cash deposit with Barclays and Enron provided directly or indirectly the balance of the "equity" money. Had proper accounting procedures been followed, because there was no legitimate independent outside investor in Chewco, Chewco was required to have been consolidated with Enron and ***all of Enron's 97 profits generated by transactions with JEDI would have been eliminated***!

807. By forming Chewco at year-end 97, Enron and Vinson & Elkins avoided a disaster by keeping Enron's previously recorded profits from transactions with JEDI in place, thus inflating Enron's 97 reported profits. ***Thus, Chewco/JEDI was not a valid SPE meeting the requirements for non-consolidation. Notwithstanding this, Enron did not consolidate Chewco/JEDI into Enron's financial statements during 97-01 and used Chewco/JEDI to generate false profits from 97 through 01***, in transactions that Vinson & Elkins participated in structuring and provided false "true sale" opinions to facilitate. Chewco was now also positioned to serve as a controlled entity which Enron could use going forward with which to do non-arm's length transactions, which Vinson & Elkins would give "true sale" opinions on and would create phony profits for Enron (at least $350 million) and allow Enron to conceal the true state of its indebtedness by improperly moving debt off its balance sheet and onto the books of Chewco. In 98-01, Enron and Vinson & Elkins would create numerous other secretly controlled partnerships and entities over the next few years and use them to generate billions of dollars of additional phony profits for Enron and to conceal billions of dollars of Enron debt by moving it off Enron's balance sheet.

808. Vinson & Elkins prepared the documentation for Chewco's financing and ***falsified*** these documents so as to make it appear that Chewco was independent. For non-consolidation, Chewco had to be funded by at least 3% equity from independent investors. With just one day left in 97, Kirkland & Ellis and Vinson & Elkins drafted a side agreement providing that ***Enron would provide the necessary $6.6 million in cash to fund Chewco via clandestine reserve accounts for Big River Funding and Little River Funding***. The side agreement was dated 12/30/97. The Kopper/Enron side agreement concocted by Vinson & Elkins and Kirkland & Ellis made it clear that ***no outside equity was used to fund Chewco and thus Chewco was not a viable SPE***. Rather,

Chewco was simply a manipulative device and artifice to further a fraud and which served to falsely inflate Enron's financial statements.

809. Vinson & Elkins also took steps to avoid disclosure of the Chewco buyout of the partner interest in JEDI and Enron's control of JEDI. Initially, Fastow was to have managerial control of Chewco, but the participants realized that Fastow could not have that position without having to disclose this interest in Enron's SEC filings. This would potentially expose the non-arm's length of this transaction. So Vinson & Elkins and Fastow arranged for Kopper, Fastow's subordinate, to be substituted as the manager of Chewco, and by this subterfuge conceal this from Enron's shareholders.

810. During 12/97, Vinson & Elkins and Kirkland & Ellis also made changes to the structure of the transaction to allow Enron to avoid disclosing the existence of Enron's financial relationship with Chewco. Vinson & Elkins and Kirkland & Ellis converted the General Partner of Chewco from a limited liability company to a limited partnership, and put Kopper in instead of Fastow as the owner of Chewco's general partner. The sole purpose for this structural change was to allow non-disclosure of the Chewco/JEDI transactions at year end 97. However, prior to the closing of Chewco, Kopper expressed concern over his improper conflict of interest since he was an Enron employee and would act as the owner of both the general partner of Chewco ***and*** the owner of the equity of limited partner, Big River Funding. Notwithstanding the fact Kopper complained to Vinson & Elkins and Kirkland & Ellis about the sham transaction, they went ahead and structured the transaction as proposed. Neither Kirkland & Ellis nor Vinson & Elkins withdrew from their involvement in the scheme or insisted on disclosure of this conflict of interest in Enron's SEC filings – despite this clear red flag of its impropriety.

(2) Vinson & Elkins Participated In Structuring the Illicit Partnership and SPE Deals

811. Then, in 99, Enron and Vinson & Elkins engaged and participated in the creation of the two ***LJM partnerships for Enron that Enron and its CFO Fastow controlled. Over the next few years, Enron engaged in a series of transactions – which were, in fact, manipulative devices – between Enron and the LJM partnerships and LJM SPEs which resulted in Enron inflating its***

reported financial results by more than a billion dollars – at the same time enriching Fastow and his friends and several of Enron's bankers who were allowed to invest in the LJM2 partnership – by tens of millions of dollars. Vinson & Elkins knew that the reason for establishing these partnerships was that they would permit Enron to accomplish transactions it could not otherwise accomplish with an independent entity, by providing Enron with a buyer of assets that Enron wanted to sell. The LJM1 and LJM2 transactions were structured, reviewed and approved by Vinson & Elkins.

812. One of the primary manipulative devices to falsify Enron's financial results was LJM2, which was supposedly formed in 12/99. It was secretly controlled by Enron and was used to help create numerous SPEs (including the "Raptors") – used to engage in transactions to artificially inflate Enron's profits while concealing billions of dollars in debt that should have been included on Enron's balance sheet. Vinson & Elkins knew that because LJM2 was going to be utilized to engage in transactions with Enron where Enron insiders would be on both sides of the transactions and that the LJM2 partnership would be extremely lucrative – ***a deal that was virtually guaranteed to provide huge returns to LJM2's investors as the Enron Ponzi scheme went forward***. In fact, Fastow's dual role by which he could self-deal on behalf of the LJM2 partnership with Enron's assets was so important ***that investors in LJM2 were assured (in documents Vinson & Elkins participated in drafting) that they did not have to make any additional capital contributions if Fastow's dual role ended***.

813. Because the LJM2 partnership was potentially so lucrative to investors in that private entity, it was decided that ***certain favored investment banks and high-level officers of those investment banks and other favored Merrill Lynch clients were going to be permitted to invest in LJM2 because the participants in the scheme knew the LJM2 investment was virtually guaranteed to produce exceptional returns as the Enron Ponzi scheme continued***. In fact, the offering memorandum for the LJM2 partnership which Vinson & Elkins participated in writing – ***which was not a public document*** – contained an invitation to benefit from the insider self-dealing transactions that LJM2 would engage in. It stressed the "***unusually attractive investment opportunity***" resulting from LJM's connection to Enron. It emphasized Fastow's position as Enron's CFO, and that

LJM2's day-to-day activities would be managed by Enron insiders Fastow, Kopper, and Glisan. It explained that ***"[t]he Partnership expects that Enron will be the Partnership's primary source of investment opportunities"*** and that it ***"expects to benefit from having the opportunity to invest in Enron-generated investment opportunities that would not be available otherwise to outside investors."*** It specifically noted that Fastow's ***"access to Enron's information pertaining to potential investments will contribute to superior returns." In addition, investors were told that a similar Fastow controlled partnership (JEDI) that had done deals with Enron like the ones LJM2 would do had tripled their investment in just two years and that overall returns of 2,500% to LJM2 investors were actually anticipated***, In short, the non-public offering memorandum Vinson & Elkins participated in drafting was an invitation to join in the benefits of self-dealing transactions with Enron.

814. Vinson & Elkins knew it was indispensable that LJM2 be formed before year-end 99 because of the need to use it as a vehicle to consummate several transactions with Enron before year-end 99 to create huge profits for Enron in the 4thQ 99 so that Enron could meet and exceed its forecasted 99 earnings. However, as had been the case with Chewco at year-end 97, there was tremendous time pressure and it could not get done. Merrill Lynch could not raise the money from outside investors in LJM2 in time to fund LJM2 by year-end 99 with sufficient capital to enable it to do the desperately needed transactions with Enron. So, with the knowledge of Vinson & Elkins, on or about 12/22/99, certain Enron bankers, knowing that LJM2 was going to be an extraordinarily lucrative investment anyway created documentation that enabled the banks to advance virtually 100% of the monies needed to initially fund LJM2, *i.e.*, ***many times more than the banks' allocated shares in 12/99***. Key year-end LJM deals, involving LJM, detailed elsewhere, were:

(a) ***Collateralized Loan Obligations ("CLOs")***.

(b) ***Nowa Sarzyna (Poland Power Plant)***.

(c) ***MEGS, LLC***.

(d) ***Yosemite***.

Vinson & Elkins structured each of these transactions for Enron.

815. ***The transactions between the LJMs and Enron or its affiliates occurred close to the end of financial reporting periods to artificially boost reported results to meet forecasts Enron and other participants in the scheme had been making***. For instance, near the end of the 3rdQ and 4thQ 99, Enron sold interests in seven assets to LJM 1 and LJM 2 in transactions structured, reviewed and approved by Vinson & Elkins. The transactions permitted Enron to conceal its true debt levels by removing the assets from Enron's ***balance sheet and, at the same time, record large gains. However, (i) as Vinson & Elkins knew Enron had agreed in advance it would do, Enron bought back five of the seven assets after the close of the financial reporting period; (ii) the LJM partnerships made large profits on every transaction, even when the asset it had purchased actually declined in market value; and (iii) those transactions generated "earnings" for Enron of $229 million in the second half of 99 out of total earnings for that period of $549 million. In three of these transactions where Enron ultimately bought back LJM's interest, Enron had agreed in advance to protect the LJM partnerships against any loss. Thus, the LJM partnerships functioned only as vehicles to accommodate defendants in the manipulation, falsification and artificial inflation of Enron's reported financial results, while enriching the LJM2 investors***.

816. One "hedging" transaction with LJM in 6/99 involved Rhythms stock owned by Enron, ***to "hedge" Enron's huge gains in Rhythms stock and enable Enron to create a huge profit. Enron transferred its own stock to the SPE in exchange for a note. But if the SPE were required to pay Enron on the "hedge" the Enron stock would be the source of payment. In 99, Enron recognized millions of dollars of income from the Rhythms' "hedging" transactions. Other "hedging" transactions occurred in 00 and 01 and involved SPEs known as the "Raptor" vehicles. These were also structures, funded principally with Enron's own stock, that were intended to "hedge" against declines in the value of certain of Enron's merchant investments. These transactions were not economic hedges. They actually were manipulative devices devised to circumvent accounting rules. The economic reality was that Enron never escaped the risk of loss, because it had provided the bulk of the capital with which the SPEs would pay Enron***. Vinson & Elkins engaged and participated in these contrivances and manipulative devices to help inflate Enron's reported financial results.

817. In 11/99, Enron purchased certificates issued by a trust affiliated with Enron called "Yosemite." However, the only way defendants could avoid disclosing Enron's holdings in Yosemite was to reduce Enron's interest in Yosemite to less than 10% by year end 99. Because no *bona fide* purchaser would buy Enron's interest in Yosemite, Vinson & Elkins and Kirkland & Ellis worked with Fastow to concoct a series of transactions designed to make it appear – at least for the last week between 12/25/99 and 01/2/00 – that the Yosemite Certificates were not owned by Enron but rather by a "third party," LJM2. In fact, LJM2 "owned" the Yosemite Certificates it bought from Enron for a single day, immediately reselling the Yosemite Certificates to another SPE, Condor. The Yosemite transaction created and structured by Fastow, Vinson & Elkins, Kirkland & Ellis and others was a sham. In fact, the legal documents drafted by Kirkland & Ellis and approved by Vinson & Elkins had been clearly and deliberately back-dated during 2/00 in order to justify the continued concealment from Enron's shareholders of the existence of the fraudulent scheme complained of herein.

818. Effective 9/99, Enron sold LJM1 a 13% stake in a company building the power plant in Cuiaba, Brazil for $11.3 billion. This reduced Enron's ownership to the point where Enron purportedly did not control the entity and therefore did not have to consolidate its interest. ***This sale enabled Enron to improperly realize $34 million of mark-to-market income in the 3rdQ 99, and another $31 million of mark-to-market income in the 4thQ 99. In 8/01, Enron repurchased LJM1's interest in Cuiaba for $14.4 million***! LJM1's equity investment in Cuiaba, however, was never "at risk" because Enron had agreed to make LJM1 whole for its investment. Thus, Enron was required to consolidate the SPE Vinson & Elkins and Kirkland & Ellis created for this deal but did not.

819. As Vinson & Elkins knew, hedging Enron's investments with the value of Enron's stock created an enormous and unusual motive to keep Enron stock trading at inflated levels. This was because if the value of the investments fell at the same time as the value of Enron stock fell, the SPEs would be unable to meet their obligations and the "hedges" would fail. This happened in late 00 and early 01 and the Raptor SPEs lacked sufficient credit capacity to pay Enron on the "hedges." By 11/00, Enron had entered into derivative transactions with the Raptors with a notional value of

over $1.5 billion. In 12/00, Enron's net gain (and the Raptors' corresponding net loss) on these transactions was over $500 million. Enron could recognize these gains – offsetting corresponding losses on the investments in its merchant portfolio – only if the Raptors had the capacity to make good on their debt to Enron. If they did not, Enron would be required to record a "credit reserve." Such a loss would defeat the very purpose of the Raptors, which was to shield Enron's financial statements from reflecting the change in value of its merchant investments.

820. As year-end 00 approached, two of Enron's Raptor SPEs were in danger of coming unwound as they lacked sufficient credit capacity to support their obligations, let alone continue to engage in similar transactions with Enron. If something were not done to prevent the unwinding of these SPEs, Enron would have to take hundreds of millions of dollars in charges against earnings which would expose the prior falsification of Enron's financial results and result in Enron stock plunging, more and more of the stock issuance "triggers" would begin to be hit, and a vicious fatal down-cycle would kick in. Therefore, Vinson & Elkins and Enron restructured and capitalized the Raptor SPEs at year-end 00 via artificial transactions which transferred rights ***to even more shares*** of Enron stock to these entities, creating ever-increasing pressure on Enron and the other participants in the scheme to support Enron's stock price. But this enabled Enron to avoid recording a huge credit reserve for the year ending 12/31/00.

821. Vinson & Elkins also engaged and participated in falsifying Enron's reported results is the New Power transaction, including the New Power IPO, by which Enron improperly recognized $370 million in profits in the 4thQ 00. In 00, Enron owned millions of shares of New Power Co. stock – then a private company, and controlled New Power. Vinson & Elkins knew if Enron could take New Power public and create a trading market in its stock, then Enron could recognize a profit on the gain in value on its shares by "hedging" that gain via yet another non-arm's length transaction with an LJM2 entity. In the 4thQ 00, Enron desperately needed to create profits to perpetuate the Ponzi scheme. Enron did the huge New Power IPO – 27.6 million shares at $21 per share in 10/00. After the IPO, Enron continued to hold 13.6 million shares of New Power common stock and warrants to purchase 42 million more shares. With the participation of Vinson & Elkins, in a deal Vinson & Elkins and Enron had structured before the IPO, Enron quickly moved

to create a huge phony profit using LJM2. Immediately after the New Power IPO, Vinson & Elkins created an SPE Hawaii 125-0. CIBC (and several other of Enron's banks) made a "loan" of $125 million to Hawaii 125-0, but as Vinson & Elkins knew received a "total return swap" guarantee that was supposed to protect CIBC and the other banks against ***any loss*** from Enron. Enron transferred millions of its New Power warrants to Hawaii 125-0 to "secure" the banks' loan and thus created a huge $370 million "profit" on the purported gain on the New Power warrants made possible by the New Power IPO. Hawaii 125-0 simultaneously supposedly "hedged" the warrants with another entity created and controlled by Enron called "Porcupine." To supposedly capitalize Porcupine, LJM2 put $30 million into Porcupine to facilitate the so-called hedge of the New Power warrants but, one week later, Porcupine paid the $30 million back to LJM2 plus a $9.5 million profit – leaving Porcupine with no assets.

822. In late 00/early 01, Enron's stock began to decline. As this price decline accelerated, it put pressure on Enron's top executives to halt the decline in the price of the stock as they knew that if that price decline continued and the stock fell to lower levels, more and more of the Enron stock "triggers" contained in agreements for deals with entities controlled by Chewco, LJM1 and LJM2 would be triggered, ***which would require Enron to issue over 100 million shares of its common stock to those partnerships, causing a huge reduction in Enron shareholders' equity***.

823. ***In late 3/01, Enron and Vinson & Elkins knew that Enron would be required to take a pre-tax charge against earnings of more than $500 million*** to reflect a shortfall in credit capacity of the Raptor SPEs, which would have been catastrophic and exposed the scheme. Rather than take that loss and face these consequences, Vinson & Elkins engaged and participated in a "restructuring" of the Raptor vehicles by transferring ***more than $800 million of contracts to receive Enron's own stock to them just before quarter-end. This transfer permitted Enron to conceal the substantial losses in Enron's merchant investments, keep billions of dollars of debt off Enron's balance sheet, and allowed the Enron Ponzi scheme to continue***.

(3) Vinson & Elkins Concealed the Phony Nature of Enron's SPEs in Enron's Public Filings

824. Vinson & Elkins drafted and approved Enron's related-party disclosures, which concealed material facts concerning the JEDI/Chewco, LJM, or Raptors transactions, in the following SEC filings of Enron:

Quarterly Reports

Report on Form 10-Q, filed 8/16/99
Report on Form 10-Q, filed 11/15/99
Report on Form 10-Q, filed 5/15/00
Report on Form 10-Q, filed 8/14/00
Report on Form 10-Q, filed 11/14/00
Report on Form 10-Q, filed 5/15/01
Report on Form 10-Q, filed 8/14/01

Annual Reports

Report on Form 10-K, filed 3/31/98
Report on Form 10-K, filed 3/31/99
Report on Form 10-K, filed 3/30/00
Report on Form 10-K, filed 4/02/01

Annual Proxies

Annual Proxy filed 3/30/99
Annual Proxy filed 5/02/00
Annual Proxy filed 5/01/01

Other Reports

Report on Form 8-K, filed 2/28/01

Enron's related-party disclosures from the Company's previous Report on Form 10-K and Report on Form 10-Q were also incorporated by reference into the following Prospectus and Registration Statements of Enron for various securities offerings:

- Resale of Zero Coupon Convertible Senior Notes due 2021, filed 7/25/01
- 7.875% Notes due 6/15/03, filed 6/2/00
- 8.375% Notes due 5/23/05, filed 5/19/00
- 7% Exchangeable Notes due 7/31/02, filed 8/11/99
- 7.375% Notes due 5/15/2019, filed 5/20/99
- Common stock, filed 2/12/99
- 6.95% Notes due 7/15/2028, filed 11/30/98
- Floating rate Notes due 3/30/00, filed 9/28/98

825. These disclosures consistently indicated that Enron's transactions with related parties were on terms representative of terms that could have been obtained from independent third parties. This was false. As the Watkins letter stated and the Powers Report concluded these were not arm's-

length transactions of true economic substance or that any independent third party would have agreed to.

(a) Vinson & Elkins's False and Misleading "Disclosures" Concerning JEDI/Chewco

826. In Enron's Reports on Form 10-K for the years ended 97 through 00, Vinson & Elkins approved JEDI's description as an unconsolidated affiliate purportedly only "50 percent" owned by Enron. In Enron's Report on Form 10-K filed 3/30/00, Vinson & Elkins drafted and approved as adequate disclosure the following: "At December 31, 1999, JEDI held approximately 12 million shares of Enron Corp. common stock. The value of the Enron Corp. common stock has been hedged. In addition, an officer of Enron has invested in the limited partner of JEDI and from time to time acts as agent on behalf of the limited partner's management." Those "disclosures" were false and misleading. The existence of Chewco, that Chewco was not independent, was not capitalized with outside equity at risk but instead was capitalized by JEDI and an Enron guaranty, or that Chewco was a limited partner of JEDI was never disclosed until Enron announced its massive restatement on 11/8/01. Nor was it disclosed that JEDI transactions were ***not*** true commercial, economic transactions, comparable to transactions with independent third parties. Nor was the substance and effect of the JEDI transactions on Enron and the Company's financial statements disclosed.

827. In 3/01, Enron paid Kopper and Dodson $35 million in a "purchase" of Chewco's limited partnership interest in JEDI, so that Kopper could acquire Fastow's interest in the LJM partnerships. The "disclosure" drafted and approved by Vinson & Elkins concerning the buyout in Enron's Reports on Form 10-Q filed 5/15/01 and 8/14/01 was false and misleading:

> In March 2001, Enron acquired the limited partner's interests in an unconsolidated equity affiliate, Joint Energy Development Investments Limited Partnership (JEDI), for $35 million. As a result of the acquisition, JEDI has been consolidated. JEDI's balance sheet as of the date of acquisition consisted of net assets of approximately $500 million, including an investment of 12 million shares of Enron common stock valued at approximately $785 million, merchant investments and other assets of approximately $670 million and third-party debt and debt owed to Enron of approximately $950 million. Enron repaid the third-party debt of approximately $620 million prior to March 31, 2001.

828. That the Chewco buyout was a deal between Enron, Kopper, and Fastow was never disclosed. That the buyout included a $2.6 million gift to Kopper and Dodson was never disclosed,

despite Vinson & Elkins's opinion that Enron was not obligated to pay the $2.6 million. And, the existence of Chewco, that Chewco was not independent, was not capitalized with outside equity at risk but instead was capitalized by JEDI and an Enron guaranty, or that Chewco was a limited partner of JEDI was never disclosed until Enron announced its massive restatement on 11/8/01.

829. Nor was the true substance and effect of the JEDI buyout on Enron and the Company's financial statements disclosed. To the contrary, the buyout was characterized as having a net positive effect on Enron's financial statements. In truth, the consolidation of JEDI resulted in a massive ***reduction*** in Enron's reported net income and shareholders' equity and massive ***increase*** in Enron's reported debt.

