

Wiedman, Mark

From: Carleton, Norman
Sent: Monday, January 07, 2002 2:18 PM
To: Bair, Sheila; Berardi, Steve; Bitsberger, Timothy; Eichner, Matthew; Gabilondo, Jose; Gross, Jared; Hammer, Viva; Lori Sanatamorenna (E-mail); Nickoloff, Peter; Novey, Michael; Pietrangeli, Fred; Roseboro, Brian; Schultheiss, Heidilynne; Whaley, Jean; Wiedman, Mark
Subject: DJ: IntercontinentalExchange Trade Volume Grew 1,500% In 2001

[(b)(5)]

Norman

January 7, 2002

IntercontinentalExchange Trade Volume Grew 1,500% In 2001

NEW YORK -- IntercontinentalExchange, an online energy and metals marketplace, grew its trade volume 15-fold and increased the number of participating firms and users more than 400% in 2001, ICE said Monday.

ICE volume and new-user interest skyrocketed in the autumn as **Enron Corp.** (ENE) filed for bankruptcy protection and suspended trade on its EnronOnline Internet-based trading platform.

Capping off the year, ICE set a new daily record Dec. 27 with natural gas trading of 500 billion cubic feet, breaking by 18% the previous daily record set Dec. 4, ICE said.

More than 400 commodity trading firms execute trades on ICE. The platform matches many buyers and sellers, providing less counterparty credit risk than platforms offering the same counterparty in every deal.

Intercontinental Exchange, based in Atlanta, launched its metals trading on the Internet in August 2000 and its energy trading in October 2000.

ICE partners include American Electric Power Co. (AEP); Aquila Energy (ILA); BP Amoco PLC (BP); Deutsche Bank AG (G.DBK); Duke Energy (DUK); El Paso Corp. (EPG); Goldman Sachs Group (GS); Morgan Stanley Dean Witter & Co. (MWD); Reliant Energy (REI); Royal Dutch/Shell Group (RD); Societe Generale SA (F.SGF) unit SG Investment Banking; Mirant Corp. (MIR); TotalFina Elf SA (TOT); and Continental Power Exchange, which provided the trading technology and management team.

-By Stephen Parker, Dow Jones Newswires; 201-938-4426; stephen.parker@dowjones.com

is this for the speech or other stuff?

-----Original Message-----

From: Wiedman, Mark
Sent: Friday, January 04, 2002 5:47 PM
To: Roseboro, Brian; Bitsberger, Timothy
Subject: FW: Draft Memo on Enron/CFMA Articles

This is something to keep close tabs on -- would it make sense to meet with Heidi and Norman on this?

-----Original Message-----

From: Carleton, Norman <Norman.Carleton@do.treas.gov>
To: Roseboro, Brian <Brian.Roseboro@do.treas.gov>; Bair, Sheila <Sheila.Bair@do.treas.gov>; Gross, Jared <Jared.Gross@do.treas.gov>; Wiedman, Mark <Mark.Wiedman@do.treas.gov>; Bitsberger, Timothy <Timothy.Bitsberger@do.treas.gov>; Smith, Amy <Amy.Smith@do.treas.gov>
CC: Schultheiss, Heidilynne <Heidilynne.Schultheiss@do.treas.gov>; Nickoloff, Peter <Peter.Nickoloff@do.treas.gov>; Ellett, Martha <Martha.Ellett@do.treas.gov>; Gabilondo, Jose <Jose.Gabilondo@do.treas.gov>; Sutton, Gary <Gary.Sutton@do.treas.gov>
Sent: Fri Jan 04 17:29:36 2002
Subject: FW: Draft Memo on Enron/CFMA Articles

Attached is a memo that details our first attempt to clarify what the press has been saying in regards to Enron and the Commodity Futures Modernization Act.

I talked to the Ken Raisler, a New York lawyer, about this. He told me that Enron did not directly lobby the administration about the CFMA but was part of an energy coalition, which Mr. Raisler represented, that did lobby on this issue. The exempt commodity/electronic trading facility provision in the CFMA did not directly benefit Enron since EnronOnline was not structured as a trading facility as defined in the CFMA. Therefore, the major beneficiaries of these provisions are Enron's competitors, such as the InterContinental Exchange and TradeSpark, which are structured as electronic trading facilities. Enron did get the legal certainty it wanted that the CFTC cannot regulate EnronOnline. **[(b)(5)]**

Ken also told me that he had talked to then Assistant Secretary Lee Sachs about the exempt commodity issue. According to Ken, Lee told him that the Treasury would not oppose the CFMA because of the exempt commodity issue but encouraged the industry to reach a compromise with the CFTC. In the end, Wall Street firms, energy firms, and the futures industry, as well as the PWG (including the CFTC) all supported passage of the CFMA.

-----Original Message-----

From: Schultheiss, Heidilynne
Sent: Friday, January 04, 2002 5:10 PM
To: Carleton, Norman
Subject: Draft Memo on Enron/CFMA Articles

Attached is the draft memo on the Enron articles that asserted that the CFTC and PWG objected to the energy exclusion provisions of the CFMA. The three news articles are downloaded as the latter pages.

Wiedman, Mark

From: Carleton, Norman
Sent: Friday, December 21, 2001 3:56 PM
To: Bitsberger, Timothy; Wiedman, Mark
Subject: Revised Enron Talking Points

enron new.doc

Attached is a revised document based on Mark's comments.

Wiedman, Mark

From: Schultheiss, Heidi Lynne
Sent: Friday, January 11, 2002 11:12 AM
To: Wiedman, Mark
Subject: Enron/CFMA Memo

Attached is an updated copy of the Enron/CFMA memo. The first four pages are the memo; the following pages are the downloaded newspaper articles. I will bring copies with me at 12 noon, but I thought you should have an advance copy.

enroncfma.doc

DRAFT

January 10, 2002

TO: Norman Carleton
Director
Office of Federal Finance Policy Analysis

FROM: Heidilynne Schultheiss
Financial Economist
Office of Federal Finance Policy Analysis

SUBJECT: Dow Jones Newswires and Washington Post Articles on Enron and the
Commodity Futures Modernization Act of 2000

BACKGROUND

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CEA EXEMPTIONS

[(b)(5)]

[(b)(5)]

ISSUE AND DISCUSSION

[(b)(5)]

[(b)(5)]

CONCLUSION

[(b)(5)]



Attachments

[(b)(5)]

Campaign Gifts, Lobbying Built Enron's Power In Washington

By Dan Morgan and Juliet Eilperin
Washington Post Staff Writers
Tuesday, December 25, 2001; Page A01

During the administration of the first President George Bush, a new party fundraiser named Kenneth L. Lay was invited to spend the night at the White House. The sleepover was an early coup for the chairman of Enron Corp. and a harbinger of things to come.