(b) Vinson & Elkins's False and Misleading "Disclosures" Concerning LJM and Raptors

830. The related-party disclosures drafted and approved as adequate by Vinson & Elkins were in fact not. As the Powers report stated:

> [T]hese disclosures were obtuse, did not communicate the essence of the transactions completely or clearly, and failed to convey the substance of what was going on between Enron and the partnerships. The disclosures also did not communicate the nature or extent of Fastow's financial interest in the LJM partnerships. This was the result of an effort to avoid disclosing Fastow's financial interest and to downplay the significance of the related-party transactions and, in some respects, to disguise their substance and import.

831. Common to each of Enron's related-party disclosures, which Vinson & Elkins drafted and approved is that the "disclosures" conceal and/or misrepresent material matters known to Vinson & Elkins, such as: (i) that the related-party transactions were ***not*** true commercial, economic transactions, comparable to transactions with independent third parties (*e.g.*, the purpose or bogus nature of the transactions); (ii) the substance and effect of related-party transactions on Enron and the Company's financial statements (*e.g.*, the transactions should have been consolidated in Enron's financial statements); and (iii) Fastow's true financial interest in or compensation from the LJM partnerships.

(i) Vinson & Elkins Concealed the Phony Nature of the LJM and Raptors Transactions By Suggesting the Deals Were Fair and Legitimate, *i.e.*, Comparable To Similar Transactions With Unrelated Third Parties

832. In each of the related-party disclosures drafted and approved as adequate by Vinson & Elkins, assertions were made to give the impression that each of the transactions referenced were fair to the Company, not contrived, but instead were made at arm's length, like transactions with independent third parties. In Enron's Report on Form 10-Q filed 8/16/99, Vinson & Elkins drafted and approved the adequacy of such a statement: "[m]anagement believes that the terms of the transactions were reasonable and no less favorable than the terms of similar arrangements with unrelated third parties." Although the wording changed slightly in this "disclosure" repeatedly drafted and approved by Vinson & Elkins in Enron's other SEC filings until the end of the Class Period, the substance of the representation was the same.

833. But the transactions were bogus, contrived to enrich individual defendants and, as Enron's Special Investigative Committee stated, "to accomplish favorable financial statement results, not to achieve *bona fide* economic objectives or to transfer risk." Vinson & Elkins knew this because it participated in the negotiations for, prepared the transaction documents for, and provided legal advice in structuring the LJM and Raptors transactions. And the transactions did not contain any economic or commercial components. Only Enron, Fastow or Kopper (through LJM entities) were the parties to or controlled the transactions. And in nearly every transaction the exchange was as follows: (1) Fastow or Kopper (through LJM entities) would reap millions of dollars and bear little or no risk, and (2) Enron would achieve favorable financial statement results and bear in totality any risk.

834. Another "disclosure" that Vinson & Elkins approved in Enron's Report on Form 10-Q filed 8/14/01, suggested legitimacy of the LJM transactions by stating Fastow, "who previously was the general partner of [the LJM] partnerships, sold all of his financial interests ... and no longer has any management responsibilities for these entities." This statement was false and misleading because Fastow's interest was sold to Kopper, who had nearly as much connection to Enron and was

controlled by Enron. Thus, the LJM partnerships were no more legitimate than when Fastow owned them.

(ii) Vinson & Elkins Concealed the Phony Nature of the LJM and Raptors Transactions By False and Misleading Descriptions of the Transactions

835. Throughout the Class Period Vinson & Elkins drafted and approved as adequate related-party disclosures with false and misleading descriptions.

a. Rhythms Transaction

836. The related-party disclosures in Enron's Reports on Form 10-Q filed 8/16/99 and 11/15/99 obliquely refer to the Rhythms transaction (though not by name):

> In June 1999, Enron entered into a series of transactions involving a third party and LJM Cayman, L.P. (LJM). LJM is a private investment company which engages in acquiring or investing primarily in energy related investments. A senior officer of Enron is managing member of LJM's general partner. The effect of the transactions was (i) Enron amended with the third party certain forward contracts to purchase shares of Enron common stock, resulting in Enron having forward contracts to purchase 3.3 million Enron common shares at the market price on that day, (ii) LJM received 3.4 million shares of Enron common stock subject to certain restrictions and (iii) Enron received a note receivable and a put option related to an investment held by Enron. Enron recorded the assets received and equity issued at estimated fair value.... Management believes that the terms of the transactions were reasonable and no less favorable than the terms of similar arrangements with unrelated third parties.

837. The above "disclosure" was false and misleading for the following reasons. There was no "third party" as stated, to suggest legitimacy of the transaction. The "third party" was Fastow and LJM's general partner was capitalized with Enron's stock provided by Enron in the transaction. Thus, Enron was essentially dealing with itself and, if this were disclosed, Enron would have to consolidate the results into its financial statements. By failing to consolidate LJM, Enron overstated its net income by $95 million in 99 and $8 million in 00.

b. Bogus Hedges – Raptors Transactions

838. In many of the transactions to which Vinson & Elkins obliquely referred in the related-party disclosures it drafted and approved, the appearance was given that Enron was hedging its investments with a third party when in fact there was no such counterparty to the hedge or even a hedge. The purported "third parties" were the Raptors – entities which LJM2 and Enron created. The way the transactions were structured, LJM2 received its profits and capital out of the Raptors

before any purported hedging occurred. Thereafter, Enron was the only entity with a stake in the purported counterparty. The Raptors were funded with Enron's stock and the credit capacity of the Raptors rested almost entirely upon the price of Enron's stock. Thus, if the value of Enron's merchant investments and stock went down, there would be no money to pay the hedge, *i.e.*, Enron bore the ultimate risk of the investment. Enron used these transactions to overstate its net income by over $1 billion in 00 through 01.

839. The related-party disclosures in the Company's Report on Form 10-Q filed 8/14/00 obliquely refer to Raptors transactions (though not by name):

> In the second quarter of 2000, Enron entered into transactions with the Related Party to hedge certain merchant investments. As part of the transactions, Enron contributed to newly-formed entities (the Entities) assets valued at approximately $800 million, including 3.7 million restricted shares of outstanding Enron common stock, $100 million in Enron notes payable and the right to receive up to 11.7 million shares of outstanding Enron common stock in March 2003 (subject to certain conditions).

840. The related-party disclosures in Enron's Report on Form 10-Q filed 11/14/00 likewise state:

> In the third quarter of 2000, Enron entered into derivative transactions with the Entities with a combined notional value of approximately $1.2 billion to hedge certain merchant investments and other assets.

841. The related-party disclosures in Enron's Report on Form 10-K filed 4/02/01 again misleadingly describe the Raptors transactions:

> In 2000, Enron entered into transactions with the Related Party to hedge certain merchant investments and other assets. As part of the transactions, Enron (i) contributed to newly-formed entities (the Entities) assets valued at approximately $1.2 billion, including $150 million in Enron notes payable, 3.7 million restricted shares of outstanding Enron common stock and the right to receive up to 18.0 million shares of outstanding Enron common stock in March 2003 (subject to certain conditions) and (ii) transferred to the Entities assets valued at approximately $309 million, including a $50 million note payable and an investment in an entity that indirectly holds warrants convertible into common stock of an Enron equity method investee....
>
> In 2000, Enron entered into derivative transactions with the entities with a combined notional amount of approximately $2.1 billion to hedge certain merchant investments and other assets.

842. The related-party disclosures in Enron's Reports on Form 10-Q filed 5/15/01 and 8/14/01 similarly refer to the Company's hedging efforts. The related-party disclosures in Enron's

Proxy filed 3/27/2001 also misleadingly describe the Raptors transactions after stating the transactions were "intended to manage price and value risk with regard to certain merchant and similar assets."

843. The above statements were false and misleading because the "share-settled options" purchased by Enron were such that the transaction was based on a future material decrease in the price of Enron's stock. Nor did the related-party disclosures drafted and approved by Vinson & Elkins disclose that (1) Enron controlled the "entities" or "vehicles," and (2) the transactions were structured such that LJM2 received its profits and capital up front in the transactions before any hedging (*i.e.*, before risk of loss), and Enron bore the ultimate risk of the investment, all of which would have revealed Enron was not dealing with valid Special Purpose Entities and there was no hedging occurring.

c. Merchant Assets and Investments Buybacks

844. Related-party disclosures which Vinson & Elkins drafted and approved concerning Enron's merchant assets sales and purchases were false and misleading because they concealed facts demonstrating Enron was playing a "shell game" with its merchant assets and investments. Enron used this shell game to falsely inflate its net income in 99 over $130 million.

845. The related-party disclosures in Enron's Report on Form 10-K filed 3/30/00 state: "In the fourth quarter of 1999, LJM2, which has the same general partner as LJM, acquired, directly or indirectly, approximately $360 million of merchant assets and investments from Enron, on which Enron recognized pre-tax gains of approximately $16 million." The related-party disclosures in Enron's Report on Form 10-K filed 4/02/01 state: "In 1999, the Related Party acquired approximately $371 million, merchant assets and investments and other assets from Enron. Enron recognized pre-tax gains of approximately $16 million related to these transactions." And Enron's Proxy filed 3/27/01 states: "[D]uring 2000, LJM2 sold to Enron certain merchant investment interests for a total consideration of approximately $76 million."

846. The "disclosures" above are false and misleading because Enron was ***buying back*** the same assets and investments which it was selling to Fastow. In some cases the assets were bought back within a matter of months and even before Enron filed its Report on Form 10-K 3/30/00 with

the related-party disclosures indicating Enron was ***selling*** those assets. Enron bought back at least five of seven assets in the transactions referenced, including (1) the sale in 9/99 and subsequent repurchase of Enron's interest in the Cuiaba, Brazil power plant construction; (2) the sale on 12/22/99 and subsequent repurchase of Enron North America collateralized loan obligations; (3) the sale on 12/21/99 and subsequent repurchase of Enron's interest in the Nowa Sarzyna, Poland power plant construction; (4) the sale on 12/29/99 and subsequent repurchase of Enron's equity interest in MEGS LLC; and (5) the sale in 5/00-6/00 and subsequent resale of dark fiber (Enron's EBS sold the dark fiber to LJM2 and then resold the same dark fiber for LJM2). The related-party disclosures drafted and approved by Vinson & Elkins further did not reveal that in each of the "buybacks," the LJM partnerships profited millions of dollars even when the assets lost value.

(iii) Vinson & Elkins Concealed the Phony Nature of the LJM and Raptors Transactions By Misrepresenting or Omitting Fastow's Interest in the Deals

847. As Enron's Special Investigative Committee concluded, "[t]he failure to set forth Fastow's compensation from the LJM transactions and the process leading to that decision raise substantial issues." Vinson & Elkins knew significant facts concerning Fastow's interest in the LJM transactions. But Vinson & Elkins avoided disclosure of these facts despite clear requirements in SEC regulations that they specifically be disclosed. Vinson & Elkins did not reveal Fastow's profits and interest in the LJM transactions in each of the related-party disclosures drafted and approved by Vinson & Elkins during the Class Period. Had Vinson & Elkins disclosed Fastow's interest in the LJM transactions, viewed in light of proper descriptions of the transactions, this would have alerted investors that Fastow and the LJM entities were being paid to move debt off of Enron's financial statements, not as part of true economic transactions.

848. The related-party disclosures in Enron's Proxy filed 5/02/00 state:

> In June, 1999, Enron entered into a series of transactions involving a third party and LJM Cayman, L.P. ("LJM1"). LJM1 is a private investment company that primarily engages in acquiring or investing in energy and communications related investments. Andrew S. Fastow, Executive Vice President and Chief Financial Officer of Enron, is the managing member of LJM1's general partner. The general partner of LJM1 is entitled to receive a percentage of the profits of LJM1 in excess of the general partner's proportion of the total capital contributed to LJM1, depending upon the performance of the investments made by LJM1.

The related-party disclosures in Enron's Proxy filed 5/01/01 in relevant part are almost identical to the statement above. The decision to disclose nothing more than what was stated above in both the 00 and 01 Proxies was a consensus between Vinson & Elkins, Fastow, Jordan Mintz, Derrick and others at Enron and was discussed in a memo written by Mintz.

849. The "disclosure" above omits material facts specifically called for by SEC regulations, namely the economic interest of Fastow in the LJM transactions. Before Enron's Proxy was filed on 5/02/00, the Rhythms transaction was terminated pursuant to a $30 million payment to Fastow's Swap Sub. The structure of the termination of the Rhythms transaction had been determined and the termination executed on the following terms, as determined by Enron's Special Investigative Committee: (1) the Rhythms' options held by Fastow's Swap Sub. were terminated; (2) Fastow's Swap Sub. returned to Enron 3.1 million Enron shares but kept $3.75 million cash received from LJM1; and (3) Enron paid Fastow's Swap Sub. $16.7 million. The $16.7 million payment included $30 million, plus $500,000 accrued dividends on Enron's stock held by Swap Sub., less $3.75 million cash in Swap Sub., less $10.1 million principal and interest on a loan Enron made to Swap Sub. just prior to the transaction's termination.

(4) The Attempted Coverup

850. In mid-8/01, just as Skilling resigned as Enron's CEO, a management level Enron employee (Watkins) sent Lay a letter detailing the huge fraud at Enron – focusing on the bogus partnerships and SPE transactions. Her letter stated:

Dear Mr. Lay,

* * *

> Skilling's abrupt departure will raise suspicions of accounting improprieties and valuation issues. Enron has been very aggressive in its accounting – most notably the Raptor transactions and the Condor vehicle. We do have valuation issues with our international assets and possibly some of our EES MTM positions.
>
> The spotlight will be on us, the market just can't accept that Skilling is leaving his dream job.... How do we fix the Raptor and Condor deals?... [W]e will have to pony up Enron stock and that won't go unnoticed.
>
> * * *
>
> We have recognized over $550 million of fair value gains on stocks via our swaps with Raptor, much of that stock has declined significantly – Avici by 98%, from

$178 mm to $5 mm. The New Power Co. by 70%, from $20/share to $6/share. The value in the swaps won't be there for Raptor, so once again Enron will issue stock to offset these losses. Raptor is an LJM entity. It sure looks to the layman on the street that we are hiding losses in a related company and will compensate that company with Enron stock in the future.

I am incredibly nervous that we will implode in a wave of accounting scandals.... [T]he business world will consider the past successes as nothing but an elaborate accounting hoax. Skilling is resigning now for "personal reasons" but I think he wasn't having fun, looked down the road and knew this stuff was unfixable and would rather abandon ship now than resign in shame in 2 years.

Is there a way our accounting guru's can unwind these deals now? I have thought and thought about how to do this, but I keep bumping into one big problem – ***we booked the Condor and Raptor deals in 1999 and 2000, we enjoyed a wonderfully high stock price, many executives sold stock, we then try and reverse or fix the deals in 2001 and it's a bit like robbing the bank in one year and trying to pay it back 2 years later. Nice try, but investors were hurt, they bought at $70 and $80/share looking for $120/share and now they're at $38 or worse***. We are under too much scrutiny and there are probably one or two disgruntled "redeployed" employees who know enough about the "funny" accounting to get us in trouble.

* * *

I realize that we have had a lot of smart people looking at this .... ***None of that will protect Enron if these transactions are ever disclosed in the bright light of day***.

* * *

My concern is that the footnotes don't adequately explain the transactions. If adequately explained, the investor would know that the "Entities" described in our related party footnote are thinly capitalized, the equity holders have no skin in the game, and all the value in the entities comes from the underlying value of the derivatives (unfortunately in this case, a big loss) AND Enron stock and N/P. ***Looking at the stock we swapped, I also don't believe any other company would have entered into the equity derivative transactions with us at the same prices or without substantial premiums from Enron***.

* * *

Raptor looks to be a big bet, if the underlying stocks did well, then no one would be the wiser. If Enron stock did well, the stock issuance to these entities would decline and the transactions would be less noticeable. ***All has gone against us. The stocks, most notably Hanover, The New Power Co., and Avici are underwater to great or lesser degrees***.

* * *

I firmly believe that the probability of discovery significantly increased with Skilling's shocking departure. Too many people are looking for a smoking gun.

Summary of Raptor Oddities:

* * *

2. ***The equity derivative transactions do not appear to be at arms length***.

a. Enron hedged New Power, Hanover, and Avici with the related party at what now appears to be the peak of the market. New Power and Avici have fallen away significantly since. The related party was unable to lay off this risk. This fact pattern is once again very negative for Enron.

b. ***I don't think any other unrelated company would have entered into these transactions at these prices***. What else is going on here? What was the compensation to the related party to induce it to enter into such transactions?

3. ***There is a veil of secrecy around LJM and Raptor. Employees question our accounting propriety consistently and constantly***. This alone is cause for concern.

a. Jeff McMahon was highly vexed over the inherent conflicts of LJM. ***He complained mightily to Jeff Skilling*** .... 3 days later, Skilling offered him the CEO spot at Enron Industrial Markets ....

b. ***Cliff Baxter complained mightily to Skilling and all who would listen about the inappropriateness of our transactions with LJM***.

c. I have heard one manager level employee ... say "***I know it would be devastating to all of us, but I wish we would get caught. We're such a crooked company."... Many similar comments are made when you ask about these deals***.

851. Watkins' letter made clear that Vinson & Elkins had been involved in the fraud and had a clear conflict of interest. Nevertheless, Lay promptly contacted top Vinson & Elkins partners to find out how to cover up these allegations.

852. Vinson & Elkins, despite its clear conflict, agreed with Enron to conduct a "purported" investigation into these charges and to issue a letter or a report dismissing the allegations of fraud – which they knew to be true. Vinson & Elkins and Enron agreed the firm would not "second-guess" accounting work or judgments of Andersen and Vinson & Elkins would limit its inquiry to top level executives at Enron, *i.e.*, the persons on the fraud.

853. On 8/29/01, a management level employee at Enron's EES operation sent a letter to Enron's Board which laid out and detailed the fraud that was going on in Enron's EES operation:

To the Board of Directors:

One can only surmise that the removal of Jeff Skilling was an action taken by the board to correct the wrong doings of the various management teams at Enron. However, based on my experience at this company, I'm sure the board has only

scratched the surface of the impending problems that plague Enron at the moment. (*i.e.*, EES's ... hiding losses/SEC violations ... lack of product, etc.).

... I feel it is my responsibility to bring to the Board's attention the various ongoing [sic] that I observed during my short tenure (9 months) with the company.

EES Management

... [I]t became obvious that EES had been doing deals for 2 years and was losing money on almost all the deals they had booked. (JC Penney being a $60MM loss alone, then Safeway, Albertson's, GAP, etc.). Some customers threatened to sue if EES didn't close the deal with a loss (Simon Properties – $8MM loss day one).... Overnight the product offerings evaporated. The only product left is for the hotel and mall customers. Except that Starwood is also mad since EES has not invested the $45MM in equipment under the agreement. Enron was supposed to invest $45MM over the first 3 years of the contract. The people who negotiated the contract FORGOT to put in, at Enron's discretion ... it turns out that it doesn't make financial sense for Enron to put in the equipment, but Starwood wants it. Now you will loose [sic] at least $45MM on the deal. The Crisis was set in motion. You should also check on the Safeway contract, Albertson's, IBM and the California contracts that are being renegotiated.... It will add up to over $500MM that EES is losing and trying to hide in Wholesale. Rumor on the 7th floor is that it is closer to $1 Billion....

This is when they decided to merge the EES risk group with Wholesale to hide the $500MM in losses that EES was experiencing. But somehow EES, to everyone's amazement, reported earnings for the 2nd quarter. According to FAS 131 – Statement of Financial Accounting Standards (SFAS) #131, "Disclosures about Segments of an Enterprise and related Information," EES has knowingly misrepresented EES' earnings. This is common knowledge among all the EES employees, and is actually joked about....

There are numerous operational problems with all the accounts.

* * *

... Some would say the house of cards are falling....

You are potentially facing Shareholder lawsuits, Employee lawsuits ... Heat from the Analysts and newspapers. The market has lost all confidence, and its obvious why.

You, the board have a big task at hand. You have to decide the moral, or ethical things to do, to right the wrongs of your various management teams.

* * *

... But all of the problems I have mentioned, they are very much common knowledge to hundreds of EES employees, past and present.

Check out the 7th floor.... They are very talkative at the moment.

854. The result of this letter – laying out another massive area of fraudulent misconduct at Enron – was an explosion.

855. Between 8/15-10/15, Vinson & Elkins conducted a purported investigation of the assertions of wrongdoing. Vinson & Elkins interviewed several top level Enron executives who had been involved, but only interviewed people who it knew were involved in the fraud and thus would deny it. On 10/15/01, Vinson & Elkins issued a letter to Enron which basically dismissed ***all*** of Watkins' assertions even though Vinson & Elkins, from its own involvement in the fraud, knew they were true. Vinson & Elkins's 10/15/01 letter belittled and trivialized the assertions – constantly referring to them as coming from an anonymous source – even though Vinson & Elkins well knew who Watkins was and that she was in a position to know what she was asserting.

> You requested that Vinson & Elkins L.L.P. ("V&E") conduct an investigation into certain allegations initially made on an ***anonymous*** basis by an employee of Enron Corp. ("Enron"). Those allegations question the propriety of Enron's accounting treatment and public disclosures for certain deconsolidated entities known as Condor or Whitewing and certain transactions with a related party, LJM, and particularly transactions with LJM known as Raptor vehicles. The anonymous employee later identified herself as Sherron Watkins, who met with Kenneth L. Lay, Chairman and Chief Executive Officer of Enron, for approximately one hour to express her concerns and provided him with materials to supplement her initial anonymous letter....
>
> In general, the scope of V&E's undertaking was to review the allegations raised by Ms. Watkins' ***anonymous*** letter and supplemental materials and to conduct an investigation to determine whether the facts she has raised ***warrant further independent legal or accounting review***.
>
> By way of background, some of the supplemental materials provided by Ms. Watkins proposed a series of steps for addressing the problems she perceived, which included retention of independent legal counsel to conduct a wide-spread investigation, and the engagement of independent auditors, apparently for the purpose of analyzing transactions in detail and opining as to the propriety of the accounting treatment employed by Enron and its auditors Arthur Andersen L.L.P. ("AA"). ***In preliminary discussions with you, it was decided that our initial approach would not involve the second guessing of the accounting advice and treatment provided by AA, that there would be no detailed analysis of each and every transaction and that there would be no full scale discovery style inquiry. Instead, the inquiry would be confined to a determination whether the anonymous letter and supplemental materials raised new factual information that would warrant a broader investigation***.
>
> * * *
>
> Interviews were also conducted with various Enron personnel based either on their connection with the transactions involving Condor/Whitewing, LJM and Raptor, or because they were identified in materials provided by Ms. Watkins as persons who might share her concerns. Those persons interviewed were: Andrew S. Fastow, Executive Vice President and Chief Financial Officer; Richard B. Causey, Executive Vice President and Chief Accounting Officer; Richard B. Buy, Executive Vice President and Chief Risk Officer; Greg Whalley, President and Chief Operating

Officer (formerly Chairman of Enron Wholesale); Jeffrey McMahon, President and Chief Executive Officer, Enron Industrial Markets (formerly Treasurer of Enron); Jordan H. Mintz, Vice President and General Counsel of Enron Global Finance; Mark E. Koenig, Executive Vice President, Investor Relations; Paula H. Rieker, Managing Director, Investor Relations; and Sherron Watkins, the author of the anonymous letter and supplemental materials.

Interviews were also conducted with David B. Duncan and Debra A. Cash, both partners with AA assigned to the Enron audit engagement.

* * *

In summary, none of the individuals interviewed could identify any transaction between Enron and LJM that was not reasonable from Enron's standpoint or that was contrary to Enron's best interests*....*

As stated at the outset, the decision was made early in our preliminary investigation not to engage an independent accounting firm to second guess the accounting advice and audit treatments provided by AA. Based on interviews with representatives of AA and Mr. Causey, all material facts of the Condor/Whitewing and Raptor vehicles, as well as other transactions involving LJM, appeared to have been disclosed to and reviewed by AA. In this regard, AA reviewed the LJM solicitation materials and partnership agreement to assure that certain safeguards were provided that would permit LJM to be a source of third party equity in transactions conducted with Enron. AA likewise reviewed specific transactions between Enron and LJM to assure that LJM had sufficient equity in the transaction to justify the accounting and audit principles being applied.

* * *

Enron and AA representatives both acknowledge that the accounting treatment on the Condor/Whitewing and Raptor transactions is creative and aggressive, but no one has reason to believe that it is inappropriate from a technical standpoint. In this regard, AA consulted with its senior technical experts in its Chicago office regarding the technical accounting treatment on the Condor/Whitewing and Raptor transactions, and the AA partners on the Enron account consulted with AA's senior practice committee in Houston on other aspects of the transactions. Enron may also take comfort from AA's audit opinion and report to the Audit Committee which implicitly approves the transactions involving Condor/Whitewing and Raptor structures in the context of the approval of Enron's financial statements.

* * *

Notwithstanding the expression of concern in Ms. Watkins' anonymous letter and supporting materials regarding the adequacy of Enron's disclosures as to the Condor/Whitewing and Raptor vehicles (which, to a large extent, reflect her opinion), AA is comfortable with the disclosure in the footnotes to the financials describing the Condor/Whitewing and Raptor structures and other relationships and transactions with LJM. AA points out that the transactions involving Condor/Whitewing are disclosed in aggregate terms in the unconsolidated equity affiliates footnote and that the transactions with LJM, including the Raptor transactions, are disclosed in aggregate terms in the related party transactions footnote to the financials.

The concern with adequacy of disclosures is that one can always argue in hindsight that disclosures contained in proxy solicitations, management's discussion

and analysis and financial footnotes could be more detailed. ***In this regard, it is our understanding that Enron's practice is to provide its financial statements and disclosure materials to V&E with a relatively short time frame within which to respond with comments***.

* * *

Based on the findings and conclusions set forth with respect to each of the four areas of primary concern discussed above, the facts disclosed through our preliminary investigation do not, in our judgment, warrant a further widespread investigation by independent counsel and auditors....

... ***Finally, we believe that some response should be provided to Ms. Watkins to assure her that her concerns were thoroughly reviewed, analyzed, and although found not to raise new or undisclosed information, were given serious consideration***.

We have previously reported verbally to Mr. Lay and you regarding our investigation and conclusions and, at your request, have reported the same information to Robert K. Jaedicke, in his capacity of Chairman of the Audit Committee of Enron's Board of Directors. At Dr. Jaedicke's request, we gave a verbal summary of our review and conclusions to the full Audit Committee.

856. When Lay wanted to fire Watkins for her letter, Vinson & Elkins and Lay agreed that this would be a mistake and would lead to a wrongful termination suit exposing what Watkins had alleged about the transactions at Enron. So Vinson & Elkins and Enron agreed that Watkins should be shifted to another job at Enron where she would have less access to damaging information.

B. Involvement of Kirkland & Ellis

857. Kirkland & Ellis actively engaged and participated in the scheme to defraud and course of business that operated as a fraud and deceit on purchasers of Enron securities. Kirkland & Ellis began working with Fastow, Enron, Vinson & Elkins and several banks in the early 90's to create and utilize off balance sheet investment partnerships and SPEs to enable Enron to engage in transactions designed to enhance or maintain Enron's credit rating by removing debt from Enron's balance sheet and artificially inflating Enron's reported financial results.

858. Kirkland & Ellis's relationship with Fastow long preceded his employment at Enron. That relationship began in the 80's when Fastow worked at Chicago's Continental Bank. Fastow developed a close relationship with Kirkland & Ellis partners, who would later participate with him in the fraudulent scheme involving Enron. Indeed, this relationship grew so close during the Class

Period that Mintz, the V.P. and General Counsel for Enron Global Finance, referred to Kirkland & Ellis as "***Fastow's attorneys***."

(1) Kirkland & Ellis's Role in the SPEs

859. Kirkland & Ellis's ostensibly separate legal representation was utilized to provide the appearance of independence of these SPE's. In fact, Kirkland & Ellis was selected by Fastow because of Kirkland & Ellis's willingness to take direction from Fastow and Enron and was an active participant in the scheme. Kirkland & Ellis's participation in the scheme was essential as it provided some of the expertise necessary for creating SPE transactions that would appear to be arm's-length transactions with independent entities. Working with Andersen, Vinson & Elkins and Enron's banks, Kirkland & Ellis structured the manipulative devices that formed the core of the scheme, including the partnerships and SPE's known as LJM1, LJM2, Chewco and the Raptors, which were used to artificially inflate Enron's reported financial condition and results.

860. Kirkland & Ellis engaged and participated in the scheme by: (i) structuring the SPE's utilized to perpetrate the scheme; (ii) participating in the monetization of assets to facilitate the falsification of Enron's financial statements and results; (iii) preparing partnership and loan agreements for Chewco, LJM1 and LJM2; (iv) participating in the offering and sale of partnership interests in LJM2 via the LJM2 private placement memoranda; and (iv) issuing of dozens of legal opinions concerning the structure, legality and *bona fides* of SPE's used to perpetuate the scheme.

861. Kirkland & Ellis knew of the defects in and lack of *bona fides* of the SPEs it created and that these transactions were not arm's length from Enron but, in fact, were manipulative contrivances designed to artificially boost Enron's reported financial results. Kirkland & Ellis also knew that because these entities were not independent of Enron, ***it was not representing independent entities nor was it providing independent representation to those entities but, in fact, it was working with, under the control of and at the direction of Fastow, Kopper, Skilling, Lay and other Enron insiders***, to paper transactions and close deals as they directed ***without regard to the legal or economic interests or rights of the entities Kirkland & Ellis purportedly represented***.

862. In addition to structuring Enron's SPE's, Kirkland & Ellis issued numerous legal opinions in connection with the formation and later transactions of the LJMs and other related SPEs.

These opinions were essential to allow the transactions between Enron and the partnerships and SPE's to occur. These opinions were false because these transactions were shams, created to artificially inflate Enron's reported financial performance while siphoning off Enron's assets for the benefit of favored insiders, and because these transactions were being conducted on terms inconsistent with disclosures that were being made to investors by Enron, Vinson & Elkins, the Banks and Andersen.

(2) Kirkland & Ellis Participated in Structuring Numerous SPEs

863. Kirkland & Ellis structured and issued opinions related to numerous transactions and entities, including:

JEDI I Big River LLC Little River LLC LJM1 LJM2 Raptor I Raptor II (Timberwolf) Raptor III (Condor) Raptor IV (Bobcat) Honer Chewco	Bob West Treasure LLC Cortez LLC ENA CLO Yosemite Securities Southhampton Place Condor SONR#1 LLC SONR#2 LLC

864. In exchange for its willingness to engage and participate in the scheme, Kirkland & Ellis received tens of millions of dollars in fees for its work for Enron, LJM2 and other partnerships controlled by Enron, Kopper and Fastow. ***In fact, a material part of Kirkland & Ellis's fees was paid directly or indirectly by Enron, notwithstanding the fact that Kirkland & Ellis was supposed to be representing parties independent of Enron and with economic interests adverse to Enron***!

865. Kirkland & Ellis's willingness to structure SPEs and issue false opinions as part of the scheme continued throughout the Class Period as the SPE transactions in which Kirkland & Ellis were involved were a primary manipulative device used to secretly shift billions of dollars of debt from Enron's balance sheet and artificially inflate Enron's income by hundreds of millions of dollars during 97-01, to enable Enron to project an image of a financially sound company with an investment grade credit rating and strong revenue and earnings growth, thus permitting the Enron Ponzi scheme, from which Kirkland & Ellis was profiting, to continue.

(a) Chewco

866. In late 97, Enron learned that its JEDI partnership had to be quickly restructured, as the outside investor was going to withdraw from JEDI. This created a crisis. Because of the involvement of the outside investor in JEDI, JEDI had been treated as independent of Enron and had ***not*** been consolidated into Enron's financial statements and results. Thus, Enron had been able to engage in transactions with JEDI as an independent third party, recognize revenue and profits from those transactions and not carry JEDI's debt on Enron's books. However, unless JEDI could be quickly restructured by having a new, independent investor come forward, ***Enron would have to wipe out all of the profitable transactions it had done with JEDI in 97 – 40% of that year's profits – put hundreds of millions of dollars of JEDI's debt back on Enron's balance sheet – and lose the ability to generate profits from similar such deals with JEDI or its successor going forward***.

867. ***However, Enron could not find a legitimate buyer for the outside investor's interest in JEDI in time for 97 year end***. Thus, Kirkland & Ellis, as directed by Fastow and Enron, quickly formed a new entity called Chewco, which Enron and an Enron executive (Kopper) controlled, to buy the outside investor's interest in JEDI. In the last days of 12/97, Kirkland & Ellis, Vinson & Elkins, Fastow and Kopper, created Chewco, BigRiver Funding and Little River Funding to allow the outside investor in JEDI to sell its interest in JEDI to Chewco. Kirkland & Ellis was supposedly to provide independent representation of Chewco and Chewco's equity investors, but in fact, took direction from Enron and its top insiders.

868. Kirkland & Ellis knew Chewco ***did not have an outside equity investor with a 3% stake – the minimum required to enable Chewco or JEDI to be treated as an independent third party. This was because, to structure the deal, Barclays loaned some $240 million to Chewco to allow it to buy out the partner's interest and JEDI and also loaned the money to two straw parties to provide the funds for the "equity" investment in Chewco. But because the deal was bogus, Kirkland & Ellis knew that Enron had to guarantee Barclay's $240 million loan. And because the purported equity investors in Chewco (which Kirkland & Ellis represented), were, in fact, "strawmen" for Enron, Kirkland & Ellis knew that Barclays required Chewco to support the purported "equity" loans Barclays made to the two "strawmen" via a $6 million cash deposit with***

Barclays! Had proper accounting procedures been followed, because there was no legitimate independent outside investor in Chewco, Chewco was required to have been consolidated with Enron and ***all of Enron's 97 profits generated by transactions with JEDI would have been eliminated***!

869. Kirkland & Ellis and Vinson & Elkins prepared the documentation for Chewco's financing and ***falsified*** these documents so as to make it appear that Chewco was independent. For non-consolidation, Chewco had to be funded by at least 3% equity from independent investors. With just one day left in 97, Kirkland & Ellis and Vinson & Elkins drafted a side agreement providing that ***Enron would provide the necessary cash to fund Chewco via clandestine reserve accounts for Big River Funding and Little River Funding***. The side agreement was dated 12/30/97. The Kopper/Enron side agreement concocted by Kirkland & Ellis and Vinson & Elkins made it clear that ***no outside equity was used to fund Chewco and thus Chewco was not a viable SPE***. Rather, Chewco was simply a manipulative device and artifice to further a fraud and which served to falsely inflate Enron's financial statements. By forming Chewco at year-end 97, Kirkland & Ellis avoided a disaster by keeping Enron's previously recorded profits from transactions with JEDI in place, thus inflating Enron's 97 reported profits.

870. Kirkland & Ellis also took steps to avoid disclosure of the Chewco buyout of the partner interest in JEDI and Enron's control of JEDI. Initially, Fastow was to have managerial control of Chewco, but the participants realized that Fastow could not have that position without having to disclose this interest in Enron's SEC filings. This would potentially expose the non-arm's length of this transaction. So Kirkland & Ellis and Fastow arranged for Kopper, Fastow's subordinate, to be substituted as the manager of Chewco, and by this subterfuge conceal this from Enron's shareholders.

871. During 12/97, Kirkland & Ellis also made changes to the structure of the transaction to allow Enron to avoid disclosing the existence of Enron's financial relationship with Chewco. Kirkland & Ellis converted the general partner of Chewco from a limited liability company to a limited partnership, and put Kopper in instead of Fastow as the owner of Chewco's general partner. The sole purpose for this structural change was to allow non-disclosure of the Chewco/JEDI transactions at year end 97. However, prior to the closing of Chewco, Kopper expressed concern

over his improper conflict of interest since he was an Enron employee and would act as the owner of both the general partner of Chewco ***and*** the owner of the equity of limited partner, Big River Funding. Notwithstanding the fact Kopper complained to Kirkland & Ellis about the sham transaction, Kirkland & Ellis went ahead and structured the transaction as proposed. Kirkland & Ellis did not withdraw from its involvement in the scheme or insist on disclosure of this conflict of interest in Enron's SEC filings – despite this clear red flag of its impropriety. Rather, Kirkland & Ellis participated with Andersen, Fastow, Kopper and Vinson & Elkins to obscure Kopper's true managerial position with Chewco by "transferring" Kopper's ownership interest in Big River Funding and Little River Funding to his domestic partner Dodson and completing the purchase of the 50% interest in JEDI by Chewco.

872. ***Thus, Kirkland & Ellis knew Chewco/JEDI was not a valid SPE meeting the requirements for non-consolidation.*** Chewco was also now positioned to serve as a controlled entity which Enron could use going forward to do more non-arm's length transactions with, which Kirkland & Ellis would help structure and which would create phony profits for Enron (at least $350 million) and allow Enron to conceal the true state of its indebtedness by improperly moving debt off its balance sheet.

873. In 98-01, Kirkland & Ellis engaged and participated in the creation of numerous other controlled partnerships and entities and used them to generate billions of dollars of additional phony profits for Enron and to conceal billions of dollars of Enron debt by moving it off Enron's balance sheet. To manipulate and falsify Enron's reported financial condition and reported results, Kirkland & Ellis helped structured a series of purported partnership and SPE transactions, including those described below.

(b) LJM

874. In 99, Enron, Kirkland & Ellis engaged and participated in the creation of two ***LJM partnerships for Enron which Enron and Fastow controlled. The LJM partnerships were manipulative devices, allowing Enron to inflate its reported financial results by more than a billion dollars while at the same time enriching Fastow and his friends and several of Enron's bankers who were allowed to invest in the LJM2 partnership by tens of millions of dollars.***

Kirkland & Ellis knew that the reason for establishing these two partnerships was that they would permit Enron to accomplish transactions it could not otherwise accomplish with an independent entity, by providing Enron with a buyer of assets that Enron wanted to sell. The LJM1 and LJM2 transactions were structured, reviewed and approved by Kirkland & Ellis which was purportedly providing independent representation of the LJM's and its SPE's but, in fact, because it had been hand picked by Fastow and Enron for their role, Kirkland & Ellis was beholden to and took instructions from them.

875. During 6/99-6/01, Enron entered into numerous transactions with the LJMs, in which Kirkland & Ellis purportedly represented the SPE's and/or partnerships involved. Enron sold assets to LJM that it wanted to get off its books on terms that no independent third party would ever have agreed to. ***The transactions between the LJMs and Enron or its affiliates occurred close to the end of financial reporting periods to artificially boost reported results to meet forecasts Enron and other participants in the scheme had been making***. For instance, near the end of the 3rdQ and 4thQ 99, Enron sold interests in seven assets to LJM1 and LJM2 in transactions structured and approved by Kirkland & Ellis. The transactions permitted Enron to conceal its true debt levels by removing the assets from Enron's ***balance sheet and, at the same time, record large gains. However, (i) as it had agreed in advance it would do, Enron bought back five of the seven assets after the close of the financial reporting period; (ii) the LJM partnerships made large profits on every transaction, even when the asset it had purchased actually declined in market value; and (iii) those transactions generated "earnings" for Enron of $229 million in the second half of 99 out of total earnings for that period of $549 million. In three of these transactions where Enron ultimately bought back LJM's interest, Enron had agreed in advance to protect the LJM partnerships against any loss. Thus, as Kirkland & Ellis knew would be the case, the LJM partnerships were functioning only as vehicles to effectuate the manipulation, falsification and artificial inflation of Enron's reported financial results***.

876. One LJM transaction where Kirkland & Ellis was involved was the purchase of an equity interest in an Enron power plant in Cuiaba, Brazil (the "Cuiaba plant"). Because Enron had substantial debt related to the Cuiaba plant, which debt Enron wanted to remove from its books,

Enron sought to sell an equity stake in the Cuiaba plant. However, it could not find a third party purchaser. In 6/99, in order to remove the debt to make Enron's balance sheet appear healthy, Kirkland & Ellis and Vinson & Elkins structured a transaction whereby LJM1 would "buy" an equity stake in the Cuiaba plant. This was not an arm's length or *bona fide* transaction.

877. Effective 9/99, Enron sold LJM1 a 13% stake in a company building the power plant in Cuiaba, Brazil for $11.3 billion. This reduced Enron's ownership to the point where Enron purportedly did not control the entity and therefore did not have to consolidate its interest. ***This sale enabled Enron to improperly realize $34 million of mark-to-market income in the 3rdQ 99, and another $31 million of mark-to-market income in the 4thQ 99. In 8/01, Enron repurchased LJM1's interest in Cuiaba for $14.4 million***! LJM1's equity investment in Cuiaba, however, was never "at risk" because Enron had agreed to make LJM1 whole for its investment. Thus, Enron was required to consolidate the SPE Kirkland & Ellis created for their deal but did not and should have improperly recognized the mark-to-market gains from the gas supply contract.

878. Another LJM "hedging" transaction with LJM that Kirkland & Ellis helped structure in 6/99 involved Rhythms stock owned by Enron, ***to "hedge" Enron's huge gains in Rhythms stock and enable Enron to create a huge profit. Enron transferred its own stock to the SPE in exchange for a note. But if the SPE were required to pay Enron on the "hedge" the Enron stock would be the source of payment. Other "hedging" transactions that were structured by Kirkland & Ellis and occurred in 00 and 01 and involved SPEs known as the "Raptor" vehicles. These were also structures funded principally with Enron's own stock, that were intended to "hedge" against declines in the value of certain of Enron's merchant investments. These transactions were not economic hedges. As Kirkland & Ellis knew, these were also actually manipulative devices devised to circumvent accounting rules. The economic reality was that Enron never escaped the risk of loss, because it had provided the bulk of the capital with which the SPEs would pay Enron***. Kirkland & Ellis helped Enron use these contrivances and manipulative devices to inflate Enron's reported financial results. In 99, Enron improperly recognized millions of dollars of income from the Rhythms' "hedging" transaction.

879. One of the primary manipulative devices used to falsify Enron's financial results was LJM2, which was supposedly formed in 12/99 and was controlled by Enron and used to create numerous SPEs (including the "Raptors") – where they engaged in transactions to artificially inflate Enron's profits while concealing billions of dollars in debt that should have been included on Enron's balance sheet. Kirkland & Ellis knew that because LJM2 was going to be utilized to engage in transactions with Enron where Enron insiders would be on both sides of the transactions, that the LJM2 partnership would be extremely lucrative – ***a deal that was virtually guaranteed to provide huge returns to LJM2's investors as the Enron Ponzi scheme went forward***. In fact, Fastow's dual role by which he could self-deal on behalf of the LJM2 partnership with Enron's assets was so important ***that investors in LJM2 were assured (in documents Kirkland & Ellis helped write) that they did not have to make any additional capital contributions if Fastow's dual role ended***.