Over the following decade, Lay and Enron poured millions of dollars into U.S. politics, cultivating unequal access and using the entree to lobby Congress, the White House and regulatory agencies for action that was critical to the energy company's spectacular growth. Now, with Enron's sudden bankruptcy, public attention has turned not only to the financial practices that brought the company down, but to what its far-flung political operations say about the country's campaign finance system.

Some Democrats in Congress are spoiling for an opportunity to use Lay and Enron to embarrass the Republican Party, which received most of the company's largess over the years. They want to look into such things as Enron's relationship with Phil Gramm (R-Tex.), ranking minority member on the Senate Banking Committee and chairman of the committee at a time when his wife, Wendy L. Gramm, was serving on Enron's board. Last year, Gramm's committee approved legislation that included a key provision exempting parts of Enron's massive energy trading operation from federal oversight.

"I think the Enron story is going to turn out to be an enormous political story," said Rep. Henry A. Waxman (D-Calif.), ranking minority member on the House Energy and Commerce Committee.

The ties of Lay to the White House and GOP leaders, he added, were so multilayered that Republicans are likely to be reluctant to pursue them. But he made clear that he intends to do so and expects the Democratic-controlled Senate to follow suit.

Enron also cultivated relationships with Democrats, however. Lay played golf in Vail, Colo., with President Bill Clinton, and Enron gave hundreds of thousands of dollars to Democratic campaign committees and Democrats in the House and Senate, including Sen. Charles E. Schumer (N.Y.) and Rep. Martin Frost (Tex.), the ranking minority member on the House Rules Committee.

A Routine Cost for Some

Advocates of campaign finance reform say the Enron case vividly illustrates the ties between politics and big money, though it's unclear that the company's political operations were radically different from others for whom political contributions have become a routine cost of doing business.

"There are aspects of [the Enron case] that remind us of the savings and loan scandal, in the sense that a powerful institution used big money to buy influence and protect itself while ordinary citizens ended up losing their life savings," said Fred Wertheimer, president of Democracy 21, a Washington interest group, referring to a banking controversy in the 1980s. Enron's ties to Republicans and the present Bush administration were especially close. Lay raised large sums for George W. Bush's campaign.

Enron, Lay and its employees have contributed \$572,350 to him over his career, far more than any other company, according to the Center for Public Integrity in Washington.

Several top administration officials have been Enron advisers or stockholders. Enron, Lay and other senior executives contributed \$1.7 million in soft-money donations to politicians in the 2000 election cycle, two-thirds of it to Republicans, according to the Center for Responsive Politics.

Republicans clearly are sensitive to the potential political dangers. The National Republican Senatorial Committee recently returned a \$100,000 check collected from Enron in November, after deciding that "it was appropriate to give it back," spokesman Dan Allen said. The Republican Governors Association last week returned an Enron donation of \$60,000. What was unique about Enron, competitors and allies agree, was a brash and sometimes counterproductive political style.

Stories of Enron's hardball style are legion. In October 1999, for example, Jeffrey K. Skilling, then Enron's president, expressed his displeasure at Rep. Joe Barton's position on a deregulation bill pending in the energy subcommittee Barton chairs.

The meeting grew "heated and awful," said one person who was present, until Barton (R-Tex.), a usually mild-mannered man who keeps a Bible on his desk, exploded. "Jeffrey Skilling, I may not have your millions of dollars, but I am not an idiot," one witness recalled Barton saying. The meeting ended without Enron getting the changes it wanted. "Skilling did not get Washington," the source added.

"In their lobbying, they acted like the 800-pound gorilla they were," said Christopher Horner, a Washington lawyer who briefly directed Enron's government relations in 1997. Lay and Skilling declined interview requests, but Enron officials say they have no regrets about their use of money. "It got us name recognition," company spokesman Mark Palmer said. "Given the aggregation of our foes, we had to make sure that people knew what our argument was."

Jump-Starting Deregulation

Almost from its start in 1985 as a gas pipeline company, Enron needed help in Washington, and it got it in a series of actions by Congress and the Federal Energy Regulatory Commission (FERC) that undermined the traditional monopoly of utility companies over power plants and transmission lines.

Enron lobbied for several of the initial actions that set the stage for the era of a deregulated wholesale electricity market.

It supported the 1992 Energy Policy Act, which opened the utility companies' wires to electricity merchants such as Enron. It also worked with the Commodity Futures Trading Commission -- then chaired by Wendy Gramm -- for a regulatory exemption for futures trading in energy derivatives, which later became Enron's most lucrative business. Soon after Gramm stepped down in 1993, she was appointed to Enron's board.

Independent sources knowledgeable about these dealings, however, said Enron was not the main interested party. They said the lead was taken by several major oil companies, including British Petroleum Co. and Phillips Petroleum Co., which were concerned about the effect of CFTC regulation on their offshore trading in crude oil contracts. Wendy Gramm, an apostle of free markets, needed little convincing, the sources said.

That same year, Lay served as chairman of the committee organizing the Republican National Convention in Houston. Hedging its bets, Enron made a major contribution to a "street fair" in honor of Sen. John Breaux (D-La.), a key energy policymaker, at the Democratic convention. Key orders by FERC in 1996 also supported Enron's transformation into a freewheeling trader of gas, electricity and more exotic products, such as telecommunications services and sulfur-dioxide emissions credits.

The new rules ensured that Enron and other merchant companies could buy electricity from independent power plants and sell it to distant customers, using transmission lines borrowed from utility companies.

Even Enron's harshest critics credit Lay with putting new issues -- such as electricity deregulation -- on the Washington agenda. Lay, a former Interior Department official with a PhD in economics, became "the ambassador" for deregulation, one former employee said.

Throughout the 1990s, Enron's agenda was opposed by coal-burning utilities, especially ones in the Southeast, which viewed the emerging wholesale electricity market as a threat to their turf. Many of these, such as Atlanta-based Southern Co., had impressive political funding and connections of their own.