880. Because the LJM2 partnership was potentially so lucrative to investors in that private entity, it was decided that in funding LJM2 ***certain favored investment banks and high-level officers of those investment banks and other favored Merrill Lynch clients would be allowed to invest in LJM2 because the investment was virtually guaranteed to produce exceptional returns as the Enron Ponzi scheme continued***. In fact, the offering memorandum for the LJM2 partnership (which Kirkland & Ellis helped write and ***which was not a public document***) contained an invitation to benefit from the insider self-dealing transactions that LJM2 would engage in. It stressed the "***unusually attractive investment opportunity***" resulting from LJM's connection to Enron. It emphasized Fastow's position as Enron's CFO, and that LJM2's day-to-day activities would be managed by Enron insiders Fastow, Kopper, and Glisan. It explained that ***"[t]he Partnership expects that Enron will be the Partnership's primary source of investment opportunities"*** and that it ***"expects to benefit from having the opportunity to invest in Enron-generated investment opportunities that would not be available otherwise to outside investors."*** It specifically noted that Fastow's ***"access to Enron's information pertaining to potential investments will contribute to superior returns." In addition, investors were told that a similar Enron controlled partnership (JEDI) that had done deals with Enron like the ones LJM2 would do had tripled their investment in just two years and that overall returns of 2,500% to LJM2 investors were actually anticipated***,

In short, the non-public offering memorandum written in part by Kirkland & Ellis was an invitation to join in the benefits of self-dealing transactions with Enron.

881. Kirkland & Ellis knew it was indispensable that LJM2 be formed before year-end 99 because of the need to use LJM2 as a vehicle to consummate several transactions with Enron before year-end 99, to move debt off the Enron balance sheet and to create huge profits for Enron in the 4thQ 99 so that Enron could meet and exceed its forecasted 99 earnings. However, as had been the case with Chewco at year-end 97, there was tremendous time pressure and the deal could not get done by year end. Merrill Lynch could not raise the money from outside investors in LJM2 in time to fund LJM2 by year-end 99 with sufficient capital to enable it to do the desperately needed transactions with Enron. So, in 12/99, with the participation of Kirkland & Ellis, several of Enron's bankers, knowing that LJM2 was going to be an extraordinarily lucrative investment anyway created documentation that enabled the banks to advance virtually 100% of the monies needed to initially fund LJM2, *i.e.*, many times more than their allocated shares in 12/99. The reason the banks put up virtually all the money to pre-fund LJM2 in 12/99 was that they knew Enron doing the 99 year-end deals with the LJM2 SPE was indispensable to avoiding Enron reporting a very bad 4thQ 99 – which would have caused its stock to plunge. Then, after LJM2 was fully funded in early 00 and other investors' money flowed into LJM2, those banks' initial "over-funding" in 12/99 was adjusted for in subsequent capital contributions to LJM2. Kirkland & Ellis helped structure each of these transactions for Enron, representing the SPE's but acting at Enron's or Fastow's direction and providing the opinions necessary to close these deals.

882. Key year-end deals were:

(a) ***Collateralized Loan Obligations ("CLOs")***.

(b) ***Nowa Sarzyna (Poland Power Plant)***.

(c) ***MEGS, LLC***.

(d) ***Yosemite***.

883. During the last week of 99, Kirkland & Ellis worked feverishly with Fastow, Merrill Lynch, CS First Boston, Vinson & Elkins and Andersen to create and fund LJM2 so that a series of sham transactions could be consummated between LJM2 and Enron ***prior to year end 99***, enabling

Enron to report strong EPS growth for 99. These four transactions were structured in the last week of 99 to eliminate certain assets from Enron's year-end balance sheet and allow Enron to report 99 earnings. The transactions were then to be reversed during 1Q00. Each of these transactions was a manipulative device and contrivance designed by Kirkland & Ellis and others to manipulate Enron's financial results.

884. In 11/99, Enron purchased certificates issued by a trust affiliated with Enron called "Yosemite." However, the only way defendants could avoid disclosing Enron's holdings in Yosemite was to reduce Enron's interest in Yosemite to less than 10% by year end 99. Because no *bona fide* purchaser would buy Enron's interest in Yosemite, Kirkland & Ellis worked with Fastow to concoct a series of transactions designed to make it appear – at least for the last week between 12/25/99 and ½/00 – that the Yosemite Certificates were not owned by Enron but rather by a "third party," LJM2. In fact, LJM2 "owned" the Yosemite Certificates it bought from Enron for a single day, immediately reselling the Yosemite Certificates to another SPE, Condor. The Yosemite transaction created and structured by defendants Fastow, Kirkland & Ellis and others was a sham. ***In fact, the legal documents approved and drafted by Kirkland & Ellis had been clearly and deliberately back-dated during 2/00 in order to justify the continued concealment from Enron's shareholders of the existence of the fraudulent scheme complained of herein***.

885. Just days prior to the end of 99, Kirkland & Ellis also prepared a supplement to the PPM ("Supplement No. 1") which detailed several of the "investments" that would be made by LJM2 upon closing of the transaction. In an effort to induce heightened interest in LJM2, Kirkland & Ellis, Enron, Fastow, and Merrill Lynch and Kopper included a chart in the PPM which noted that a similar SPE formed six years earlier by these defendants (JEDI) had generated a favorable annual internal rate of return ("IRR") of 23%. Defendants knew or recklessly disregarded that the IRR number was false and misleading, as it was not based upon a resale of the JEDI interest at fair market value but rather was based upon the fact that defendants Fastow, Kirkland & Ellis and Vinson & Elkins had clandestinely created another SPE, Chewco to acquire 50% of the outstanding interest of JEDI.

886. During00, Enron continued to use LJM2 and its SPE's to manipulate its balancesheet and reported results via a series of transactions with LJM2 which Kirkland & Ellis helped structure. On 3/20/00, Kirkland & Ellis created a partnership agreement for a limited partnership called Southhampton Place L.P., the general partner which was Big Doe LLC. Kirkland & Ellis created the Southampton partnership, together with defendant Fastow, for the purpose of acquiring a portion of the interest held in LJM1 by an existing limited partner. Fastow, Kopper and Kirkland & Ellis created the Southampton entity and funded it with $70,000 of capital contributions from several Enron employees, including themselves, Glisan, Mordaunt, Lynn and Patel. All of these individuals were substantially involved in the numerous transactions between Enron and LJM2.

887. Enron's Glisan objected to Kirkland & Ellis that the transaction should be accounted for as a related-party transaction, thus necessitating disclosure. However, in furtherance of the efforts to conceal defendants' fraudulent scheme, Kirkland & Ellis opined that the involvement of these Enron employees in the Southampton partnership and the Southampton partnership's transaction with LJM1 and/or Enron did ***not have to be disclosed***.

888. In 5/00, Kirkland & Ellis, together with other defendants, structured another sham transaction between Enron and LJM2 that enabled Enron to report earnings in line with estimates for the quarter. By 5/00, Enron realized that it was unable to meet its earnings estimates for the quarter. In an attempt to generate revenue in Enron's fiber optic business, (EBS), Enron tried to sell a portion of its fiber optic cable lines. However, no legitimate purchaser could be found prior to the end of the quarter. Defendants, once again, turned to Kirkland & Ellis and LJM2 to manipulate Enron's finances. With little time left in the quarter, defendants determined that LJM2 would purchase the fiber optic cables. The sale was structured and memorialized by Fastow and Kirkland & Ellis. There was tremendous pressure to complete the transaction prior to the end of the quarter, as the only reason Enron was engaging in the sale with LJM2 was to artificially inflate its earnings via the sham transaction. The deal with LJM2 was not truly an arms-length sale but rather an artificial transaction used to concoct earnings for Enron. Enron sold dark fiber optic cable for the price of $100 million to LJM2. LJM2 paid Enron $30 million in cash and the balance in an interest-bearing note for $70 million. Despite the fact that the dark fiber wasn't worth anywhere near $100

million, Enron recognized $67 million in pre-tax earnings in 2000 related to the asset sale. Another deal with LJM occurred in the 3rdQ 00 worth more than $300 million. This deal did not follow normal protocol as even network developers and traders did not learn about the deal until after the fact. The sole reason for the deal was for Enron to make its numbers.

889. During the Class Period, Kirkland & Ellis's involvement in the fraudulent scheme was to not only structure the SPE's and transactions effected therewith to avoid having to disclose the transactions and to inflate Enron's reported performance, but to also engage and participate in restructuring the SPE's so as to continue to conceal the fraudulent transactions and permit the fraudulent scheme to continue.

890. During 00, Kirkland & Ellis and Vincent and Elkins structured increasingly more aggressive SPEs to enable Enron to create profits and/or shift assets off Enron's balance sheet at the end of reporting periods to inflate Enron's reported income and improve its balance sheet. Operating as Fastow's personal outside counsel while functioning formally as counsel to LJM2, Kirkland & Ellis devised mechanisms and structures to enable Enron to create purported income by abusing mark-to-market accounting. During 00, Kirkland & Ellis participated in the structuring and restructuring of 4 SPE's named Raptor I, Raptor II, Raptor III and Raptor IV. The Raptors' SPE's were structured as "mark-to-market" manipulative devices and were used to off-load assets from Enron and/or create income from the shifting of assets held by Enron to the Raptors. Working closely with Fastow, Andersen and Vinson & Elkins, Kirkland & Ellis created and structured the Raptors.

891. Hedging Enron's investments with the value of Enron's stock – as Kirkland & Ellis did in numerous SPE deals – created an enormous motive to keep Enron stock trading at inflated levels. This was because as Kirkland & Ellis knew Enron had structured these transactions so that if the value of the investments fell at the same time as the value of Enron stock fell, the SPEs would be unable to meet their obligations and the "hedges" would fail. This happened in late 00 and early 01 and the Raptor SPEs lacked sufficient credit capacity to pay Enron on the "hedges." By 11/00, Enron had entered into derivative transactions with the Raptors with a notional value of over $1.5 billion. In 12/00, Enron calculated its net gain (and the Raptors' corresponding net loss) on these

transactions to be slightly over $500 million. Enron could recognize these gains – offsetting corresponding losses on the investments in its merchant portfolio – only if the Raptors had the capacity to make good on their debt to Enron. If they did not, Enron would be required to record a "credit reserve." Such a loss would defeat the very purpose of the Raptors, which was to shield Enron's financial statements from reflecting the change in value of its merchant investments.

892. As year-end 00 approached, two of Enron's Raptor SPEs were in danger of coming unwound as they lacked sufficient credit capacity to support their obligations, let alone continue to engage in similar transactions with Enron. If something were not done to prevent the unwinding of these SPEs, Enron would have to take a multi-million charge against earnings which would expose the prior falsification of Enron's financial results and result in Enron stock plunging, more and more of the stock issuance "triggers" would begin to be hit, and a vicious fatal down-cycle would kick in. Therefore, Kirkland & Ellis helped Enron restructure and capitalize the Raptor SPEs at year-end 00 via artificial transactions which transferred rights ***to even more shares*** of Enron stock to these entities, creating ever-increasing pressure on Enron and the other participants in the scheme to support Enron's stock price. But this enabled Enron to avoid recording a huge credit reserve for the year ending 12/31/00.

893. Another example of how Kirkland & Ellis engaged and participated in falsifying Enron's results is the New Power transaction, including the New Power IPO, by which Enron improperly recognized $370 million in profits in the 4thQ 00. In 00, Enron owned millions of shares of New Power stock – then a private company, and controlled New Power. If Enron could take Enron public and create a trading market in its stock, then Enron could recognize a profit on the gain in value on its shares by "hedging" that gain via yet another non-arm's length transaction with a LJM2 entity. In the 4thQ 00, Enron desperately needed to create profits to perpetuate the Ponzi scheme. Enron did the huge New Power IPO – 27.6 million shares at $21 per share in 10/00. After the IPO, Enron continued to hold 13.6 million shares of New Power common stock and warrants to purchase 42 million more shares. With the participation of Kirkland & Ellis, in a deal already structured before the IPO, Enron quickly moved to create a huge phony profit using LJM2. Immediately after the New Power IPO, Kirkland & Ellis engaged and participated in creating an SPE

called Hawaii 125-0. CIBC (and several other of Enron's banks) made a "loan" of $125 million to Hawaii 125-0, but as Kirkland & Ellis knew received a "total return swap" guarantee from Enron that was supposed to protect CIBC and the other banks against ***any loss***. Enron transferred millions of its New Power warrants to Hawaii 125-0 to "secure" the banks' loan and thus created a huge $370 million "profit" on the purported gain on the New Power warrants made possible by the New Power IPO. Hawaii 125-0 simultaneously supposedly "hedged" the warrants with another entity created and controlled by Enron called "Porcupine." To supposedly capitalize Porcupine, LJM2 put $30 million into Porcupine to facilitate the so-called hedge of the New Power warrants but, one week later, Porcupine paid the $30 million back to LJM2 plus a $9.5 million profit – leaving Porcupine with no assets.

894. ***In late 3/01, inside Enron it appeared that Enron would be required to take a pre-tax charge against earnings of more than $500 million*** to reflect a shortfall in credit capacity of the Raptor SPEs, which would have been catastrophic and exposed the scheme. Rather than allow Enron to take that loss and face the consequences, Kirkland & Ellis engaged and participated in a "restructuring" of the Raptor vehicles by having Enron transfer ***more than $800 million of contracts to receive Enron's own stock to them just before quarter-end. This was a transfer of huge value for no consideration and violated governing accounting rules. It also permitted the participants in the scheme to continue the concealment of the substantial losses in Enron's merchant investments, keep billions of dollars of debt off Enron's balance sheet and allowed the Enron Ponzi scheme to continue***.

(3) Kirkland & Ellis Participated in Enron's Misleading Disclosures

895. Towards the end of the Class Period, Kirkland & Ellis openly admitted to a senior Enron employee responsible for preparing Enron's SEC disclosures, that Kirkland & Ellis's rationalization for non-disclosure of the various LJMs and LJM transactions ***was without any basis in precedent***. Kirkland & Ellis reviewed Enron's various SEC filings as they related to Enron's related party transactions and knew that those related party transactions were unfair to Enron and that Enron's assertion that the transactions were on terms similar to those that could have been obtained for independent third parties was false. Furthermore, in 5/01, Kirkland & Ellis continued to engage

in an effort to restructure LJM2 so that it would not have to be disclosed pursuant to Regulation S-K. Although Kirkland & Ellis knew throughout the Class Period that the federal securities laws demanded that Enron make full complete and truthful disclosure of the SPE's, including LJM2, Kirkland & Ellis continued to evade and/or manipulate applicable disclosure requests by, among other things, having Fastow and Kopper sell some of their ownership interests to others. Kirkland & Ellis's manipulations were so extreme that one senior employee responsible for Enron's SEC disclosures sensed that Kirkland & Ellis's position on this disclosure requirement was not credible, and went so far as to hire another law firm to review Kirkland & Ellis's work.

896. In summary, Kirkland & Ellis participated and engaged in several aspects of the fraudulent scheme, including issuing opinions they knew were false or had no basis in fact. Kirkland & Ellis reviewed and approved Enron's SEC filings as they related to Enron's Chewco and LJM partnerships and related party SPE transactions. Kirkland & Ellis also helped to set up Chewco, JEDI, LJM1 and LJM2 and virtually ***all*** of the related SPE transactions. Kirkland & Ellis was hand-picked by Enron to purportedly provide "independent" representation for Chewco, JEDI, LJM1 and LJM2 and the SPEs, but, in fact, worked under the direction of Enron and its top insiders in helping to structure those partnerships and their related transactions – manipulative devices – engaged in by them to falsify Enron's financial condition and results.

INVOLVEMENT OF ARTHUR ANDERSEN

A. General

897. Andersen, a worldwide firm of certified public accountants, was involved in every facet of Enron's business. Andersen audited Enron's financial statements, it acted as internal auditors for Enron, it prepared Enron's tax returns, it provided consulting services on a wide range of topics and consulted on the accounting for the very transactions at issue in this litigation throughout the Class Period. Andersen examined and opined on Enron's financial statements for 97, 98, 99, and 00, and reviewed Enron's interim 97 through 01 results and press releases. Andersen, through Andersen Worldwide and all of its 4800+ worldwide partners, served Enron as an integrated part of a global enterprise. Andersen attracted clients like Enron, by holding itself out as ***one firm***, as described in ¶¶418-611, and by heavily emphasizing a "one firm" worldwide brand recognition. As a result of the far-reaching scope of services provided by Andersen, it was intimately familiar with Enron's business affairs and its personnel were present at Enron's Houston headquarters on a year-round basis. Andersen's Houston and Chicago offices were routinely involved in the development, consulting and accounting for the fraudulent deals and transactions at issue herein. Other offices in the U.S. including the Portland, Oregon office, were also involved in the Enron engagements. Andersen's worldwide offices were also an integral part of the Enron audit. Andersen-Brazil rendered professional services for the Cuiaba, Brazil Power Plant. Andersen-India provided services related to the power plant in Dabhol. Andersen-United Kingdom provided services to Enron relating to commodities trading and the Wessex water plant.

898. Andersen, as Enron's independent auditor, had a unique role and responsibility. Since 34, when Congress passed a law requiring that publicly traded companies have their books audited annually by independent accountants, auditors have been the investing public's watch dog. Indeed the United States Supreme Court affirmed that responsibility:

> By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a public responsibility transcending any employment relationship with the client. The independent public accountant performing this special function owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. This "public watchdog" function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust.

United States v. Arthur Young & Co., 465 U.S. 805, 817-18 (1984). Andersen however, turned its back on its responsibilities to Enron's investors and the investing public, and abandoned its professional standards by helping Enron perpetrate the massive accounting fraud as alleged herein.

899. Andersen falsely represented that Enron's financial statements for 97, 98, 99 and 00 were presented in accordance with GAAP and that Andersen's audits of Enron's financial statements had been performed in accordance with Generally Accepted Auditing Standards ("GAAS"). Andersen also consented to the incorporation of its reports on Enron's financial statements in Enron's Form 10-Ks for those years and in Enron's Registration Statements for the Company's: (i) registration of $1 billion in Enron Debt Securities, Warrants, Preferred Stock and Depository Shares filed on 12/17/97; (ii) registration of 488,566 shares of common stock filed on 1/12/98; (iii) registration of 34.5 million shares of common stock filed on 4/21/98; (iv) registration of $1 billion in Enron Debt Securities, Warrants, Preferred Stock and Depository Shares filed on 1/12/99; (v) registration of 7.6 million shares of common stock filed on 4/5/99; (vi) registration of ten million Exchangeable Notes filed on 7/23/99; (vii) registration of 4.9 million shares of common stock filed on 4/4/00; (viii) registration of 616,778 shares of common stock on 6/15/00; (ix) registration of $1 billion in Enron Debt Securities, Warrants, Preferred Stock and Depository Shares filed on 7/19/00; and (x) registration of $1.9 billion in Zero Coupon Convertible Senior Notes due 2021 filed on 6/1/01. Andersen also consented to the use of its name as an expert in each Prospectus filed and issued pursuant to these offerings, including the Prospectus for the Zero Coupon Notes filed on 7/25/01. Andersen's issuance of, and multiple consents to reissue materially false reports on Enron's 97-00 financial statements were themselves violations of GAAS.

900. The SEC has stressed the importance of meaningful audits being performed by independent accountants:

> [T]he capital formation process depends in large part on the confidence of investors in financial reporting. An investor's willingness to commit his capital to an impersonal market is dependent on the availability of accurate, material and timely information regarding the corporations in which he has invested or proposes to invest. The quality of information disseminated in the securities markets and the continuing conviction of individual investors that such information is reliable are thus key to the formation and effective allocation of capital. ***Accordingly, the audit function must be meaningfully performed and the accountants' independence not compromised***.

Relationship Between Registrants and Independent Accountants, SEC Accounting Series Release No. 296, 1981 SEC LEXIS 858, at *8-*9 (Aug. 20, 1981).

901. Moreover, Andersen violated the public's trust and violated the American Institute of Certified Public Accountants ("AICPA's") Code of Professional Ethics:

ET §51

> **.02** These Principles of the Code of Professional Conduct of the American Institute of Certified Public Accountants express the profession's recognition of its responsibilities to the public, to clients, and to colleagues. They guide members in the performance of their professional responsibilities and express the basic tenets of ethical and professional conduct. ***The Principles call for an unswerving commitment to honorable behavior, even at the sacrifice of personal advantage***.

ET §53

> **.03** ***Those who rely on certified public accountants expect them to discharge their responsibilities with integrity, objectivity, due professional care, and a genuine interest in serving the public***.

902. GAAS, as approved and adopted by the AICPA, are measures of the quality of the performance of audit procedures, the professional qualities the auditor should possess, and the judgment exercised by the auditor in the performance of the audit and issuance of his or her report. Statements on Auditing Standards ("SAS") (codified and referred to as AU §___) are recognized by the AICPA as the interpretation of GAAS.

903. With respect to Enron's financial statements for 00, Andersen represented, in a report dated 2/23/01, the following:

REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

To the Shareholders and Board of Directors of Enron Corp.:

> We have audited the accompanying consolidated balance sheet of Enron Corp. (an Oregon corporation) and subsidiaries as of December 31, 2000 and 1999, and the related consolidated statements of income, comprehensive income, cash flows and changes in shareholders' equity for each of the three years in the period ended December 31, 2000. These financial statements are the responsibility of Enron Corp.'s management. Our responsibility is to express an opinion on these financial statements based on our audits.
>
> We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by

management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Enron Corp. and subsidiaries as of December 31, 2000 and 1999, and the results of their operations, cash flows and changes in shareholders' equity for each of the three years in the period ended December 31, 2000, in conformity with accounting principles generally accepted in the United States.