But with the explosive growth of Enron and the GOP takeover of Congress in 1995, the company's soft-money donations -- unregulated and unlimited gifts to political parties and organizations -- jumped sharply. They went from about \$136,000 in the 1993-94 election cycle, to \$687,000 in 1996 and \$1.7 million in 2000, according to the Center for Responsive Politics.

Frustrated by Washington

For all its connections, sources say, Enron often found Washington frustratingly slow and unreliable.

The company placed a substantial bet on federal support for limits on the greenhouse gases causing global warming. Enron officials hoped to exploit a new market in industry for carbon-emissions credits, similar to the one that developed for sulphur credits after clean-air legislation was enacted in 1990.

Lay joined the Union of Concerned Scientists and environmental groups in calling for curbs on carbon in the atmosphere. The Clinton administration was supportive, but this year the Bush administration reneged on a campaign pledge to impose limits on greenhouse gas emissions from coal-burning power plants.

A multimillion-dollar lobbying campaign in Congress to secure legislation requiring states to institute retail electricity deregulation fared even worse.

Enron hired former New York representative Bill Paxon, a leading conservative, to run Americans for Affordable Electricity, which commissioned studies and recruited business support for deregulation. But the legislation never made it out of a congressional subcommittee. At the same time, Enron was growing restive over the slow pace of deregulation in the wholesale electricity market, the core of its business. Large parts of the country, especially the Southeast, were still monopolized by regulated utilities that limited the opportunity for trading gas, electricity and energy derivatives.

Political Pragmatism

Enron's political pragmatism was demonstrated in the 1998 New York Senate election, when it dropped its support of the Republican incumbent, Alfonse M. D'Amato, after Democrat Schumer endorsed Enron's goal of wholesale deregulation, sources said. Lay reciprocated by hosting several fundraisers for Schumer, and Enron's political action committee contributed \$7,500 to the Schumer campaign.

The company's lobbying team expanded along with its political spending. It outgrew the two-person operation that existed in 1989 and began to reflect Enron's interest in everything from pipeline safety and derivatives trading to Overseas Private Investment Corp. loan guarantees. By last year, its lobbying expenses exceeded \$2 million a year and covered a raft of big-name consultants, such as former Montana governor Marc F. Racicot, the new Republican National Committee chairman, and former top aides to House Majority Leader Richard K. Arney (R-Tex.) and House Majority Whip Tom DeLay (R-Tex.)

The hazards of Enron's efforts to connect with both parties were evident last year, when shortly before the November election, the company picked a Clinton administration Treasury official, Linda Robertson, to run its Washington office.

A perturbed DeLay, whose campaign and related funds had received more than \$100,000 from Enron and Lay, briefly "excommunicated" Enron, a House source said. Robertson was not invited to a series of meetings of electricity lobbyists held in DeLay's office last July, though an Enron official did finally attend the sessions.

Enron had more success when Congress overwhelmingly approved legislation last year containing a provision precluding the Commodity Futures Trading Commission (CFTC) from regulating Enron's trading in energy derivatives. These instruments are traded largely between electricity dealers and big wholesale consumers, which use them to hedge against price swings that could adversely affect their businesses.

The exemption, tucked into broader legislation that established the legality of unregulated derivatives trading by banks, was not supported by a Clinton administration working group, largely because of opposition from the CFTC. Since the departure of Wendy Gramm, some in the agency had lobbied for tighter control over the exploding energy derivatives market. The legislation passed through the Senate Banking Committee, then chaired by Phil Gramm, who has received \$97,350 from Enron employees and its political action committee since 1989. A Gramm spokesman said the senator does not recall talking to his wife, an Enron director, about the energy provision and played "no role" in negotiating it. Wendy Gramm did not return phone calls seeking comment.

Enron was a primary player, with Koch Industries Inc., a large, privately held oil and gas company based in Wichita, in pushing for the exemption, a source said. But the company's main effort was focused on the House Agriculture Committee, where the legislation originated. Its chairman and ranking Democrat, Texas Reps. Larry Combest (R) and Charles W. Stenholm (D), respectively, were among the top recipients of Enron campaign donations in the House since 1989.

The CFTC objected strenuously to the initial draft marked up by the committee, but the Texas congressmen helped work out a compromise between Enron and the agency. The compromise was then offered by Rep. Jerry Moran (R-Kan.), the home-state congressman of Koch Industries and a recipient of campaign donations from Enron and Koch in the last election cycle. Moran did not return a phone call seeking a comment.

Early this year, Lay seemed to be at the height of his political power, getting a private meeting with Vice President Cheney to discuss the administration's energy policy proposals and weighing in on key nominations to FERC.

Curtis Hebert Jr., FERC's chairman at the time, has reported that Lay called him and implied that Enron would urge the newly installed Bush administration to keep him in the job -- if he changed his views to support Enron's position for faster electricity deregulation. Lay contended that Hebert called him to ask for support.

Hebert was not reappointed. He was replaced by Texas lawyer Pat Wood III, a strong advocate of deregulation who had the backing of Lay and Enron.

Ironically, since Enron's fall, both FERC and Congress seem to be moving in the direction of the deregulated markets Lay and Enron lobbyists had pushed for.

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CORRECTION

Wednesday, December 26, 2001; Page A02

A Dec. 25 article incorrectly reported the action taken by the Senate Banking Committee, chaired by Phil Gramm (R-Tex.), on a bill that exempted much of Enron Corp.'s trading activities from federal regulation. The legislation was approved by the Senate Agriculture Committee.

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Enron Executives Face Subpoenas

Senate Panel Also Orders Testimony of Directors

By Peter Behr and Dan Morgan

Washington Post Staff Writers

Thursday, January 3, 2002; Page E01

A Senate committee announced yesterday that it is subpoenaing top executives and directors of the bankrupt Enron Corp. to determine their roles in the Houston company's epic collapse.

Three other congressional committees already are digging into the Enron failure, but the subpoenas announced yesterday are believed to be the first of the congressional probes. Among the likely recipients is Wendy Gramm, an Enron director who is the wife of Sen. Phil Gramm (R-Tex.).

Sen. Carl M. Levin (D-Mich.), chairman of the Governmental Affairs Committee's permanent subcommittee on investigations, said the panel also will subpoena financial and trading records from Enron and audit documents from its accountant, Arthur Andersen LLP.

Enron's attorney, Robert Bennett, called the subpoenas "totally unnecessary" and said "we are fully cooperating with Congress."

Although Enron Chairman Kenneth L. Lay did not show up for two earlier congressional hearings on Enron's bankruptcy, he has agreed to testify next month before the Senate Commerce Committee, Bennett said.

Enron has turned over nearly three dozen boxes of documents to the House Energy and Commerce Committee, Bennett said. "I don't question the legitimacy of an inquiry [into Enron's failure], but it's not a measured approach to have a half-dozen different committees doing this at the same time," he said. "It can lead to a circus atmosphere and a lot of wasted time and effort."

The full Governmental Affairs Committee has scheduled a hearing for Jan. 24 on Enron's use of a large number of partnerships that kept billions of dollars of corporate debt off the company's books. The hearing will also examine whether federal regulators missed warning signs of the company's trouble.

Accounting errors involving the private partnerships caused Enron to overstate its earnings by half a billion dollars over the past four years. Enron's disclosure of the overstatement, in November, triggered a final plunge in the company's stock price and the company's bankruptcy filing Dec. 2.

Sen. Joseph I. Lieberman (D-Conn.), chairman of the full committee, said, "The focus is, how did this corporation collapse, and what can we do to make sure that something like this never happens again?"

Lieberman's committee joins an already crowded field of Enron inquiries. The House Energy and Commerce Committee has sent investigators to interview Enron officials in Houston.

Subcommittees of the House Financial Services Committee and the Senate Commerce Committee have already held hearings.

But Lieberman's panel is the top investigative committee of the Senate. Under Republican leadership during the Clinton administration, then-chairman Fred D. Thompson (R-Tenn.) headed an investigation of Bill Clinton's 1996 presidential campaign fundraising.

Levin and Lieberman said they intend to look into the close ties between Lay and President Bush, a connection that some Democratic Party officials say they hope to take advantage of in this year's congressional election campaigns.

Levin said he wants to know what advice Lay, who was a large contributor to the Bush campaign, gave to officials of the new administration as it formulated energy policy a year ago. Enron "also had close relationships with some Democrats, it's fair to say," Lieberman acknowledged. He said he expected the inquiry to be bipartisan and to have Thompson's support. "We are going to work together," Lieberman said.

Lieberman said the committee also wants to learn whether federal regulators have the authority to adequately oversee the complex commodity trading and financial transactions that were the foundation of Enron's rapid growth over the past three years.

Lieberman noted that much of Enron's trading in energy derivatives was exempt from regulation by the Commodity Futures Trading Commission, and he said a focus of the inquiry would be whether this allowed the company to hide some transactions.

Enron was an active player in lobbying for the exemption beginning in the early 1990s, according to sources. The exclusion was initially approved by the CFTC in 1992, and in 2000 Congress endorsed it as part of the Commodity Futures Modernization Act, despite concerns of some senior regulators.

At a joint hearing on the legislation by the Senate Banking and Agriculture committees in June 2000, then-CFTC chairman William J. Rainer spelled out his "reservations" about the exclusion and said that "the case for it has not been made" with regard to energy derivatives.

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December 18, 2001

Senator Eyes End To Enron-Type Special-Purpose Entities

Dow Jones Newswires

WASHINGTON -- U.S. Senate Commerce Committee Chairman Fritz Hollings, D-S.C., pledged Tuesday to introduce legislation to eliminate the sorts of financial accounting that led to the financial collapse of Enron Corp. (ENE).

At a committee hearing on the Enron debacle, Hollings called for legislation to eliminate the use of special-purpose entities, which are partnerships or trusts through which companies keep their debt off the books and, in Enron's case, overstate earnings.

Hollings said such off-the-balance-sheet transactions should end in order to protect investors. Hollings also was highly critical of the amount of insider stock selling by top Enron officials. He noted that Enron Chairman Kenneth Lay and former Chief Executive Jeffrey Skilling each sold shares in recent months for more than \$60 million, while members of Enron's board sold shares worth more than \$160 million.

"The selling of Enron was prolific," Hollings said, calling the insider selling "a screaming red flag."

If Enron officials felt the stock was undervalued, as they publicly attested, "why were they cashing in?" Hollings said.

Hollings also said there was plenty of blame for the "shenanigans" associated with Enron's collapse, which he likened to a "cancer." He cited Enron's role in persuading the Commodity Futures Trading Commission against the Clinton administration's call for regulation of energy derivatives, and subsequent congressional action to exempt from regulation the highly complex energy derivatives Enron's special-purpose entities engaged in.

"We are all guilty for letting it happen," Hollings said of Enron's collapse.

Sen. Byron Dorgan, D-N.D., chairman of the committee's consumer affairs panel, described Tuesday's hearings as the first of several that will delve into the roles in Enron's financial collapse played by: Enron officials; Arthur Andersen, Enron's outside auditor; Wall Street analysts, and regulators.

"This is about an energy company that morphed into a trading company involved in hedge funds and derivatives. It took on substantial risks, created secret off-the-books partnerships and, in effect, cooked the books under the nose of their accountants and investors," Dorgan said.

Dorgan noted that Lay, Enron's chairman and chief executive, has agreed to testify at a future hearing. Dorgan also said the committee will invite Skilling, Enron's former chief executive, and Andrew Fastow, Enron's former chief financial officer, to testify at the same hearing.

"Was this just bad luck, incompetence and greed, or were there some criminal or illegal actions, as has been suggested by the accounting firm that reviewed Enron's books?" Dorgan said.