904. Andersen issued nearly identical audit reports for 97 (issued 2/23/98), 98 (issued 3/5/99), and 99 (issued 3/13/00).

905. Andersen's reports were false and misleading due to its failure to conduct its audits in compliance with GAAS and because Enron's financial statements were not prepared in conformity with GAAP, as alleged in detail in ¶¶418-611, so that issuing the reports was in violation of GAAS and SEC rules. Andersen knew its reports would be relied upon by present and potential investors in Enron securities. Throughout the same period Andersen performed reviews of Enron's quarterly financial statements, reviewed and approved Enron's quarterly reports filed on Forms 10-Q and reviewed, discussed and approved Enron's press releases.

B. Andersen Was Not Independent

906. Enron was Andersen's crown jewel client. Enron was the firm's second largest single client and its relationship with Enron was extremely lucrative and was expected to become even more so in the near future. In 00 alone, Andersen received $52 million in fees for services it provided to Enron, of which $25 million related to the audit fees and another $27 million related to its highly-profitable consulting work. This was an incredible level of fees, even for one of the largest accounting firms in the world. These fees were particularly important to Andersen's partners as their incomes were dependent on the continued business from Enron. Andersen's Houston office alone had at least eight partners working on Enron engagements, five of which were assigned to Enron full time, as well as at least 100 additional professionals. Numerous Houston Andersen auditors worked solely on Enron engagements. Andersen's Gulf Coast Market partners had a particular incentive and were under enormous pressure to not only retain Enron, but to increase the billings to the client which already accounted for a large portion of the Houston office total revenue. Andersen partners

assigned to the Enron account held regular "Client Service Team" meetings during the Class Period to discuss ways to sell more services and bill more fees to Enron.

907. Because Andersen partners could not increase the fees from Enron fast enough by performing traditional audit and accounting work, Andersen incentivized its partners to sell its much more lucrative consulting services. Andersen tied part of audit partners' compensation to the solicitation and marketing of non-audit consulting services, and creating other revenue-sharing arrangements between audit and consulting partners groups. Andersen put tremendous pressure on partners to generate more fees. A "depth chart" was developed for each audit client based upon the level of services provided to that client. Partners received extra units (worth about $200,000 per year) based on the additional services sold. Because Enron purchased so many services, the engagement was looked upon as a blueprint for how other partners should "mature a client." Hundreds of Andersen partners were each earning in excess of $1 million per year (Duncan was earning as much as $2 million per year), based primarily upon the level of fees that each individual partner "controlled" or sold to his or her assigned clients. These pressures directly led to a conflict of interest for the auditors on the Enron engagement, and were a significant factor that led to Andersen abandoning its independence, objectivity and integrity on the Enron financial statement audits and reviews.

908. Professional Audit Standards promulgated by both the AICPA and the SEC require that auditors be independent, objective and free of conflicts of interest. See ET §54, 55,102.

909. Andersen violated these professional standards and others as alleged at ¶¶962-969, and breached its duty to the public trust when its thirst for fees caused it to assist Enron in Enron's improper accounting as outlined below.

C. Andersen's Conflicts Of Interest

910. Andersen knew that the key to increasing its fees was to help Enron maintain its undeserved investment-grade credit rating as it grew. Enron set up outside entities with joint investors that would hold assets and the debt Enron was incurring to finance them. Andersen and the Enron Defendants knew however, that if Enron retained effective control over the joint entity, GAAP required consolidation of the investment in its entirety (the inclusion of all assets, liabilities

and losses) into Enron's consolidated financial statements. Determined to earn the enormous fees associated with this guidance, Andersen abandoned its professional duty to remain independent, objective and skeptical, and did not require revision of an accounting treatment it had approved, even when Enron and its lawyers and bankers structured more and more egregious transactions. The effort put forth by Andersen included the consultation and involvement of partners at the highest level of Andersen, including top partners at Andersen's national office headquartered in Chicago.

911. In this collaboration with Enron, its lawyers and bankers, Andersen violated the profession's fundamental principles of objectivity, skepticism, independence and integrity required by GAAS. As an auditor, Andersen's job was not to find a way to justify spurious accounting treatment that a layman would intuitively recognize as a ruse.

912. Keeping the Enron client happy at all costs however, was so important to Andersen partners that they found ways to either ignore or justify their own complicity in the most egregious examples of Enron's improper accounting as alleged herein. As an example, during an Andersen meeting in 2/01 held to discuss Enron's serious accounting issues, it is very apparent that top level Andersen partners from both the Houston and Chicago offices concluded that the potential to almost double the Enron fee level to an unprecedented $100 million per year was worth retaining the client despite the fact that Andersen knew Enron's accounting presented serious engagement risks:

> Ultimately the conclusion was reached to retain Enron as a client citing that it appeared that we had the appropriate people and processes in place to serve Enron and manage our engagement risks. We discussed whether there would be a perceived independence issue solely considering our level of fees. We discussed that the concerns should not be on the magnitude of fees but on the nature of fees. We arbitrarily discussed that it would not be unforeseeable that fees could reach a $100 million per year amount considering the multi-disciplinary services being provided. Such amount did not trouble the participants as long as the nature of the services was not an issue.

913. In another example, Andersen partners at the highest level removed partner Carl Bass from his oversight role on the Enron audits because he continued to oppose Enron's improper accounting practices and Andersen's complicity therein. Bass was a top accounting expert in Andersen's internal Professional Standards Group – a national team of experts whose job was to review and approve accounting and auditing questions facing local offices. As early as 99, Bass had strongly objected to Enron's accounting. Again in February, March and December 00 and March 01,

e-mails, Bass continued to express his disagreement with Enron and other Andersen partners over Enron's improper accounting. This eventually upset Enron management. As a consequence, defendant Richard Causey, with defendant David Duncan's help, pressed top Andersen management in Chicago to have Bass removed from the account. Causey went so far as to bring this up in a personal meeting with Andersen CEO Berardino on 2/21/01. Three weeks later, top Andersen management removed Bass from his job of providing oversight and approval of accounting issues to Andersen's Enron audit team.

914. Andersen's close relationship with management was another significant contributing factor in impairing Andersen's independence and objectivity on its Enron audits during the Class Period. For example, at one time, former Andersen auditors and professionals occupied upwards of 300 accounting and finance positions at Enron, many in mid-level and senior management. In fact, Enron was the world's largest single employer of Andersen alumni. Enron defendants liked the relationship as they knew that current Andersen auditors were much less likely to challenge the improper accounting done by their former Andersen co-workers and bosses that were now officers and managers at Enron.

915. Andersen also performed certain consulting services in such a way as to impair its independence on its audits and reviews. For example, during the early-to-mid 90's, as part of its relentless mission to sell more and more non-audit services to Enron, Andersen set its sights on stealing Enron's important internal audit oversight function away from Enron's own internal auditors, and selling the service itself to Enron on an outsourced, contract basis. Andersen and other big accounting firms had successfully lobbied the AICPA to allow the practice on a limited basis, the dual role of internal and external auditor was extremely controversial, and many outside the "big six accounting firms" saw it as an outrageous conflict of interest. In Enron's case, Andersen's internal audit consulting turned out to be just that. For example, by stripping Enron's internal audit function of its power and assuming most of the responsibilities itself, Andersen effectively eliminated the potential that another independent oversight body would discover and report the fraud. As a former Enron employee involved in the transition to Andersen performing internal audit characterized it,

"Going forward, Skilling was left to run a casino for a business, with a day-care center for an auditor."

916. Andersen's obsession with generating consulting fees from Enron caused a significant conflict of interest while performing Enron's audits and reviews during the Class Period, and was one of the factors that led to the impairment of the firm's integrity, objectivity and independence. In fact, recent conclusions reached by the very committee Andersen established and funded to look into its own policies as a result of the Enron debacle are in effect, an acknowledgment that such conflicts do exist and did impair Andersen's independence on the Enron audits. On 3/11/02, less than ten days after accepting the chairmanship of the blue-ribbon committee at Andersen's behest, Chairman Paul Volcker quickly came to the conclusion that, among other things, if Andersen was to resolve the kinds of conflicts of interest and impairment of independence that caused the problems in its Enron audits, the firm needed to 1) split its audit from its consulting practice; 2) ban the current financial incentives tying auditors' compensation to selling consulting work; 3) refrain from performing internal audit work on audit clients; and 4) adopt a waiting period before Andersen partners could go to work for a client.

D. Andersen Destroyed Evidence of its Conflicts and Complicity

917. As alleged in ¶¶962-966 in the Fall of 01, as a federal investigation into Enron's collapse ensued and the certainty of litigation regarding Andersen's role in Enron's accounting loomed on the horizon, Andersen knew its own documents, if found, would deeply implicate the firm in the accounting scandal. While Andersen has a professional duty to retain and preserve any and all documents and information to support and defend the conclusions reached and work performed during its audit and review services, this duty was directly at odds with 1) its overwhelming desire to get rid of any damaging documents that would implicate Andersen, and; 2) avoiding at all costs the revelation that it had violated a standing SEC consent decree by participating in yet another cover up of accounting fraud at one of the firm's largest clients. In connection with a 98 SEC investigation into a massive accounting scandal at Waste Management, the Commission found that Andersen's internal documents revealed that Andersen not only knew of the accounting fraud at its client, but was deeply involved in the secret cover up. As a result, the SEC slapped Andersen with the first

anti-fraud injunction in 20 years and the largest civil penalty ($7 million) in SEC history for an accounting firm. In addition, the SEC sanctioned several high ranking Andersen partners for their highly inappropriate conduct, and required Andersen to sign a consent decree forbidding the firm from any future wrongdoing.

918. Because of these issues and other events, by the Fall of 01 Andersen had internally come to the cold realization that an imminent investigation of Enron's financial accounting would bring to light documents illustrating Andersen's complicity in the improper accounting. Andersen concluded that such documents were so potentially disastrous to the firm, that it would rather gamble being caught destroying documents, than risk having the truth about Andersen's involvement in Enron's fraudulent accounting be revealed. Accordingly, during a one-month span in October and early November, Andersen engaged in a sustained, coordinated, worldwide campaign to destroy any documents that could implicate it in the Enron fraud. In 3/02, a federal grand jury indicted Andersen on charges that Andersen knowingly persuaded Andersen employees in its Houston, Chicago, Portland and London offices, to withhold records from regulatory and criminal proceedings and alter, destroy and shred literally "tons" of documents with the intent to impede an official investigation.

E. Andersen Has a History of Participating in Major Accounting Frauds

919. Andersen's egregious conduct surrounding the Enron affair is hardly an isolated incident. Andersen is a repeat offender with a history of failed audits, conflicts of interest and document destruction in some of the most egregious cases of accounting fraud in history. Moreover, Andersen's conduct in these cases often shares the same underlying themes as its conduct in the Enron debacle. Such cases include:

(a) **Waste Management**. In 98, Waste Management restated its 92-96 financial statements which had been audited by Andersen's Houston office, revealing a massive fraud that included the overstatement of profits by as much as $1.7 billion. At the time, this was the largest restatement of earnings in history. In 6/01, as a result of its egregious behavior associated with its audits of its Waste Management client, the SEC hit Andersen with the first anti-fraud injunction in 20 years and the largest civil penalty ($7 million) in SEC history for an accounting firm. The SEC also required Andersen to sign a consent decree promising to refrain from wrongdoing in the future.

Andersen partner Goolsby signed that agreement. Andersen and defendant Goolsby, a Houston partner with certain oversight responsibility on the Enron engagements, knew its ongoing conduct with another client, Enron, violated the agreement when it was signed. As with Enron, Andersen's willingness to keep quiet about fraudulent accounting to protect the huge fees it earned played a significant role in Waste Management's ability to perpetrate one of the largest accounting frauds in history. Andersen recognized Waste Management's "aggressive" accounting as early as 88, according to SEC documents, and by 93, Andersen had documented that Waste Management was a "high-risk client" and that the client inflated profits by more than $100 million. However, during the same time frame, Andersen was relentlessly marketing its consulting services to the client, resulting in consulting fees more than double the size of the audit fees. Even when Waste Management refused to fix the improper accounting practices recommended by Andersen in prior years, Andersen caved in and continued to sign off on the company's annual audits. This went on for the next three years. According to the SEC, those decisions were backed at the highest levels of Andersen's Chicago office, including Andersen's Practice Director, the firm's Managing Partner and the Audit Division Head for the firm's National office in Chicago. In addition to the SEC penalty, according to media reports Waste Management and Andersen paid $220 million to settle class action lawsuits brought by shareholders. Several parallels exist between Andersen's conduct on Waste Management and Enron. For example: Enron and Waste Management were Andersen's two largest clients. Andersen's Houston office audited both Waste Management and Enron. Further, Andersen partners, including Swanson and Goolsby, had oversight responsibility over both the Waste Management and Enron engagements.

(b) **Sunbeam**. In 5/01, the SEC filed an injunctive action against Andersen partner Phillip E. Harlow, the former engagement partner on the Sunbeam account, for authorizing the issuance of unqualified audit opinions on Sunbeam's 96 and 97 financial statements, even though he was aware of many of the company's accounting improprieties and disclosure failures. In 01, Andersen paid $110 million to settle shareholder lawsuits in connection with Sunbeam's restatement of six quarters of financial results. Indeed, the SEC stated that Sunbeam's purported turnaround was little more than accounting gimmicks, accomplished through the creation of inappropriate "cookie-

jar" reserves. In this case, as in Enron, Andersen's document destruction was a common theme. In fact, an Andersen partner testified that months after the restatements were announced and after shareholder lawsuits had been filed, the firm ordered its Fort Lauderdale employees to dispose of any work papers or correspondence that did not agree with the final documentation of the Sunbeam restatement.

(c) **Baptist Foundation of Arizona**. In a suit filed by the Arizona Attorney General, Andersen had recently agreed to pay investors $217 million to settle a suit in connection with the 99 failure of The Baptist Foundation of Arizona ("Foundation"), where an ongoing Ponzi scheme wiped out $590 million of investors' savings, many of them retirees. Three key individuals associated with the Foundation have pleaded guilty to felony charges, five others have been indicted, and Arizona authorities are in the process of revoking the licenses of three Andersen auditors. Jay Steven Ozer, one of the senior partners on Andersen's audits of the Foundation, audited Charles Keating's Lincoln Savings & Loan, described below. Ozer has recently agreed to give up his Arizona accounting license. The Foundation used accounting artifices that were strikingly similar to Enron's. For example, the Foundation used off-balance-sheet entities to hide significant losses in its real estate investments. Unbeknownst to investors, the Foundation sold the real estate at artificially inflated prices to a company called ALO, in exchange for a mere IOU instead of cash. In a theme common to many Enron SPEs, unknown to investors, ALO was a related-party entity created, financed and controlled by the Foundation. Particularly egregious was the fact that outside CPAs and professionals continued to warn Andersen for two years that they highly suspected fraudulent accounting at the Foundation, yet Andersen completely ignored them. An accountant for the Foundation testified that more than two years before the bankruptcy she met with Andersen and openly explained the nature of the Foundation and ALO relationship. Subsequently, a Texas Baptist group became suspicious, called Andersen, spoke with partners, including Corgel and Dreyfuss, and told them about the suspected fraudulent accounting at the Foundation. Additionally, Dee Griebel, a sole practitioner CPA figured the fraud out in an afternoon by conducting a simple search of ALO's public records, revealing that ALO had a negative net worth of approximately $106 million and couldn't possibly make good on the debt to the Foundation. Griebel then called Andersen's Chicago

headquarters and the Phoenix office twice, stating, "'You must withdraw your unqualified opinion immediately. The company's effectively broke. Call me.'" Neither the Chicago or Phoenix Andersen office ever called her back. From the first warning until the Foundation's failure, Andersen issued two more unqualified opinions, allowing the Foundation to take in another $200 million of investor savings.

(d) **Colonial Realty Company.** In the mid 90s, the State of Connecticut revoked Andersen's license to practice after investigating Andersen's conduct in its audits surrounding the collapse of Colonial Realty Company, a national real estate syndication firm. Central to the Colonial Realty fraud was a Ponzi scheme that involved deliberate and grossly exaggerated valuation of Colonial Realty properties. Andersen furnished unqualified opinions supporting Colonial Realty's extravagant valuations and claims, and assisted in preparing private placement memoranda in connection with the public offerings that resulted in investors sustaining substantial losses. As with Enron, after conducting an extensive investigation, Connecticut's Attorney General concluded that Andersen employees destroyed incriminating documents under the auspices of complying with Andersen's document retention policy.

(e) **Lincoln Savings/ACC.** Andersen was also associated with this infamous fraud perpetrated by Charles Keating. In 84 and 85, Andersen improperly issued "clean" or unqualified audit opinions on the ACC/Lincoln financial statements. Those opinions were included in ACC/Lincoln SEC filings and helped Keating promote an illusion of prosperity that was used to market notes to investors. Thus, Andersen participated in the Charles Keating fraud that bilked investors out of over $500 million. In 92, Andersen paid $30 million to settle the securities fraud action. Andersen of course, did not learn a lesson from this experience. In fact, Partner Jay Ozer, a member of the Andersen audit team on Lincoln/ACC, went on to be a key Andersen auditor on the aforementioned Baptist Foundation of Arizona Scandal.

920. These cases demonstrate that for years Andersen has demonstrated a callous, reckless disregard for its duty to investors and the public trust. Andersen's conduct throughout this period displays an uncaring, calculated cost/benefit approach to ignoring fraud and improper accounting in its audit engagements. As the facts above indicate, Andersen is unrepentant and would rather pay

hundreds of millions of dollars to settle these cases than actually rectify its improper behavior. In essence, Andersen considers compromising its integrity and getting caught allying itself with management's interests an ordinary and necessary cost of doing business.

F. Andersen Disregarded Major Indicators of Financial Statement Fraud at Enron ("Red Flags")

(1) Andersen Knew the Risk of Fraud Was Extremely High

921. Andersen had direct knowledge of Enron's improper accounting as alleged herein. Andersen also knew that the risk of fraudulent financial reporting at Enron was very high. In designing and carrying out audit procedures, professional standards specifically require that auditors assess the risk of material misstatement due to fraud. To that end, Andersen, pursuant to SAS No. 82 (AU §§316, 110), was required to assess the risk of fraudulent financial statements at Enron. Andersen had a "responsibility to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud," AU §110, and plan an audit to increase the likelihood that fraud will be discovered. AU §316 provides categories of fraud risk factors that should be considered in making that assessment. Andersen knew that Enron possessed many of the risk factors delineated in AU §316.16-.18, including:

Risk factors relating to operating characteristics and financial stability.

- Overly complex organizational structure involving numerous or unusual legal entities, managerial lines of authority, or contractual arrangements without apparent business purpose.
- Significant related-party transactions not in the ordinary course of business or with related entities not audited or audited by another firm.
- Significant, unusual, or highly complex transactions, especially those close to year end, that pose difficult "substance over form" questions.
- Significant bank accounts or subsidiary or branch operations in tax haven jurisdictions for which there appears to be no clear business justification.

922. Andersen knew that Enron had an extraordinarily complex structure. Andersen helped Enron structure hundreds of highly complex partnerships many of which had no apparent business purpose other than to conceal debt and losses. Moreover, Enron's related-party transactions were massive. The true "substance" of many of these related-party transactions was

that Enron maintained control over entities but improperly did not consolidate them. Further, Andersen knew that Enron used at least 600 offshore tax haven entities to shift income, minimize taxation, circumvent laws in the U.S., and maintain secrecy. Andersen even knew that many of the Fastow controlled partnerships were formed in offshore havens. Andersen, including its tax and consulting departments, knew about the excessive use of such entities and knew that no clear business justification existed for many of them. Other risk factors included:

> ***Risk factors relating to management's characteristics and influence over the control environment***.
>
> – Management failing to correct known reportable conditions on a timely basis.
>
> – Management setting unduly aggressive financial targets and expectations for operating personnel.
>
> – A significant portion of management's compensation represented by bonuses, stock options, or other incentives, the value of which is contingent upon the entity achieving unduly aggressive targets for operating results, financial position, or cash flow.
>
> – An excessive interest by management in maintaining or increasing the entity's stock price or earnings trend through the use of unusually aggressive accounting practices.
>
> – A practice by management of committing to analysts, creditors, and other third parties to achieve what appear to be unduly aggressive or clearly unrealistic forecasts.

AU §316.17(a).

923. Andersen knew that Enron management had not only an "excessive interest" but a highly unusual interest in maintaining the Company's stock price. In fact, Enron was recognizing, with Andersen's knowledge, income from the inflation of its own stock price. Enron's hedges were dependent on maintaining its stock price. Insider trading proceeds were a huge part of management's income. In addition, Enron executives received multi-millions of dollars in bonuses from hitting a series of stock-price targets based on a program known as the "Performance Unit Plan." Highly "aggressive targets" were the definition of Enron's business and management practices. Andersen knew that Enron had failed to make some $51 million in proposed audit adjustments in 97 as alleged at ¶517. Other risk factors included:

- Unusually rapid growth or profitability, especially compared with that of other companies in the same industry.

- Significant pressure to obtain additional capital necessary to stay competitive considering the financial position of the entity–including need for funds to finance major research and development or capital expenditures.