Wiedman, Mark

From: Carleton, Norman
Sent: Friday, January 11, 2002 9:47 AM
To: Cetina, Jill; Bair, Sheila; Berardi, Steve; Bitsberger, Timothy; Eichner, Matthew; Gabilondo, Jose; Gross, Jared; Hammer, Viva; Lori Santamorena (E-mail); Nickoloff, Peter; Novvey, Michael; Pietrangeli, Fred; Roseboro, Brian; Schultheiss, HeidiLynne; Whaley, Jean; Wiedman, Mark
Subject: FW: 1BN) Treasury's O'Neill Comments on Enron Calls, Disclosur

-----Original Message-----

From: Lori.Santamorena@bpd.treas.gov [mailto:Lori.Santamorena@bpd.treas.gov]
Sent: Friday, January 11, 2002 8:40 AM
To: norman.carleton@do.treas.gov
Subject: 1BN) Treasury's O'Neill Comments on Enron Calls, Disclosur

----- Forwarded by Lori Santamorena/bpd on 01/11/02 08:39 AM -----

"PUBLIC DEBT. US DEPT OF TREASURY"

<GERS@bloomberg.net>

To: leantamorena@bpd.treas.gov

cc:

Subject: 1BN) Treasury's O'Neill Comments on Enron Calls, Disclosur

01/11/02 08:17 AM

Treasury's O'Neill Comments on Enron Calls, Disclosure Rules
 2002-01-10 19:35 (New York)

Washington, Jan. 10 (Bloomberg) -- The following are comments from U.S. Treasury Secretary Paul O'Neill on his conversations with Enron Corp.'s chairman Ken Lay prior to Enron's bankruptcy and a review by government regulators of the adequacy of corporate disclosure rules. O'Neill spoke during interviews on Cable News Network and CNBC.

"My first call from Ken Lay was for him to give me a heads-up that they were struggling and to offer the president of his company to speak with the Undersecretary of Domestic Finance (Peter Fisher) to understand the positions they had so we could make sure that we were taking care of our responsibility, which is to make sure that the U.S. capital markets work," O'Neill told CNN.

"That was the purpose of Ken's call to me, to let me know we were welcome to have access to information so we could understand what they were doing and the possible exposure to the world's capital markets.

"The second call, Ken called me to tell me they were in discussions with Dynergy and it was an information-only call. Subsequently, (Commerce Secretary) Don Evans called me to say he'd had a call and that Ken had told him that rating agencies were looking at them and there was real concern if the rating agencies downgraded them that that could effectively scupper the deal with Dynergy," he said.

On what he did following the call:

"I subsequently asked (Fisher) to speak with the Enron people, which he did, so that we could satisfy ourselves that the Enron affairs were not going to have a negative impact on U.S. capital markets," O'Neill told CNBC.

On whether he thinks ethics rules were broken:

"I thought it was business as usual," he told CNBC. "I get calls every day from the big players in the world. Enron was the

01/16/2002

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biggest trader of energy in the world. So I was not surprised at all that I would get a call saying we've got a problem over here and you should know about it."

On whether he was he asked by Ken Lay for a government bailout:
 "Absolutely not," he told CNBC. "One of things I enjoy about Treasury is I don't have a lot of giveaway programs so if he wanted a giveaway from the government he sure wouldn't have called me. I don't know if one were inclined to make bailouts why there would be a bailout for a company that's gotten itself into trouble. If you want to look at recent Chapter 11 filings or Chapter seven filings you can look at Bethlehem Steel and Sunbeam and they don't call the government for a bailout. I ran a Fortune 50 company, it never would have occurred to me to call the government for a bailout if I got my company in trouble."

On what President George W. Bush has asked him to do today:
 "The president tasked me to one, head a committee that includes Don Evans and (Labor Secretary) Elaine Chao to look at the Enron case and other bankruptcy cases to pay special attention to the question of whether we need to amend the rules that govern pension plans and 401k plans to provide a greater deal of assurance to individuals who have a stake in pension plans and 401k plans," he told CNN. "That is driven by the president's concern about the individual employees. The president said to me we need to see if there is something we need to do so that we learn from this. If there is a weakness in our rules let's fix the rules."

"And the second committee the president asked me to convene is one that's a standing committee, the president's economic committee. That includes myself and Alan Greenspan, the head of (the Commodities Futures Trading Commission) and Harvey Pitt of the SEC. The charge the president's given us is to look at the Enron case and other cases and see if we need to adjust the disclosure rules so that shareholders and employees have all the information they need to make intelligent decisions. This is not about Enron, this is about making sure the rules that govern the way our economic system works are worthy of the conditions that we're dealing with these days to assure that individuals are not hurt because of a weakness in our rules."

--Simon Kennedy in the Washington newroom (202) 624-1834, or at skennedy4@bloomberg.net /jo

Story illustration: For graph of Enron's stock price, type:
 (ENR US <Equity> GPO D <GO>)

ENR US <Equity> CN

NI TRE
 NI SEC
 NI SCR
 NI LAW
 NI ACC
 NI CNG
 NI FIN
 NI GOV
 NI US
 NI TX
 NI NY
 NI NASD
 NI OIL
 NI PIP
 NI NRG
 NI GAS
 NI ERN
 NI EXE
 NI CNG
 NI LAW
 NI RULES
 NI VOICES

#<40533>#

-0- (BN) Jan/11/2002 0:35 GMT

01/16/2002

0120000000026

Wiedman, Mark

From: Wiedman, Mark
Sent: Monday, January 07, 2002 10:21 AM
To: Wiedman, Mark
Subject: SECRETARY ON ENRON

MR. RUSSERT: Enron, the biggest bankruptcy in our nation's history-people at the top were able to trade out their stock and bring home some money. People at the bottom were not able to do that because of some of the regulations imposed upon them. As secretary of Treasury, will you investigate Enron?

SEC'Y O'NEILL: You know, I think what we've been doing and what we'll do going forward is look and see if there are regulatory actions or rules that could be put in place that would avoid this kind of situation. I think the dust hasn't cleared yet on this case and it's not clear whether the company fulfilled all of its obligations under the existing rules. If they did, it suggests that we need rule change. If, on the contrary, it turns out that they didn't fully comply with all the rules, we have a different issue on our hands.

MR. RUSSERT: That's criminal behavior.

SEC'Y O'NEILL: Well, I don't know. You're jumping to a conclusion. I wouldn't do that.

MR. RUSSERT: If they don't comply with the rules.

SEC'Y O'NEILL: I would tell you from my own experience, again, having run a Fortune 50 corporation, that I thought the rules were very clear on what's required for reporting. And I think we'll see fairly soon from the work that's being done by the SEC and others whether or not the corporation fully complied with its reporting responsibilities.

MR. RUSSERT: Are you going to look into some of the offshore investments?

SEC'Y O'NEILL: Well, I think we need to look at their compliance with rules, and to the extent that takes us to that issue, yes.

MR. RUSSERT: Do you believe the Treasury Department should look at this aggressively because of the political considerations that some are suggesting?

SEC'Y O'NEILL: I think we need to be constantly looking at the rules and the schemes that exist for the way private enterprise operates. With this in mind, investors and the general public need to be able to rely on the truthfulness and completeness of what enterprises report. It's a critical aspect of why our economy has done so much better than the rest of the world. It's because capital believes, people who invest believe, that they can rely on information that's provided to them and the U.S. economy. It's a principle we need to protect and cherish and extend because it is so important to the fundamental operation of our kind of economy.

MR. RUSSERT: Do you think that Enron is a big story, a serious story?

SEC'Y O'NEILL: Well, it's obviously a big and serious story when millions of people are economically impacted by the meltdown of a major corporation. Of course, it's a very important story and it's something that we need to pay attention to. But we need to pay attention to, again, whether or not all the facts have been dutifully reported and people were given the information required under law to make intelligent decisions.

Wiedman, Mark

From: Carleton, Norman
Sent: Friday, January 04, 2002 5:30 PM
To: Roseboro, Brian; Bair, Sheila; Gross, Jared; Wiedman, Mark; Bitsberger, Timothy; Smith, Amy
Cc: Schultheiss, Heidilynne; Nickoloff, Peter; Ellett, Martha; Gabilondo, Jose; Sutton, Gary
Subject: FW: Draft Memo on Enron/CFMA Articles

Attached is a memo that details our first attempt to clarify what the press has been saying in regards to Enron and the Commodity Futures Modernization Act.

I talked to the Ken Raisler, a New York lawyer, about this. He told me that Enron did not directly lobby the administration about the CFMA but was part of an energy coalition, which Mr. Raisler represented, that did lobby on this issue. The exempt commodity/electronic trading facility provision in the CFMA did not directly benefit Enron since EnronOnline was not structured as a trading facility as defined in the CFMA. Therefore, the major beneficiaries of these provisions are Enron's competitors, such as the InterContinental Exchange and TradeSpark, which are structured as electronic trading facilities. Enron did get the legal certainty it wanted that the CFTC cannot regulate EnronOnline. [(b)(5)]

Ken also told me that he had talked to then Assistant Secretary Lee Sachs about the exempt commodity issue. According to Ken, Lee told him that the Treasury would not oppose the CFMA because of the exempt commodity issue but encouraged the industry to reach a compromise with the CFTC. In the end, Wall Street firms, energy firms, and the futures industry, as well as the PWG (including the CFTC) all supported passage of the CFMA.

-----Original Message-----

From: Schultheiss, Heidilynne
Sent: Friday, January 04, 2002 5:10 PM
To: Carleton, Norman
Subject: Draft Memo on Enron/CFMA Articles

Attached is the draft memo on the Enron articles that asserted that the CFTC and PWG objected to the energy exclusion provisions of the CFMA. The three news articles are downloaded as the latter pages.

enroncfma.doc

DRAFT

January 4, 2002

TO: Norman Carleton
Director
Office of Federal Finance Policy Analysis

FROM: Heidilynne Schultheiss
Financial Economist
Office of Federal Finance Policy Analysis

SUBJECT: Dow Jones Newswires and Washington Post Articles on Enron and the
Commodity Futures Modernization Act of 2000

BACKGROUND

[(b)(5)]

01200000000029

[(b)(5)]

ISSUE AND DISCUSSION

[(b)(5)]

[(b)(5)]

CONCLUSION

[(b)(5)]

[(b)(5)]

Campaign Gifts, Lobbying Built Enron's Power In Washington

By Dan Morgan and Juliet Eilperin
Washington Post Staff Writers
Tuesday, December 25, 2001; Page A01

During the administration of the first President George Bush, a new party fundraiser named Kenneth L. Lay was invited to spend the night at the White House. The sleepover was an early coup for the chairman of Enron Corp. and a harbinger of things to come.

Over the following decade, Lay and Enron poured millions of dollars into U.S. politics, cultivating unequalled access and using the entree to lobby Congress, the White House and regulatory agencies for action that was critical to the energy company's spectacular growth. Now, with Enron's sudden bankruptcy, public attention has turned not only to the financial practices that brought the company down, but to what its far-flung political operations say about the country's campaign finance system.

Some Democrats in Congress are spoiling for an opportunity to use Lay and Enron to embarrass the Republican Party, which received most of the company's largess over the years. They want to look into such things as Enron's relationship with Phil Gramm (R-Tex.), ranking minority member on the Senate Banking Committee and chairman of the committee at a time when his wife, Wendy L. Gramm, was serving on Enron's board. Last year, Gramm's committee approved legislation that included a key provision exempting parts of Enron's massive energy trading operation from federal oversight.

"I think the Enron story is going to turn out to be an enormous political story," said Rep. Henry A. Waxman (D-Calif.), ranking minority member on the House Energy and Commerce Committee.

The ties of Lay to the White House and GOP leaders, he added, were so multilayered that Republicans are likely to be reluctant to pursue them. But he made clear that he intends to do so and expects the Democratic-controlled Senate to follow suit.

Enron also cultivated relationships with Democrats, however. Lay played golf in Vail, Colo., with President Bill Clinton, and Enron gave hundreds of thousands of dollars to Democratic campaign committees and Democrats in the House and Senate, including Sen. Charles E. Schumer (N.Y.) and Rep. Martin Frost (Tex.), the ranking minority member on the House Rules Committee.

A Routine Cost for Some

Advocates of campaign finance reform say the Enron case vividly illustrates the ties between politics and big money, though it's unclear that the company's political operations were radically different from others for whom political contributions have become a routine cost of doing business.

"There are aspects of [the Enron case] that remind us of the savings and loan scandal, in the sense that a powerful institution used big money to buy influence and protect itself while ordinary citizens ended up losing their life savings," said Fred Wertheimer, president of Democracy 21, a Washington interest group, referring to a banking controversy in the 1980s. Enron's ties to Republicans and the present Bush administration were especially close. Lay raised large sums for George W. Bush's campaign.

Enron, Lay and its employees have contributed \$572,350 to him over his career, far more than any other company, according to the Center for Public Integrity in Washington.

Several top administration officials have been Enron advisers or stockholders. Enron, Lay and other senior executives contributed \$1.7 million in soft-money donations to politicians in the 2000 election cycle, two-thirds of it to Republicans, according to the Center for Responsive Politics.