AU §316.17(c).

924. As depicted in the following chart, Enron experienced dramatic growth between 96 and 00. Note the following:

	1995	1996	1997	1998	1999	2000
Net Sales	$9.2B	$13.3B	$20.3B	$31.3B	$40.1B	$100.8B

925. As a result of the extensive audit, review, tax, internal control and other consulting services it rendered to Enron (in 00 alone, these fees were $52 million – or approximately 260,000 hours using an average rate of $200 per hour), Andersen knew that these and nearly every other fraud risk factor identified by AU §316 above applied to Enron's situation during the Class Period. As a consequence, Andersen also knew that these risk factors present at Enron, taken collectively, meant that the risk of fraudulent financial reporting was extremely high.

926. Ultimately, Andersen was forced to acknowledge this fact when Congressional hearings in early 02 revealed an Andersen email describing the same conclusion. On 10/9/01, an Andersen Chicago "risk management" auditor named Mark Zajac sent an email to Andersen partners on the Enron account, including David Duncan, alerting them that, as a result of considering these and other risk factors in a routine analysis designed to determine the risk of fraud in a client's financial statements, the test triggered a "red alert" indicating a heightened risk of fraud. Andersen however, knew these factors were present throughout the Class Period as well. Despite this knowledge and knowledge of actual misrepresentations as alleged herein, Andersen chose to turn a blind eye to the numerous red flags at Enron and continued to issue "clean" audit opinions to generate tens of millions of dollars in fees and thereby increase Andersen's partners' compensation.

(2) Andersen Documents Support Allegations That It Knew of Improper Accounting

927. Not only did Andersen work with Enron's lawyers and bankers to participate in creating improper accounting practices, several Andersen documents that survived Andersen's

destruction campaign also clearly illustrate that Andersen knew, and was concerned about, Enron's fraudulent accounting practices, but ignored them or covered them up.

928. For example, on 12/18/99, Andersen PSG partner Carl Bass wrote an e-mail to defendants Stewart and Neuhausen expressing his opposition to Enron's accounting for a particular entity and that Andersen should not support the accounting.

929. On 2/4/00, Bass wrote another e-mail to Stewart expressing his opinion that a particular SPE they had been discussing had no real substance, and that Bass was bothered by the fact that Enron would receive the appreciation on its own stock that was contributed to the SPE. Bauer, Cash and David Duncan also received the information in this e-mail. In an e-mail to Stewart and Neuhausen three days earlier, Bass, when describing several transactions at a different partnership, wrote, "this whole deal looks like there is no substance."

930. In another example, on 2/5/01, top Andersen executives from the national headquarters in Chicago met via teleconference with top Houston and Gulf Coast partners assigned to Enron to discuss whether or not to retain Enron as an ongoing client. The participants in this meeting included Andersen's head of U.S. operations, defendants Swanson, Stewart, Jones, David Duncan, Bauer, Jones, Lowther, Odom, Goolsby, Goddard, Bennett and partner Kutsenda. The minutes of the meeting reveal that significant discussion ensued regarding the propriety of the very accounting issues that ultimately caused the collapse of Enron, including:

- Significant related-party transactions with LJM, including the materiality of such amounts to Enron's income statement and the amount retained "off balance sheet";
- Fastow's conflicts of interest in his capacity as CFO and the LJM fund manager;
- The amount that Fastow received for his services and participation in LJM;
- The disclosures of transactions in the financial footnotes;
- Enron's mark-to-market earnings and the fact that it was "intelligent gambling";
- Enron's reliance on its current credit rating to maintain solvency; and
- Enron's aggressive transaction structuring.

931. Despite Andersen's knowledge of these "red flags" regarding improper accounting, given the lucrative nature of the Enron engagement, Andersen decided to continue to keep Enron as a client, and, a few weeks later, issued a "clean" audit opinion on Enron's 00 financial statements.

932. On 3/4/01, just prior to being removed by Andersen management as the PSG advisor to the Enron audit team, Bass sent yet another e-mail to Stewart venting his opposition to Enron's accounting for the Blockbuster and Raptor transactions, that together represented at least $150 million in improperly recognized income or avoided losses at year-end 00.

933. On 8/20/01, former Andersen accountant and current Enron Vice President Sherron Watkins made a phone call to an Andersen audit partner, James A. Hecker, and warned him about a series of improper accounting practices that had been ongoing at Enron. On 8/21, Hecker called an emergency meeting with other Andersen partners, including Duncan, Swanson, Cash and Odom, to discuss Watkins' questions and concerns about "the propriety of accounting for certain related-party transactions" with LJM. Indeed, Watkins' concerns were very similar to Andersen's concerns back in 2/01 – albeit ignored and dismissed by Andersen in light of the $100 million potential fee level, and the very issues that caused Enron's collapse. For example:

- How Enron could, with its own capital stock, repeatedly add to the collateral underlying an obligation owed to Enron from a related party without recognizing it in the financial statements.
- Enron stock contributions/issuances to LJM did not appear to be recorded on Enron's books.
- Enron's financial statement disclosures related to the Fastow investment-company relationships and transactions were (putting it kindly) hard to understand or incomplete.
- The LJM equity had been distributed to its shareholders, including Fastow and CIBC, concurrently, or shortly after, its original formation.

934. Watkins informed Hecker that "she was concerned enough about these issues that she was going to discuss them with Ken Lay, Enron's Chairman, on Wednesday, 8/22/01."

G. Andersen Signed Off on Enron's Phony Broadband Reporting and Mark-to-Market Accounting

935. Andersen was consulted on, and reviewed, many of Enron's manipulative transactions involving broadband as described in ¶¶520-532. Andersen signed off on Enron's mark-to-market accounting that the Company also used (and abused) for its broadband transactions.

936. The improper accounting for the Braveheart/Blockbuster transactions, for example, was agreed to by Andersen. This egregious transaction, more fully described in ¶¶521-526, was responsible for most of the profits Enron reported for broadband. Andersen actually signed off on the phony recognition. As *The New York Times* noted on 1/30/02:

> Enron asserted that there was a market in broadband, and that its transaction amounted to one involving the transfer of financial assets. That meant it could report the transaction on a mark-to-market basis, similar to the way it accounted for the energy trades. It applied its undisclosed model to calculate how much revenue it could report from the transaction, and reported more than $110 million. Former executives say accountants at Arthur Andersen approved the accounting.
>
> "Nobody in the division could comprehend how they got Andersen to sign off on that," one former senior executive in the broadband division said. "It just didn't make any sense. When we heard what they did, everybody's mouths just hung open. We weren't doing business on any scale even close to those numbers."

937. That Andersen was involved in the improper accounting for broadband swaps is shown by its destruction of documents related to broadband. Andersen's document destruction included documents in Portland where much of the broadband work occurred. The *Associated Press* reported on 3/15/02:

> Arthur Andersen obstructed justice by destroying tons of evidence relating to Enron, including shredding some documents in its Portland office, according to a criminal indictment.
>
> * * *
>
> Last October or November, after Andersen learned that the U.S. Securities and Exchange Commission was investigating Enron, a team of auditors from Houston asked a Portland employee to "clean up the files," Wilborn told the newspaper.
>
> The files were for Enron Broadband, the now-defunct telecommunications arm that for a time was based in Portland, he said.
>
> Enron Broadband is now a focus of investigators because it booked hundreds of dollars worth of revenue by posting sales to Enron's notorious partnerships and by swapping capacity on its fiberoptic network with struggling telecom companies, a technique that investors claim was fraudulent.

938. Andersen was also aware of and did not require revision of Enron's abusive use of mark-to-market accounting. As the 2/01 email from Andersen partner Jones indicated:

> A significant discussion was also held regarding Enron's MTM earnings and the fact that it was "***intelligent gambling***." We discussed Enron's risk management activities including authority limits, valuation and position monitoring.

939. Enron started using mark-to-market accounting more aggressively in the early 90s when Skilling wanted to book profits faster. As *U.S. News & World Report* noted:

> Because it called for Enron to write long-term contracts, the company could start accounting for those contracts differently. Traditional accounting would book revenue from a long-term contract when it came in. But Skilling wanted Enron to book all anticipated revenue immediately. The practice is known as mark-to-market – or, more colloquially, counting your chickens before they hatch. Whatever the term, it was the third time in five years that Enron had significantly changed its accounting.
>
> Tallying all expected profits immediately would mean a huge earnings kick for a company obsessed with debt. But it would also put Enron on a treadmill: To keep growing, it would have to book bigger and bigger deals every quarter. The result, in hindsight, was predictable: a shift from developing economically sound partnerships to doing deals at all costs. "The focus wasn't on maintaining relationships and serving customers," says a former Enron official. "The quality of the deals deteriorated." The turning point, some say, was a deal involving a British power facility that earned Enron brass big bonuses. Yet, says one executive, the deal was "a disaster" that forced Enron to cough up $400 million when gas prices moved the wrong way.
>
> The new accounting made workers eligible for fatter payoffs. Enron employees once were urged to work together on deals. But the new arrangements created an incentive to cut out colleagues, because bringing them in meant carving more slices in the bonus pie. "It was a very intense and urgent form of accounting," says Dan Ryser, a former employee who worked with Skilling.

940. Andersen, including PSG partners Stewart, Petersen and Neuhausen, continued to approve Enron's use of mark-to-market accounting as Enron became more egregious in revenue recognition.

H. Andersen Knew Enron Improperly Hid Debt and Boosted Reported Income Through Use of the SPEs

941. The Enron Defendants, with Andersen's and Enron's lawyers' and bankers' participation, embarked on a scheme of structuring and accounting that allowed Enron to keep debt off its books and, at the same time, record income from and maintain control over the entities involved in the deal. Andersen and the Enron Defendants knew, however, that if Enron retained

effective control over the joint entity, GAAP required consolidation of the investment in its entirety (the inclusion of all assets, liabilities and losses) into Enron's consolidated financial statements.

942. As one of the largest audit firms in the world, Andersen was well aware of the strategies, methods and procedures required by GAAS to conduct a proper audit. Additionally, Andersen knew of the audit risks inherent at Enron and in the industries in which Enron operated because of the comprehensive services it provided to Enron over the years and its experience with many other clients. To fully comprehend the extent of Andersen's involvement in the structuring, accounting, and activities of Enron's SPEs, it is important to view the transactions in light of the fact that Andersen billed Enron $5.7 million for the advice it provided on the LJM and Chewco entities. That sum corresponds to an incredible ***28,000 hours of consulting and accounting work on the SPEs***, assuming an average hourly rate of $200 per hour. The accounting decisions relating to the SPEs were made at the highest levels of Andersen. Enron communicated not only with the Houston partners including (Cash, Duncan, Bauer and Bass) but also with Andersen's National Office Group ("NOG") and professional services group in Chicago. A former Enron tax manager related that Enron's internal policies on whether certain SPEs would be consolidated on Enron's books were driven by Andersen and, whenever anyone at Enron had a question about how to structure a deal, the question was taken to Andersen engagement partner David Duncan, who then consulted with the Chicago office. Additional evidence of Andersen's failure to comply with GAAS in the performance of the Enron audits is noted in the following paragraphs.

943. The Chewco, JEDI and LJM relationships were transactions which Andersen was required to carefully evaluate. Pursuant to AU §334.09:

> .09 After identifying related party transactions, the auditor should apply the procedures he considers necessary to obtain satisfaction concerning the purpose, nature, and extent of these transactions and their effect on the financial statements. The procedures should be directed toward obtaining and evaluating sufficient competent evidential matter and should extend beyond inquiry of management. Procedures that should be considered include the following:
>
> a. Obtain an understanding of the business purpose of the transaction.[14]

[14] Until the auditor understands the business sense of material transactions, he cannot complete his audit. If he lacks sufficient specialized knowledge to understand a particular transaction, he should consult with persons who do have the requisite knowledge.

b. Examine invoices, executed copies of agreements, contracts, and other pertinent documents, such as receiving reports and shipping documents.

c. Determine whether the transaction has been approved by the board of directors or other appropriate officials.

d. Test for reasonableness the compilation of amounts to be disclosed, or considered for disclosure, in the financial statements.

e. Arrange for the audits of intercompany account balances to be performed as of concurrent dates, even if the fiscal years differ, and for the examination of specified, important, and representative related party transactions by the auditors for each of the parties, with appropriate exchange of relevant information.

f. Inspect or confirm and obtain satisfaction concerning the transferability and value of collateral.

944. Andersen ignored this professional literature, which required that Andersen understand the transactions and the business purpose for the transactions, and failed to insist that Enron make adequate disclosure and proper accounting for the transactions. Andersen knew that:

- Employees and officers of Enron had interests in and control over certain of the SPEs.
- Enron had recorded a note receivable received in exchange for stock issued in 00 as an asset.
- The Barclays investment on the Chewco deal had a reserve of $6.6 million such that there was not 3% independent equity in the partnership and it was not a qualifying SPE.
- Andersen's extensive involvement with the JEDI and Chewco transactions is evidenced by the $5.7 million Andersen billed Enron for its work on those transactions.

(1) Red Flags Start with JEDI/Chewco

945. The beginning of Enron's pervasive practice of not consolidating its joint investments can be traced back at least to 93, with the formation and capitalization of the JEDI joint venture. Andersen provided audit and consulting services at the time, and was involved in the accounting for those transactions.

946. As described in ¶¶435-447, Enron created the Chewco SPE with Barclays' help in late 97 for the purpose of buying out an institutional investor's 50% stake in JEDI so that JEDI could still ostensibly be considered independent. Significant red flags surrounded the creation of this SPE,

raising significant questions regarding the substance or legitimate business purpose of the transaction. Andersen provided significant assistance in structuring and reviewing the transaction, and billed Enron $80,000 for its review of the Chewco deal. This amounted to approximately 400 hours of examination on Chewco (assuming an average hourly rate of $200 per hour) during a short period at the end of 97. During Andersen's examination, including its review of Enron's 11/97 and 12/97 board minutes, Andersen recognized or should have recognized that virtually every aspect of the deal carried a red flag that raised questions about Enron control, or the legitimacy of the business purpose and substance of the investment. For example, even on its face the details surrounding the formation of Chewco were red flags:

(a) Andersen knew that Chewco's general partners were senior financial employees at Enron;

(b) A 3% minimum of independent, at risk, controlling capital was not met, as Barclays required a reserve account deposit of $6.6 million to collateralize the loans. According to former Enron employees, Andersen was given documentation showing the reserve; and

(c) The Barclays funding to Chewco that purportedly made up the "equity part" of the investment actually was more like a loan.

947. In sum, as a result of Andersen's involvement in the creation and review of the Chewco deal, Andersen knew that practically every feature of Chewco's creation, funding, structure and wind-down raised red flags, yet Andersen ignored them. By ignoring these related-party connections and Enron's constructive control in the Chewco deal, Andersen helped Enron improperly keep the Chewco deal off the books. As a result, Andersen allowed Enron to improperly overstate profits by $405 million and understate debt by hundreds of millions of dollars.

(2) Red Flags Generated by the LJM Transactions

948. Enron, with Andersen's approval, designed and entered into virtually all the LJM transactions for little purpose other than hiding debt and losses, and personally enriching certain Enron financial officers, including defendant Fastow. Details surrounding the LJM partnerships presented prominent warnings that Enron controlled the entities, but Andersen ignored them. In the course of performing tens of thousands of hours of work on the LJM partnerships, Andersen read

the LJM2 PPM and noticed that the document's first few pages clearly described that: (1) Enron would retain significant economic or operating interests in the investments; (2) the General Partner was owned and controlled by Fastow, Kopper and Glisan; (3) some of the banks were initial investors in LJM2 who were guaranteed the return of their investment and large profits before LJM2 entities could enter into hedging transactions with Enron; (4) LJM2 would be managed on a day-to-day basis by senior level Enron finance executives; and (5) LJM2 would invest in the assets "sold" by Enron, yet Enron would require that it retain significant economic or operating interests. The document even touted how superior the investment returns would be because the general partners were senior Enron finance executives, and as such, had access to Enron's inside information and resources. Additionally, when describing Enron as a whole, the LJM2 PPM disclosed that $17 billion of Enron assets – an incredible 33% of its assets – were "financed off-balance sheet," and that even though Enron might sell a portion of such investments, "in many cases, [Enron] s[ought] to maintain an active or controlling role in the underlying investment."

949. By its work on the LJM2 structuring, Andersen could clearly see the following evidence of improper accounting for LJM2 and other SPEs:

(a) Enron management controlled LJM2 and therefore, in accordance with accounting rules, the investment should have been consolidated (but was not);

(b) Enron had at least $17 billion in assets and associated liabilities carried off balance sheet and as such, Andersen should have thoroughly investigated the business purpose and substantive reasons for accounting for as much as 33% of Enron's total assets on an "off-balance sheet" basis;

(c) Enron made a practice of maintaining control in its off-balance-sheet investments despite the fact that accounting rules required consolidation if Enron maintained control;

(d) Enron finance executives and insiders received tens of millions of dollars in management fees and quick profits;

(e) Enron assets were purportedly sold to LJM, but then quickly repurchased within a very short period producing a gain, despite the fact that the value of the assets had declined; and

(f) Enron's use of its own shares as security for supposed hedges of other Enron investments.

950. Defendants David Duncan, Cash, Stewart and Neuhausen and others were heavily involved in the structuring of the entity, the decisions to allow Enron to improperly account for the LJM2 entity, and were aware of Bass's disagreement with the LJM2 accounting beginning in 00.

(3) Andersen's Knowledge of Improper Accounting for the Raptors

951. Andersen also permitted Enron to improperly account for notes received for stock issued, which manipulation is described in ¶¶445-446, 477-484. Andersen billed Enron at least $335,000 (1,675 hours at $200 per hour) in 00 alone for its work on the Raptor deals (which ultimately resulted in a $1 billion reduction in shareholders' equity when Enron and Andersen's improper accounting was corrected). According to the SEC's former Chief Accountant, Andersen ignored a basic accounting rule on this issue. An 11/12/01 *Bloomberg* article stated:

> Lynn Turner, who was the SEC's chief accountant for three years until he resigned in August, said Enron and Andersen ignored a basic accounting rule when they overstated shareholder's equity.
>
> Explaining the equity reduction last week, Enron said it had given common stock to companies created by Enron's former chief financial officer in exchange for notes receivable, and then improperly increased shareholder equity on its balance sheet by the value of the notes.
>
> "Basic Accounting"
>
> "What we teach in college is that you don't record equity until you get cash for it, and a note is not cash," said Turner, who is now director of the Center for Quality Financial Reporting at Colorado State University. "It's a mystery how both the company would violate, and the auditors would miss, such a basic accounting rule, when the number is one billion dollars."

952. Proper financial accounting does not permit this result. To reach it, the accountants at Enron and Andersen – including the local engagement team and Andersen's national office experts in Chicago – circumvented numerous obstacles presented by pertinent accounting rules. A careful review of the transactions show however, that the accounting violated several accounting rules and Andersen knew it:

(a) Accounting principles forbid a company from recognizing an increase in the value of its capital stock in its income statement except under limited circumstances not present here.

The substance of the Raptors and other transactions effectively allowed Enron to report net income and gains on its income statement that were backed almost entirely by Enron stock, and contracts to receive Enron stock, held by the Raptors. In essence, the transactions created net income from thin air.

(b) Andersen-Houston consulted the PSG in Chicago frequently regarding the Raptor transactions. PSG initially required an analysis of whether there was a minimum 3% independent, at-risk equity investment not only at inception of a partnership, but also each time a derivative transaction was entered into. Later Andersen improperly agreed that the analysis only needed to be performed at inception, such that subsequent deterioration of the interest was not important.

(c) Andersen also made the decision to allow Enron to improperly avoid recording individual impairment charges for Raptor investments that had significantly and permanently declined in value. Andersen e-mails between Cash, David Duncan and Stewart throughout the Class Period reveal that defendants David Duncan, Cash, Lowther, Odom, Stewart and others were deeply involved in this accounting decision, and were aware that Bass thought the Raptor accounting was improper.

953. The accountants at Andersen, who should have brought a measure of objectivity and perspective to these transactions, did not do so. Andersen accountants were in a position to understand all the critical features of the Raptors and offer advice on the appropriate accounting treatment. Andersen's total bill for Raptor-related work came to approximately $1.3 million. Andersen in fact offered Enron advice at every step, from inception through restructuring and ultimately terminating the Raptors. Enron followed that advice.

954. In the restatement of Enron's prior financial statements, Andersen improperly did not require revision of the $1 billion in prior earnings improperly derived from the Raptors.

I. $51 Million of Known Errors Ignored in the 97 Audit

955. During its audits of Enron's 97 financial statements, Andersen staff auditors compiled $51 million of adjustments where Enron's accounting was identified as improper. Andersen knew that these adjustments, taken collectively, amounted to almost 50% of Enron's $105 million net

income for 97 and, as such, were clearly material to the financial statements and needed to be made in order for the financial statements to not be misleading. However, Enron told Andersen it did not want to make the adjustments, because the adjustments would dramatically reduce the $105 million in the net income figure Enron management was going to report to the public. As alleged above, because Enron was such a lucrative client, Andersen partners associated with the engagement acquiesced to Enron management and did not insist that the adjustments be made. In failing to do so, Andersen abandoned its role as the public watchdog and violated GAAS. However, due to the sheer size of the collective adjustments – almost 50% of Enron's net income, Andersen could not simply waive the adjustments in its workpapers without concocting some sort of justification. Andersen's obfuscation was as follows: In calculating whether $51 million in adjustments were material to the financial statements, it was obvious to Andersen that if it calculated the needed adjustment as a percentage of net income, as auditors universally do, the resulting answer of 50% of net income was clearly material. To divert attention from this reality, Andersen calculated the $51 million as a percentage of a contrived figure Andersen called "normalized earnings" instead of net income. By cooking up this supposed measure of materiality, Andersen improperly declared that because the $51 million adjustment was only 8% of "normalized earnings" (instead of a whopping 50% of net income) it was somehow immaterial and therefore no adjustment was necessary. By concocting a justification for waiving these necessary adjustments, Andersen demonstrated the depths it would sink to in order to please Enron management. In doing so, Andersen improperly allowed Enron to overstate income in 97 by $51 million.