Republicans clearly are sensitive to the potential political dangers. The National Republican Senatorial Committee recently returned a \$100,000 check collected from Enron in November, after deciding that "it was appropriate to give it back," spokesman Dan Allen said. The Republican Governors Association last week returned an Enron donation of \$60,000.

What was unique about Enron, competitors and allies agree, was a brash and sometimes counterproductive political style.

Stories of Enron's hardball style are legion. In October 1999, for example, Jeffrey K. Skilling, then Enron's president, expressed his displeasure at Rep. Joe Barton's position on a deregulation bill pending in the energy subcommittee Barton chairs.

The meeting grew "heated and awful," said one person who was present, until Barton (R-Tex.), a usually mild-mannered man who keeps a Bible on his desk, exploded. "Jeffrey Skilling, I may not have your millions of dollars, but I am not an idiot," one witness recalled Barton saying. The meeting ended without Enron getting the changes it wanted. "Skilling did not get Washington," the source added.

"In their lobbying, they acted like the 800-pound gorilla they were," said Christopher Horner, a Washington lawyer who briefly directed Enron's government relations in 1997. Lay and Skilling declined interview requests, but Enron officials say they have no regrets about their use of money. "It got us name recognition," company spokesman Mark Palmer said. "Given the aggregation of our foes, we had to make sure that people knew what our argument was."

Jump-Starting Deregulation

Almost from its start in 1985 as a gas pipeline company, Enron needed help in Washington, and it got it in a series of actions by Congress and the Federal Energy Regulatory Commission (FERC) that undermined the traditional monopoly of utility companies over power plants and transmission lines.

Enron lobbied for several of the initial actions that set the stage for the era of a deregulated wholesale electricity market.

It supported the 1992 Energy Policy Act, which opened the utility companies' wires to electricity merchants such as Enron. It also worked with the Commodity Futures Trading Commission -- then chaired by Wendy Gramm -- for a regulatory exemption for futures trading in energy derivatives, which later became Enron's most lucrative business. Soon after Gramm stepped down in 1993, she was appointed to Enron's board.

Independent sources knowledgeable about these dealings, however, said Enron was not the main interested party. They said the lead was taken by several major oil companies, including British Petroleum Co. and Phillips Petroleum Co., which were concerned about the effect of CFTC regulation on their offshore trading in crude oil contracts. Wendy Gramm, an apostle of free markets, needed little convincing, the sources said.

That same year, Lay served as chairman of the committee organizing the Republican National Convention in Houston. Hedging its bets, Enron made a major contribution to a "street fair" in honor of Sen. John Breaux (D-La.), a key energy policymaker, at the Democratic convention. Key orders by FERC in 1996 also supported Enron's transformation into a freewheeling trader of gas, electricity and more exotic products, such as telecommunications services and sulfur-dioxide emissions credits.

The new rules ensured that Enron and other merchant companies could buy electricity from independent power plants and sell it to distant customers, using transmission lines borrowed from utility companies.

Even Enron's harshest critics credit Lay with putting new issues -- such as electricity deregulation -- on the Washington agenda. Lay, a former Interior Department official with a PhD in economics, became "the ambassador" for deregulation, one former employee said.

Throughout the 1990s, Enron's agenda was opposed by coal-burning utilities, especially ones in the Southeast, which viewed the emerging wholesale electricity market as a threat to their turf. Many of these, such as Atlanta-based Southern Co., had impressive political funding and connections of their own.

But with the explosive growth of Enron and the GOP takeover of Congress in 1995, the company's soft-money donations -- unregulated and unlimited gifts to political parties and organizations -- jumped sharply. They went from about \$136,000 in the 1993-94 election cycle, to \$687,000 in 1996 and \$1.7 million in 2000, according to the Center for Responsive Politics.

Frustrated by Washington

For all its connections, sources say, Enron often found Washington frustratingly slow and unreliable.

The company placed a substantial bet on federal support for limits on the greenhouse gases causing global warming. Enron officials hoped to exploit a new market in industry for carbon-emissions credits, similar to the one that developed for sulphur credits after clean-air legislation was enacted in 1990.

Lay joined the Union of Concerned Scientists and environmental groups in calling for curbs on carbon in the atmosphere. The Clinton administration was supportive, but this year the Bush administration reneged on a campaign pledge to impose limits on greenhouse gas emissions from coal-burning power plants.

A multimillion-dollar lobbying campaign in Congress to secure legislation requiring states to institute retail electricity deregulation fared even worse.

Enron hired former New York representative Bill Paxon, a leading conservative, to run Americans for Affordable Electricity, which commissioned studies and recruited business support for deregulation. But the legislation never made it out of a congressional subcommittee. At the same time, Enron was growing restive over the slow pace of deregulation in the wholesale electricity market, the core of its business. Large parts of the country, especially the Southeast, were still monopolized by regulated utilities that limited the opportunity for trading gas, electricity and energy derivatives.

Political Pragmatism

Enron's political pragmatism was demonstrated in the 1998 New York Senate election, when it dropped its support of the Republican incumbent, Alfonse M. D'Amato, after Democrat Schumer endorsed Enron's goal of wholesale deregulation, sources said. Lay reciprocated by hosting several fundraisers for Schumer, and Enron's political action committee contributed \$7,500 to the Schumer campaign.

The company's lobbying team expanded along with its political spending. It outgrew the two-person operation that existed in 1989 and began to reflect Enron's interest in everything from pipeline safety and derivatives trading to Overseas Private Investment Corp. loan guarantees. By last year, its lobbying expenses exceeded \$2 million a year and covered a raft of big-name consultants, such as former Montana governor Marc F. Racicot, the new Republican National Committee chairman, and former top aides to House Majority Leader Richard K. Arney (R-Tex.) and House Majority Whip Tom DeLay (R-Tex.)

The hazards of Enron's efforts to connect with both parties were evident last year, when shortly before the November election, the company picked a Clinton administration Treasury official, Linda Robertson, to run its Washington office.

A perturbed DeLay, whose campaign and related funds had received more than \$100,000 from Enron and Lay, briefly "excommunicated" Enron, a House source said. Robertson was not invited to a series of meetings of electricity lobbyists held in DeLay's office last July, though an Enron official did finally attend the sessions.

Enron had more success when Congress overwhelmingly approved legislation last year containing a provision precluding the Commodity Futures Trading Commission (CFTC) from regulating Enron's trading in energy derivatives. These instruments are traded largely between electricity dealers and big wholesale consumers, which use them to hedge against price swings that could adversely affect their businesses.