956. Enron has now restated its financial statements for 97 through 00 and Andersen has stated that the audit reports covering the year-end financial statements for 97 through 00 "should not be relied upon." Unfortunately for the thousands of investors who had already relied upon Andersen's reports, this warning came years too late, after they had lost billions of dollars based on admittedly false financial statements.

J. Andersen Knew Enron's Disclosures Were False

957. In accordance with GAAS, Andersen was required to consider whether Enron's disclosures accompanying its financial statements were adequate. SAS No. 32 as set forth in AU §431.02-.03 states:

> **.02** The presentation of financial statements in conformity with generally accepted accounting principles includes adequate disclosure of material matters. These matters relate to the form, arrangement, and content of the financial statements and their appended notes, including, for example, the terminology used, the amount of detail given, the classification of items in the statements, and the bases of amounts set forth. An independent auditor considers whether a particular matter should be disclosed in light of the circumstances and facts of which he is aware at the time.
>
> **.03** If management omits from the financial statements, including the accompanying notes, information that is required by generally accepted accounting principles, the auditor should express a qualified or an adverse opinion and should provide the information in his report, if practicable, unless its omission from the auditor's report is recognized as appropriate by a specific Statement on Auditing Standards.

958. The required disclosures include those concerning related parties. Auditors are required to gather sufficient evidence to ensure they understand the relationship between parties and the effects of the transactions on the financial statements. The auditor should then satisfy himself that the transactions are adequately disclosed. AU §334.11 states:

> For each material related party transaction (or aggregation of similar transactions) or common ownership or management control relationship for which FASB Statement No. 57 [AC section R36] requires disclosure, the auditor should consider whether he has obtained sufficient competent evidential matter to understand the relationship of the parties and, for related party transactions, the effects of the transaction on the financial statements. He should then evaluate all the information available to him concerning the related party transaction or control relationship and satisfy himself on the basis of his professional judgment that it is adequately disclosed in the financial statements.

959. As detailed herein, Enron's disclosures with respect to its accounting practices and related parties were woefully inadequate. The Company failed to adequately disclose the transactions involving Chewco, the management involvement in LJM, the manipulative transactions involving the Raptors, the improper and abusive use of mark-to-market accounting, its improper use of its own stock to generate income, and the manipulative practices involving broadband and many other accounting manipulations. Andersen actually knew about many of these issues as it had helped

develop the accounting for them. Yet Andersen did not require notification of the disclosures and did not issue a qualified or adverse opinion on Enron's financial statements in violation of GAAS.

960. As *The Wall Street Journal* noted on 11/5/01:

> Questions could well turn to whether Andersen fulfilled its obligation to protect investors' interests. And an important focus is likely to be whether Andersen should have required Enron to better explain its dealings with partnerships run by former Chief Financial Officer Andrew S. Fastow before agreeing to bless the company's financial statements.
>
> * * *
>
> For its part, Enron – which is hardly the only large energy company with complex partnership dealings – maintains its off-balance-sheet transactions were legal and properly disclosed. "They comply with reporting requirements," says Enron spokeswoman Karen Denne, adding that Andersen was aware of the transactions and reviewed them.

961. Contrary to GAAP, Enron's disclosures were inadequate and contrary to GAAS, Andersen failed to require revision. As noted by *The New York Times* in 10/01, "Enron's disclosures have been widely criticized for being impossible to understand." These were the same disclosures with which Andersen had stated it was "very comfortable."

K. Andersen's Destruction of Documents

962. Beginning in 9/01 and continuing into 11/01, Andersen engaged in a worldwide campaign to destroy documents that could implicate them on the Enron fraud. Andersen destroyed, according to the Justice Department, "tons" of documents throughout its U.S. and London offices related to its Enron audits and consulting engagements. On 3/14/02, a federal grand jury indicted Andersen on charges of obstructing justice in the Justice Department's probe of Enron's collapse. The indictment charged that, during 01, Andersen in its Houston, Chicago, Portland and London offices, knowingly persuaded Andersen employees to withhold records from regulatory proceedings and alter, destroy and shred documents with the intent to impede an official investigation.

963. When Andersen's document destruction first came to light, Andersen's executives scrambled to portray the destruction as an isolated incident in its Houston office or even a few Houston partners. Nothing could be further from the truth. Document destruction at Andersen is deeply ingrained in Andersen's professional culture. From the day a young college recruit begins work at Andersen as an auditor, and throughout his or her entire career, document destruction or, to

use Andersen staffers' clever euphemism, "complying with the firm's retention policy," is a mantra that is formally taught and formally and informally enforced by policy and practice at every turn throughout an auditor's career at Andersen. Indeed while Andersen has a professional responsibility to retain and preserve documents and information to support and defend the conclusions and work performed during its audit and review services, Andersen's formal and informal document destruction practices are driven by an overwhelming mission to insulate itself from potential legal exposure and outside scrutiny when its audit work comes under fire. Often in practice, Andersen's duty to maintain and preserve documents under professional standards is directly at odds with its overwhelming desire to "not retain" evidence that could, in the event of litigation, reveal that it failed to perform a proper audit. In 98, Andersen's formal and informal document destruction policies were taken to new heights as a result of costly and embarrassing revelations that Andersen was implicated in its client Waste Management's accounting scandal. As particularized at ¶919, that year, in connection with an SEC investigation into a massive accounting scandal at Waste Management, the commission found that Andersen's internal documents revealed that Andersen not only knew of the accounting fraud, but was deeply involved in its coverup.

964. What happened with the Enron client documents is a classic example of Andersen's "scorched earth" document destruction directive in action. During the Summer and Fall of 01, a series of serious developments led Andersen to believe that civil litigation and government investigation was imminent against Enron and, as a consequence, Andersen's deep involvement would undoubtedly implicate it in any litigation or investigation. In 8/01, Enron Vice President Sherron Watkins detailed specific examples of Enron's long-running fraudulent financial reporting to Andersen. By mid-9/01, Andersen's top audit specialists in the Chicago office, including Stewart, began to review their old e-mail and Enron memos, and in doing so, concluded that many memoranda that Andersen partners had written approving certain Enron accounting decisions were obviously improper and terribly wrong. Just as in the Waste Management debacle, Andersen's own memoranda and e-mail from the Houston and Chicago offices documented that Andersen's Chicago office had approved the improper accounting at the client and once again evidenced the national office's complicity. Immediately, Chicago office partners, including audit partners and in-house lawyers and "risk-management

experts," began debating in almost daily conference calls with Houston partners about how to alter the original memos or create new memos to mitigate the potential damage. They were joined by defendant Temple, an in-house lawyer at the firm, who reminded everyone about Andersen's policy on destroying "unnecessary" records. The e-mail sent by Temple reminding personnel to comply with firm policy on document retention was an occurrence used by Andersen almost exclusively when litigation was envisioned. Such "reminders" about compliance were widely understood within Andersen to be a directive to destroy any incriminating documents at Andersen.

965. Andersen's worldwide headquarter's swung into action. After Temple "reminded" them about complying with Andersen's document retention policy, senior auditors in Chicago began deleting old e-mail related to Enron by the second week of 10/01. When certain Andersen partners told Temple that they wanted to retain their e-mail to support their work on Enron, Temple insisted they delete it. These deleted documents included e-mails relating to Carl Bass's disagreement with Enron's accounting during the Class Period. According to *The New York Times* on 3/18/02, Andersen Houston began destroying documents related to its Enron work:

> In Houston on Oct. 10, Michael C. Odom, Andersen's practice director there, stood in a conference room to remind his accountants about the importance of destroying documents. According to an investigation by Andersen's lawyers, Mr. Odom explained that in past lawsuits, Andersen had been forced to produce documents that should not have been retained.
>
> "If documents are destroyed and litigation is filed the next day, that's great," Mr. Odom told the crowd. "We've followed our own policy, and whatever there was that might have been of interest to somebody is gone and irretrievable."
>
> The message had its effect. Andersen personnel headed back to their desks, and some employees began deleting an unusually large number of e-mail messages, computer records show. The government said in its indictment that the document destruction that day had been the first attempt to obstruct justice.

966. On 10/16/01, after a meeting with high level partners in Chicago, including Friedlieb and Dreyfuss, Andersen's lawyer, Temple, sent an e-mail message to the Enron team suggesting changes to memoranda that Temple, Stewart and other top Andersen officials were drafting to "add back" Carl Bass's previously omitted criticisms to earlier memos, in an attempt to give the impression that Andersen had been more critical of Enron's accounting that it really had been. Temple even instructed partners to delete her name and any references to her from draft accounting

memoranda to conceal the fact that Andersen in-house lawyers were actually crafting what would be held out as work performed and conclusions reached by David Duncan and other accountants in their workpapers. Temple also instructed them to delete Andersen's conclusion that Enron's imminent financial statement release was misleading. Forty minutes later, she sent a second e-mail message to Odom, director for the Gulf Coast Market Circle, instructing the Enron engagement team to "comply" with Andersen's documentation and retention policy. This was the code word to destroy documents. Odom forwarded the e-mail message to David Duncan, head of the Enron team. On 10/22, David Duncan and another auditor heard from Enron management that another subpeona from the SEC requesting documents was imminent. On 10/23/01, David Duncan and Bauer, lead partners on the Enron engagements, ordered a meeting where they stressed the need to get the files in "compliance." Notes taken during that meeting show the SEC inquiry was cited. Willard, a partner on the Enron engagement, also held a meeting with his managers and staff to ensure "compliance" with Andersen's document retention policy. Defendant Berardino, CEO and managing director of Andersen, was in regular contact with the senior partners at Andersen and was aware of the document destruction of Enron-related documents. Between 10/23 and 11/9, massive amounts of Enron-related documents were shredded. Bauer has stated in his deposition that he destroyed Enron-related documents during this time period. Within 36 hours of ordering the destruction of documents, the shred room at Andersen became inundated with over 20 trunk loads of documents from the Enron engagement team at 3 Allen Center. The volume of documents to be shredded was so voluminous, Andersen's outside shredding company, Shred-It, had to make a special visit to Andersen. Shredding did not stop with Houston. In other offices, the same cleanup was under way. On 10/23, Houston partners called the head of the London office. Shortly afterward, instructions went out in London to destroy unnecessary documents. The same message was sent by voice mail to an auditor in the Portland, Oregon office, which had also done work on Enron. The next day, the Portland auditor sent an email to the Houston partners to tell them that he had destroyed his Enron records. The shredding continued until at least 11/9, when Andersen was served with the SEC subpoena it had been told to expect.

L. Andersen Violated Professional Standards

967. In addition to Andersen's improper departures from professional standards as particularized above, Andersen also violated the following professional standards among others.

968. The by laws of AICPA require that members adhere to the Principles and Rules of the Code of Professional Conduct. Andersen violated those rules, including the following:

ET §53 – Article II – **The Public Interest**

> ***Members should accept the obligation to act in a way that will serve the public interest, honor the public trust, and demonstrate commitment to professionalism.***

ET §102 – **Integrity and Objectivity**

> **.02** ***Knowing misrepresentations in the preparation of financial statements or records.*** A member shall be considered to have knowingly misrepresented facts in violation of rule 102 [ET section 102.01] when he or she knowingly –
>
> *a.* Makes, or permits or directs another to make, materially false and misleading entries in an entity's financial statements or records shall be considered to have knowingly misrepresented facts in violation of rule 102 [ET section 102.01]; or

ET §501 – **Acts Discreditable**

> **.05 501.4 –** ***Negligence in the preparation of financial statements or records.*** A member shall be considered to have committed an act discreditable to the profession in violation of rule 501 [ET section 501.01] when, by virtue of his or her negligence, such member –
>
> *a.* Makes, or permits or directs another to make, materially false and misleading entries in the financial statements or records of an entity; or
>
> *b.* Fails to correct an entity's financial statements that are materially false and misleading when the member has the authority to record an entry; or
>
> *c.* Signs, or permits or directs another to sign, a document containing materially false and misleading information.

Additionally, AU §220 – Independence, further states that:

> **.01** The second general standard is:
>
> In all matters relating to the assignment, an independence in mental attitude is to be maintained by the auditor or auditors.

> **.02** This standard requires that the auditor be independent; aside from being in public practice (as distinct from being in private practice), he must be without bias with respect to the client since otherwise he would lack that impartiality necessary for the dependability of his findings, however excellent his technical proficiency may be. However, independence does not imply the attitude of a prosecutor but rather a judicial impartiality that recognizes an obligation for fairness not only to management and owners of a business but also to creditors and those who may otherwise rely (in part, at least) upon the independent auditor's report, as in the case of prospective owners or creditors.

969. One of Andersen's responsibilities as Enron's independent auditor, was to obtain "[s]ufficient competent evidential matter ... to afford a reasonable basis for an opinion regarding the financial statements under audit" as to "the fairness with which they present, in all material respects, financial position, results of operations, and its cash flows in conformity with generally accepted accounting principles." AU §§150, 110. In violation of GAAS, and contrary to the representations in its report on Enron's financial statements, Andersen did not obtain sufficient, competent, evidential matter to support Enron's assertions regarding its income, assets, debt and shareholders' equity for 97, 98, 99 and 00. Moreover, Andersen deliberately ignored information indicating that Enron's financial statements did not "present fairly" the Company's financial position.

970. Due to Andersen's false statements, knowledge of the improper accounting, failure to identify and modify its reports to identify Enron's false financial reporting, and lack of independence, Andersen violated the following GAAS standards:

(a) The first general standard is that the audit should be performed by persons having adequate technical training and proficiency as auditors.

(b) The second general standard is that the auditors should maintain an independence in mental attitude in all matters relating to the engagement.

(c) The third general standard is that due professional care is to be exercised in the performance of the audit and preparation of the report.

(d) The first standard of field work is that the audit is to be adequately planned and that assistants should be properly supervised.

(e) The second standard of field work is that the auditor should obtain a sufficient understanding of internal controls so as to plan the audit and determine the nature, timing and extent of tests to be performed.

(f) The third standard of field work is that sufficient, competent, evidential matter is to be obtained to afford a reasonable basis for an opinion on the financial statements under audit.

(g) The first standard of reporting is that the report state whether the financial statements are presented in accordance with GAAP.

(h) The second standard of reporting is that the report shall identify circumstances in which GAAP has not been consistently observed.

(i) The third standard of reporting is that informative disclosures are regarded as reasonably adequate unless otherwise stated in the report.

(j) The fourth standard of reporting is that the report shall contain an expression of opinion or the reasons why an opinion cannot be expressed.

M. Andersen Is "One Firm"

971. Andersen was formed in Illinois in 1913 as an accounting and consulting partnership under the name "Arthur Andersen & Co." In 1977, as Andersen increased its global presence, it created a new structure; the Andersen Worldwide Organization ("AWO"), comprised of a Swiss cooperative entity, Arthur Andersen & Co. Société Coopérative, ("AWSC"), which acts as an umbrella entity for the AWO member firms, the partners of AWSC, the individual partners of Andersen-Worldwide and Andersen-Worldwide's offices around the globe, which together, operates as a single global partnership or joint venture. The model adopted by AWSC Partners was meant to preserve "The Heart of Partnership Culture," including income sharing among the member firms of the two business units and common governance model. The AWO structure was and is designed to maintain the "one firm" concept, and was and is intended to foster the belief that Andersen operates as a single entity. In its promotional literature, including its Web site, Andersen-Worldwide markets itself as "one firm." "a single worldwide operating structure" that "think[s] and act[s] as one."

972. In fact, the Federal Election Committee Advisory Opinion No. 2000-36 dated 12/18/00, concluded:

> Prior to the effective date of the arbitration order, AC [Andersen Consulting] and AA [Arthur Andersen] were signatories to MFIFA's [Member Firm Interfirm Agreements] entered into with the AWSC [Andersen Worldwide Societe

> Coooperative] and were thereby subject to coordination and limited governance by the same body. ***Such an arrangement may have been, in some way, akin to the relationship of subsidiaries of the same parent entity***, although neither partnership was owned by the AWSC.

973. Andersen-Worldwide is the instrumentality through which the "one firm" concept becomes reality. Andersen's guiding principles were that the member firms' practices shall be correlated and coordinated on an international basis. It achieves this in four distinct ways.

(a) **Partner Overlap:** Andersen-Worldwide is a partnership made up of more than 4,800 partners from 390 offices in 84 different countries worldwide. Simultaneously, the partners of Andersen-Worldwide also are partners (or the equivalent) in the entities that make up those offices. Thus, all of those offices are managed by individuals who are both local partners (or the equivalent) and partners of Andersen-Worldwide. Every member firm and its practice partners enter into a Member Firm Inter Firm Agreement ("MFIFA") with AWSC.

(b) **Sharing of Costs and Profits**: Andersen-Worldwide coordinates the sharing of costs and allocation of revenues and profits among its partners and its offices around the world. As one of AWO's top clients, fees from Enron were distributed directly and indirectly around the world. Profits were shared globally. In fact, fees from U.S. fees have been funding offices in Europe, Asia and Australia for years. Compensation for AWO partners was based on units granted to partners. Global earnings are added together and then divided by the number of units outstanding, resulting in earnings per unit ("EPU"). Partners then are paid their share of profits by multiplying the EPU by the number of units they hold.

(c) **Global Setting of Professional Standards**: Andersen-Worldwide purports to establish the professional standards and principles under which its offices operate. Andersen-Worldwide's international offices enter into a standard agreement with Andersen-Worldwide under which they agree to be bound by those professional standards and principles. An office of Andersen-Worldwide that breaches the agreement is subject to removal from the organization. The Assurance Professional Standards Group has firm-wide responsibility for providing guidance on the professional standards to be followed by Andersen-Worldwide's offices.

(d) **Infrastructure and Administration**: Andersen-Worldwide handles all borrowing on behalf of its international offices, and maintains the financial records, payroll and employee and health benefits of those international offices as well. All of Andersen's offices also share global computer operations, a worldwide tax structure and training facilities. By establishing a legal, financial and administrative infrastructure, Andersen enables each of its offices around the world to function as, and to appear to clients as, an extension of a single, global entity.

974. Andersen instituted its "one-firm" concept through partner overlays, global setting of standards, sharing of costs and profits and infrastructure and administration. Moreover, Andersen's news releases confirmed they functioned and operated as a single worldwide operation:

- Andersen refers to the brand identity adopted by member firms of the Andersen "***global client service network.***"
- "With world-class skills in assurance, tax, consulting and corporate finance, Arthur Andersen has more than 77,000 people in 84 countries ***who are united by a single worldwide operating structure*** that fosters inventiveness, knowledge sharing and a focus on client success."
- Andersen spokesman Dave Tabolt – "***We conduct more than 30,000 audits around the world every year*** ...."
- "***AA is already much more integrated globally than the rest of the Big Five***. As Mr. Berardino points out, 'there is one name over the door. We're not an alphabet soup.' The cohesiveness of AA's culture has been a source of humor to outsiders, who have labeled its bean counters 'Androids.' ***While some rivals are still struggling with a complicated array of national partnerships, and thus different systems for sharing pay, AA partners enjoy a single, and possibly unique, system of remuneration: they receive a list of what each of them has earned in the past year.***"

Andersen-Worldwide Web site (Andersen.com) confirms that it was one worldwide organization:

- "***Our 390 offices may be scattered amid 84 different countries, but our voice is the same. No matter where you go, or who you talk to, we act with one vision. Without boundaries***."
- "***One world. One organization***."

Andersen's 01 recruiting brochures confirms that it was one worldwide firm:

- "We will, in Arthur Andersen's own words, ***'act as one firm and speak with one voice***. It is a united family that ***operates across hierarchies, geographical boundaries***, client groupings, service lines and competencies and feels the kinship of understanding and shared responsibility."

975. Andersen-Worldwide manages, directs and controls its international offices in two overlapping groups: by practice areas (also known as "lines of service") and by geographic location.

976. Each practice group is managed by a global practice director who oversees, directs and controls the operations of each practice group worldwide. Regional practice directors report to the global practice director and manage, direct and control the practice group within their regions. The global practice director and managing partner for the audit practice group of Andersen-Worldwide is C.E. Andrews, a United States-based partner.

977. In addition, Andersen-Worldwide groups its offices into several geographic regions and assigns a managing partner to each region.

978. Partners on the Enron audits, including David Duncan, Bauer, Dreyfuss, Goddard, Goolsby, Lowther, Neuhausen, Odom, Peterson, Stewart and Swanson are partners of both Andersen-US and Andersen-Worldwide.

979. In addition to overlapping partners, Andersen-Worldwide and Andersen-US share officers in common as well. For example, the former Chief Executive Officer and Managing Partner of Andersen-Worldwide (Berardino), was also the Chief Executive Officer and Managing Partner of Andersen-US.

980. Andersen-Worldwide and Andersen-US share more than partners and officers – they share the same address. In its promotional literature, Andersen-Worldwide states that its headquarters are located at 33 West Monroe Street, Chicago, Illinois 60603. That is the same address as the headquarters of Andersen-US.

981. The components of the Andersen organization ignore corporate formalities in referring to themselves or to each other. Andersen's worldwide personnel regularly exchanged correspondence and e-mails that were labeled "Andersenwo" – short for "world organization." Andersen continually relied on and touted its global abilities to provide resources to its clients and attract international and domestic business. Documents by Andersen-US often bear the insignia and logos of Andersen-Worldwide, including "Andersen-Worldwide," "Andersen," and "Arthur Andersen" In its promotional literature, Andersen used the names "Andersen Worldwide," "Andersen," and "Arthur Andersen LLP" interchangeably. In addition, Andersen sometimes uses only the name "Andersen" and does not differentiate between Andersen-Worldwide and its offices around the globe.

982. Financially, Andersen operates as "one firm" global enterprise. For fiscal 00, Andersen derived 44% of its revenues from North America, 33% of its revenues from Europe, Middle East, India and Africa, 13% from Asia/Pacific and 10% from Latin America. Of the $9.3 billion in revenues in 01, Andersen's North American operations contributed about half, or $4.49 billion, and its Europe, Middle east, Africa, Asia/Pacific and Latin America operations contributed about half, or $4.85 billion.

FRAUD-ON-THE-MARKET

983. At all relevant times, the market for Enron's publicly traded securities was an efficient market for the following reasons, among others:

(a) Enron's securities were listed and actively traded on the NYSE and the Over-the-Counter Market which are efficient markets;

(b) As a regulated issuer, Enron filed periodic public reports with the SEC;

(c) Enron regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases, analyst conferences and conference calls; and

(d) Enron was followed by several securities analysts who wrote reports which were published, distributed and entered the public marketplace.

984. As a result of the foregoing, the market for Enron's publicly traded securities promptly digested current information regarding Enron from all publicly available sources and reflected such information in the price of Enron's securities. Under these circumstances, all purchasers of Enron's publicly traded securities during the Class Period suffered similar injury through their purchase of Enron's publicly traded securities at artificially inflated prices and a presumption of reliance applies.

STATUTORY SAFE HARBOR

985. The statutory safe harbor provided for forward-looking statements ("FLS") does not apply to the false FLS pleaded. The safe harbor does not apply to Enron's financial statements or results. With the exception of its conference calls on 11/12/01 and 11/14/01, Enron never gave any Safe Harbor warning in its conference calls during the Class Period. Enron's cautionary statements

that were issued during the Class Period were not meaningful because the Enron Defendants each actually knew of the adverse condition of Enron's business and the problems in its business. The Enron Defendants are each liable for the false FLS pleaded because, at the time each FLS was made, the speaker actually knew the FLS was false and the FLS was authorized and/or approved by an executive officer of Enron who knew that the FLS was false.

CLASS ACTION ALLEGATIONS

986. Plaintiffs bring this action pursuant to Rule 23 of Federal Rules of Civil Procedure on behalf of all persons who acquired Enron's publicly traded securities (the "Publicly Traded Securities") during the Class Period (the "Class"), including persons who purchased Enron securities traceable to false and misleading Registration Statements (the "Offering Subclasses") and Enron employees who purchased Enron stock individually or for their 401(k) retirement plans during the Class Period.[15] Excluded from the Class are the defendants and members of their immediate families, any officer, director or partner of any defendant, any entity in which a defendant has a controlling interest and the heirs of any such excluded party.

987. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown at the present time, as of 12/31/00, there were more than 750 million shares of common stock outstanding, more than 25 million shares of the Preferred Securities and billions of dollars of debt securities, owned by thousands of shareholders throughout the country.

988. Plaintiffs' claims are typical of the claims of the Class because plaintiffs and all the Class members sustained damages which arose out of the defendants' unlawful conduct complained of herein.

989. Plaintiffs are representative parties who will fully and adequately protect the interests of the Class members. Plaintiffs have retained counsel who are experienced and competent in both class action and securities litigation. Plaintiffs have no interest which is in conflict with those of the Class they seek to represent.

990. A class action would be superior to all other available methods for the fair and efficient and adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

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[15] The Publicly Traded Securities include Enron's publicly traded debt and equity securities as well as preferred securities issued by Enron, Enron Capital LLC 8% Cumulative Guaranteed Monthly Income Preferred Shares, Enron Capital Trust I Trust Originated Preferred Securities, Enron Capital Trust II Trust Originated Preferred Securities and Enron Capital Resources, L.P. 9% Cumulative Preferred Securities (collectively, the "Preferred Securities").

991. The prosecution of separate actions by individual Class members would create a risk of inconsistent and varying adjudications, which could establish incompatible standards of conduct for defendants. Questions of law and fact common to the Class predominate over any questions which may affect only individual members. Among the common questions of law and fact are:

(a) whether defendants implemented the manipulative devices or engaged in the wrongful scheme alleged herein;

(b) whether defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(c) whether defendants misrepresented material facts;

(d) whether the 1934 Act or the 1933 Act was violated by defendants' acts as alleged herein;

(e) whether defendants knew or recklessly disregarded that the statements made by them were false and misleading;

(f) whether the prices of the Publicly Traded Securities were artificially inflated; and

(g) the extent of damage sustained by Class members and the appropriate measure of damages.

FIRST CLAIM FOR RELIEF

For Violation of §§10(b) and 20(a) of the 1934 Act and Rule 10b-5

992. Plaintiffs incorporate ¶¶1-991 by reference.

993. This Claim is brought by plaintiffs against the defendants named below:

(a) Enron's top executives and directors:

Robert A. Belfer
Norman P. Blake, Jr.
Richard B. Buy
Richard A. Causey
Ronnie C. Chan
James V. Derrick, Jr.
John H. Duncan
Andrew S. Fastow
Joe H. Foy
Mark A. Frevert
Wendy L. Gramm
Kevin P. Hannon
Ken L. Harrison
Joseph M. Hirko
Stanley C. Horton
Robert K. Jaedicke
Steven J. Kean
Mark E. Koenig
Kenneth L. Lay

Charles A. LeMaistre
Rebecca P. Mark-Jusbasche
Michael S. McConnell
Jeffrey McMahon
Cindy K. Olson
Lou L. Pai
Kenneth D. Rice
Jeffrey K. Skilling
Joseph W. Sutton
Lawrence Greg Whalley

(b) Enron's accountants and affiliated entities and partners and officers therein:

Andersen-Worldwide	Joseph F. Berardino
Andersen-U.S.	Thomas H. Bauer
Andersen-India	Michael L. Bennett
Andersen-Puerto Rico	David B. Duncan
Andersen-Cayman Islands	Debra A. Cash
Andersen-Brazil	Donald Dreyfuss
Andersen-United Kingdom	James Friedlieb
	David Stephen Goddard, Jr.
	Gary B. Goolsby
	Michael M. Lowther
	Benjamin S. Neuhausen
	Michael C. Odom
	Richard R. Petersen
	John E. Stewart
	William E. Swanson
	Nancy Temple
	Roger D. Willard
	Gregory W. Hale
	John E. Sorrells
	Danny D. Rudloff
	Michael D. Jones
	Philip A. Randall
	C.E. Andrews
	Roman W. McAlindon

(c) Law firms that represented Enron and its related entities:

Vinson & Elkins	Kirkland & Ellis

(d) The investment banks:

JP Morgan	Merrill Lynch
CitiGroup	Bank America
CS First Boston	Barclays
Canadian Imperial Bank of Commerce	Deutsche Bank
	Lehman Brothers

994. Each of the defendants named herein participated in defendants' wrongful scheme, the implementation of the manipulative devices discussed herein and/or in the preparation and dissemination of the false statements specified above, which they knew or recklessly disregarded

were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

995. Defendants violated §§10(b) and/or 20(a) of the 1934 Act and Rule 10b-5 in that they:

(a) Employed devices, schemes, and artifices to defraud;

(b) Made untrue statements of material facts or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; or

(c) Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon plaintiffs and others similarly situated in connection with their purchases of Enron securities during the Class Period.

996. Defendants' material misrepresentations and/or omissions were made knowingly and/or in reckless disregard of the truth and for the purpose and effect of concealing Enron's falsified financial results, operating condition and prospects from the investing public and supporting the artificially inflated price of its publicly traded securities.

997. Plaintiffs and the other members of the Class as detailed herein have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices in connection with their purchase of Enron securities. Plaintiffs and the members of the Class would not have purchased Enron securities at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' wrongful scheme and/or false and misleading statements.

SECOND CLAIM FOR RELIEF

For Violation of §20A of the 1934 Act

998. Plaintiffs incorporate by reference ¶¶1-997.

999. The defendants named in this Claim for Relief are the Enron Defendants that sold Enron stock during the Class Period.

1000. This Claim is brought by the plaintiffs and against the defendants detailed in Ex. A of the Exhibit Appendix. Each of the plaintiffs detailed in Ex. A of the Exhibit Appendix purchased Enron stock contemporaneously with sales of Enron stock by defendants named in this Claim.

1001. By virtue of their positions as senior insiders of Enron, defendants named in this Claim were in possession of material, non-public information about Enron at the time of their collective sales of more than $1 ***billion*** of their own Enron stock to plaintiffs and members of the Class at artificially inflated prices.

1002. By virtue of their participation in the scheme to defraud investors described herein, and/or their sales of stock while in possession of material, non-public information about the adverse information detailed herein, these defendants violated the 1934 Act and applicable rules and regulations thereunder.

1003. Plaintiffs and all other members of the Class who purchased shares of Enron stock contemporaneously with the sales of Enron stock by the defendants named in this Claim: (1) have suffered substantial damages in that they paid artificially inflated prices for Enron stock as a result of the violations of §§10(b) and 20(a) and Rule 10b-5 herein described; and (2) would not have purchased Enron stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially inflated by defendants' false and misleading statements.

1004. The Enron Defendants are required to account for all such stock sales and to disgorge their profits or ill-gotten gains.

THIRD CLAIM FOR RELIEF

For Violations of §§11 and 15 of the 1933 Act

1005. Plaintiffs incorporate ¶¶75-86, 101, 103, 104, 108, 121, 124, 126, 134-135, 141, 151, 164-165, 236, 336, 384, 419, 421, 447-448, 450, 518, 610, 612-641 and 986-991. For purposes of this claim, plaintiffs expressly exclude and disclaim any allegation that could be construed as alleging fraud or intentional or reckless misconduct, as this claim is based solely on claims of strict liability and/or negligence under the 1933 Act.

1006. This Claim is brought pursuant to §§11 and 15 of the 1933 Act, 15 U.S.C. §§77k and 77o, by plaintiffs detailed below against Andersen and the defendants detailed below.

Type of Offering	Date	Defendant Underwriters	Individual Defendants/ Registration Statement Signatories	Sub-Class Representative
Enron Corporation 7.375% Notes due 5/15/2019 ($500 million)	5/19/99	Lehman Brothers Bank America CIBC	Lay, Causey, Fastow, Belfer, Blake, Chan, Duncan, Foy, Gramm, Harrison, Jaedicke, LeMaistre, Meyer, Skilling, Urquhart, Wakeham, Walker and Winokur	Local 175/505 Washington Board Amalgamated Bank
Enron 7% Exchangeable Notes due 7/31/2002 ($222 million)	8/10/99	Bank America CitiGroup	Lay, Causey, Fastow, Belfer, Blake, Chan, Duncan, Foy, Gramm, Harrison, Jaedicke, LeMaistre, Mark-Jusbasche, Mendelsohn, Meyer, Skilling, Urquhart, Wakeham and Winokur	M. van de Velde
8.375% Notes due 5/23/05 and 7.875% Notes due 6/15/03 ($500 million)	5/18/00	Lehman Brothers Bank America	Lay, Causey, Fastow, Belfer, Blake, Chan, Duncan, Foy, Gramm, Harrison, Jaedicke, LeMaistre, Meyer, Skilling, Urquhart, Wakeham, Walker, Winokur	Hawaii Laborers Archdiocese of Milwaukee
Enron Corp. Zero Coupon Convt Sr. Notes due 2021 ($1.9 billion)	7/18/01		Skilling, Causey, Fastow, Belfer, Chan, Blake, Duncan, Gramm, Jaedicke, Lay, LeMaistre, Mendelson, Pereira, Savage/Alliance, Wakeham and Winokur	Staro Asset Mgmt.

1007. The Registration Statements and Prospectuses detailed in ¶1006 above, were false and misleading, as they omitted to state facts necessary to make the statements made not misleading and failed to adequately disclose material facts as described above.

1008. Non-party Enron is the registrant of the securities sold via the Registration Statements.

Individual Defendants

1009. The individual defendants named in ¶1006 above (the "Individual Defendants") were responsible for the contents and dissemination of the Registration Statements as they signed the registration statements and participated in the preparation and dissemination of the Registration Statements and Prospectuses by preparing, reviewing and/or signing of the Registration Statements and Prospectuses and thereby causing their filing with the SEC.

1010. Each of the Individual Defendants issued, caused to be issued and participated in the issuance of materially false and misleading written statements to the investing public which were contained in the Registration Statement, which misrepresented or failed to disclose, *inter alia*, the facts set forth above.

1011. Each of the Individual Defendants prepared, reviewed and/or signed the Registration Statements and Prospectuses and/or were sellers of the securities sold in the offerings. None of the Individual Defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statements and Prospectuses were true and did not omit any material fact and were not misleading.

Accountants

1012. Andersen consented to the inclusion or incorporation of its report on Enron's false financial statements in each of the Registration Statements and Prospectuses issued in connection with the offerings.

Investment Banks

1013. The underwriters named in this Claim underwrote the Enron securities sold in the offerings as defined in §11(a)(5) of the 1933 Act as detailed in ¶1006 above. As underwriters of the offerings, the underwriters were obligated to make reasonable and diligent investigations of the statements contained in the Registration Statements and Prospectuses at the time they were filed with the SEC and/or became effective, to ensure that said statements were not misleading and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. The underwriters did not make a reasonable and diligent investigation, nor did they possess reasonable grounds for the belief that the statements contained

in the Registration Statements and Prospectuses at the time they became effective were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. As such, the defendants detailed in the chart above are liable as detailed herein.

1014. Each of the plaintiffs listed herein and the members of the Offering Subclasses purchased the Enron securities detailed in ¶1006 above, traceable to a false and misleading Registration Statement. As a direct and proximate result of defendants' acts and omissions in violation of the 1933 Act, and plaintiffs and members of the Offering Subclasses suffered substantial damage in connection with their purchases of the Enron securities sold in the offerings. By reasons of the conduct herein alleged, each defendant violated, and/or in violation of §15 of the 1933 Act controlled a person who violated, §11 of the 1933 Act.

1015. At the times they purchased Enron securities traceable to the defective Registration Statements, plaintiffs and the members of the Offering Subclasses were without knowledge of the facts concerning the false or misleading statements or omissions alleged herein.

1016. Less than one year has elapsed from the time that the plaintiffs discovered or reasonably could have discovered the facts upon which this Complaint is based to the time that this action was commenced. Less than three years have elapsed from the time that the securities upon which this Claim is brought were *bona fide* offered to the time this action was commenced.

FOURTH CLAIM FOR RELIEF

For Violation of TSA, Art. 581-33

1017. Plaintiff Washington Board repeats and realleges ¶¶1-1016 as set forth above.

1018. This Claim is brought pursuant to the Texas Securities Act, Tex. Rev. Civ. Stat., art. 581-33, on behalf of plaintiff the Washington Board and all other States, political subdivisions thereof and/or State Pension Plans, which have authorized the prosecution of this Claim and which agree to be plaintiffs in this action (the "Note Subclass").

1019. This Claim is brought against defendants Andersen, Belfer, Blake, Buy, Causey, Chan, John Duncan, Fastow, Foy, Gramm, Harrison, Jaedicke, Lay, LeMaistre, Meyer, Skilling, Urquhart, Wakeham, Walker, Willison, Winokur, and JP Morgan and Lehman Brothers for violations

of art. 581-33 of the Texas Securities Act ("TSA") in connection with the sale of $250 million of 6.95% Notes due July 15, 2028 and $250 million of 6.40% Notes due July 15, 2006 (the "Notes") to Washington Board and the Note Subclass by these defendants.

1020. Defendants participated in the offer to sell and sold the 6.40% Notes and the 6.95% Notes to the Washington Board and the Note Subclass by means of a Registration Statement and Prospectus and written and oral communications which were inaccurate and misleading as they contained untrue statements of material fact and/or omitted to state other facts necessary to make the statements made not misleading as described above. The Washington Board and each of the members of the Note Subclass acquired the 6.95% Notes and/or the 6.40% Notes from the defendants named herein.

1021. The defendants prepared, reviewed and/or signed the Registration Statement and/or Prospectus pursuant to which the defendants sold the 6.40% Notes and 6.95% Notes to the Washington Board and the Note Subclass, including the Registration Statement and Prospectus which contained the misstatements and/or omissions detailed herein.

1022. None of the individuals named as defendants herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement and Prospectus were true and did not omit any material fact and were not misleading. Additionally, defendants did not possess reasonable grounds for the belief that the written and oral statements made by them were truthful and contained all facts necessary to make the statements made not misleading.

1023. JP Morgan and Lehman Brothers together offered for sale and sold the 6.40% Notes and 6.95% Notes purchased by the Washington Board and the members of the Note Subclass. JP Morgan and Lehman Brothers had a clear financial interest in consummating the offerings, as they received approximately $4 million in underwriting fees for each and stood to obtain millions of dollars for completing the offerings and/or stood to benefit from the resulting capital infusion to Enron, as JP Morgan and Lehman Brothers collectively had billions of dollars of outstanding loan exposure to Enron.

1024. The defendants did the following acts in furtherance of the sale of the Notes:

(a) They actively and jointly drafted, revised, approved and/or signed the Registration Statement and Prospectus by which the sale of the 6.40% Notes and 6.95% Notes was made to the investing public. The Registration Statement and Prospectus were "selling documents," calculated by these defendants to create interest in the 6.40% Notes and 6.95% Notes, were filed with the SEC and were widely distributed by defendants for that purpose.

(b) The defendants finalized the Registration Statement and Prospectus, caused them to become effective and caused them to be provided to the Washington Board and the Note Subclass. But for the defendants having drafted, filed, and/or signed the Registration Statement and Prospectus, the offering of the 6.40% Notes and 6.95% Notes could not have been made.

1025. The Washington Board and the members of the Note Subclass have been damaged in that they paid artificially inflated prices for the 6.40% Notes and 6.95% Notes. The Washington Board and the Note Subclass would not have purchased the 6.40% Notes or the 6.95% Notes at the prices they paid, or at all, if they had been aware that the prices had been artificially inflated by defendants' misleading statements.

1026. The Washington Board and other members of the Note Subclass purchased the 6.40% Notes and 6.95% Notes from defendants pursuant to the false and misleading Registration Statement and Prospectus. The Washington Board did not know, or in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in the Registration Statement and Prospectus.

1027. Each of the defendants issued, caused to be issued and/or participated in the issuance of materially false and misleading statements and/or misrepresented or failed to disclose, *inter alia*, the facts set forth above. As a direct and proximate result of defendants' acts and omissions in violation of the TSA, the price of the 6.40% Notes and 6.95% Notes was artificially inflated and the Washington Board and the Note Subclass suffered substantial damage in connection with their purchase of the 6.40% Notes and 6.95% Notes. By reasons of the conduct herein alleged, each defendant violated the TSA.

1028. Defendants Lay, Causey, Buy, Fastow and Skilling, by virtue of their positions as directors and/or senior officers of Enron directly or indirectly controlled Enron and/or other defendants named in this Claim and are liable as a result thereof.

1029. On behalf of itself and all members of the Note Subclass, the Washington Board seeks recission and/or actual damages. The Washington Board, representatively, hereby tenders to defendants those 6.40% Notes and 6.95% Notes which certain Note Subclass members continue to hold, on behalf of all members of the Note Subclass who continue to own the Notes, in return for the consideration paid for those Notes together with interest thereon. As to the 6.40% Notes and 6.95% Notes that are no longer owned, an award of damages is sought as contemplated and calculated pursuant to the Tex. Rev. Civ. Stat., art. 581-33.

1030. At the times the Notes were purchased, the Washington Board and other members of the Note Subclass were without knowledge of the facts concerning the false or misleading statements or omissions alleged herein. Less than three years have elapsed from the time that the Washington Board discovered or in the exercise of reasonable diligence could have discovered the facts upon which this Complaint is based to the time that the Washington Board filed this Complaint. Less than five years have elapsed from the time that the securities upon which this Claim is brought were *bona fide* offered to the public to the time the Washington Board filed this Complaint.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for relief and judgment, including preliminary and permanent injunctive relief, as follows:

A. Determining that this action is a proper class action, and certifying plaintiffs as class representatives under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding preliminary and permanent injunctive relief in favor of plaintiffs and the Class against defendants and their counsel, agents and all persons acting under, in concert with, or for them, including an accounting of and the imposition of a constructive trust and/or an asset freeze on defendants' insider trading proceeds;

C. Ordering an accounting of defendants' insider-trading proceeds;

D. Disgorgement of defendants' insider-trading proceeds;

E. Restitution of investors' monies of which they were defrauded;

F. Awarding compensatory damages in favor of plaintiffs and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

G. As to the §11 and/or §15 claims, awarding rescission or a recessionary measure of damages;

H. Awarding plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

I. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

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