The exemption, tucked into broader legislation that established the legality of unregulated derivatives trading by banks, was not supported by a Clinton administration working group, largely because of opposition from the CFTC. Since the departure of Wendy Gramm, some in the agency had lobbied for tighter control over the exploding energy derivatives market. The legislation passed through the Senate Banking Committee, then chaired by Phil Gramm, who has received \$97,350 from Enron employees and its political action committee since 1989. A Gramm spokesman said the senator does not recall talking to his wife, an Enron director, about the energy provision and played "no role" in negotiating it. Wendy Gramm did not return phone calls seeking comment.

Enron was a primary player, with Koch Industries Inc., a large, privately held oil and gas company based in Wichita, in pushing for the exemption, a source said. But the company's main effort was focused on the House Agriculture Committee, where the legislation originated. Its chairman and ranking Democrat, Texas Reps. Larry Combest (R) and Charles W. Stenholm (D), respectively, were among the top recipients of Enron campaign donations in the House since 1989.

The CFTC objected strenuously to the initial draft marked up by the committee, but the Texas congressmen helped work out a compromise between Enron and the agency. The compromise was then offered by Rep. Jerry Moran (R-Kan.), the home-state congressman of Koch Industries and a recipient of campaign donations from Enron and Koch in the last election cycle. Moran did not return a phone call seeking a comment.

Early this year, Lay seemed to be at the height of his political power, getting a private meeting with Vice President Cheney to discuss the administration's energy policy proposals and weighing in on key nominations to FERC.

Curtis Hebert Jr., FERC's chairman at the time, has reported that Lay called him and implied that Enron would urge the newly installed Bush administration to keep him in the job -- if he changed his views to support Enron's position for faster electricity deregulation. Lay contended that Hebert called him to ask for support.

Hebert was not reappointed. He was replaced by Texas lawyer Pat Wood III, a strong advocate of deregulation who had the backing of Lay and Enron.

Ironically, since Enron's fall, both FERC and Congress seem to be moving in the direction of the deregulated markets Lay and Enron lobbyists had pushed for.

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CORRECTION

Wednesday, December 26, 2001; Page A02

A Dec. 25 article incorrectly reported the action taken by the Senate Banking Committee, chaired by Phil Gramm (R-Tex.), on a bill that exempted much of Enron Corp.'s trading activities from federal regulation. The legislation was approved by the Senate Agriculture Committee.

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Enron Executives Face Subpoenas

Senate Panel Also Orders Testimony of Directors

By Peter Behr and Dan Morgan

Washington Post Staff Writers

Thursday, January 3, 2002; Page E01

A Senate committee announced yesterday that it is subpoenaing top executives and directors of the bankrupt Enron Corp. to determine their roles in the Houston company's epic collapse.

Three other congressional committees already are digging into the Enron failure, but the subpoenas announced yesterday are believed to be the first of the congressional probes. Among the likely recipients is Wendy Gramm, an Enron director who is the wife of Sen. Phil Gramm (R-Tex.).

Sen. Carl M. Levin (D-Mich.), chairman of the Governmental Affairs Committee's permanent subcommittee on investigations, said the panel also will subpoena financial and trading records from Enron and audit documents from its accountant, Arthur Andersen LLP.

Enron's attorney, Robert Bennett, called the subpoenas "totally unnecessary" and said "we are fully cooperating with Congress."

Although Enron Chairman Kenneth L. Lay did not show up for two earlier congressional hearings on Enron's bankruptcy, he has agreed to testify next month before the Senate Commerce Committee, Bennett said.

Enron has turned over nearly three dozen boxes of documents to the House Energy and Commerce Committee, Bennett said. "I don't question the legitimacy of an inquiry [into Enron's failure], but it's not a measured approach to have a half-dozen different committees doing this at the same time," he said. "It can lead to a circus atmosphere and a lot of wasted time and effort." The full Governmental Affairs Committee has scheduled a hearing for Jan. 24 on Enron's use of a large number of partnerships that kept billions of dollars of corporate debt off the company's books. The hearing will also examine whether federal regulators missed warning signs of the company's trouble.

Accounting errors involving the private partnerships caused Enron to overstate its earnings by half a billion dollars over the past four years. Enron's disclosure of the overstatement, in November, triggered a final plunge in the company's stock price and the company's bankruptcy filing Dec. 2.

Sen. Joseph I. Lieberman (D-Conn.), chairman of the full committee, said, "The focus is, how did this corporation collapse, and what can we do to make sure that something like this never happens again?"

Lieberman's committee joins an already crowded field of Enron inquiries. The House Energy and Commerce Committee has sent investigators to interview Enron officials in Houston.

Subcommittees of the House Financial Services Committee and the Senate Commerce Committee have already held hearings.

But Lieberman's panel is the top investigative committee of the Senate. Under Republican leadership during the Clinton administration, then-chairman Fred D. Thompson (R-Tenn.) headed an investigation of Bill Clinton's 1996 presidential campaign fundraising.

Levin and Lieberman said they intend to look into the close ties between Lay and President Bush, a connection that some Democratic Party officials say they hope to take advantage of in this year's congressional election campaigns.

Levin said he wants to know what advice Lay, who was a large contributor to the Bush campaign, gave to officials of the new administration as it formulated energy policy a year ago. Enron "also had close relationships with some Democrats, it's fair to say," Lieberman acknowledged. He said he expected the inquiry to be bipartisan and to have Thompson's support. "We are going to work together," Lieberman said.

Lieberman said the committee also wants to learn whether federal regulators have the authority to adequately oversee the complex commodity trading and financial transactions that were the foundation of Enron's rapid growth over the past three years.

Lieberman noted that much of Enron's trading in energy derivatives was exempt from regulation by the Commodity Futures Trading Commission, and he said a focus of the inquiry would be whether this allowed the company to hide some transactions.

Enron was an active player in lobbying for the exemption beginning in the early 1990s, according to sources. The exclusion was initially approved by the CFTC in 1992, and in 2000 Congress endorsed it as part of the Commodity Futures Modernization Act, despite concerns of some senior regulators.

At a joint hearing on the legislation by the Senate Banking and Agriculture committees in June 2000, then-CFTC chairman William J. Rainer spelled out his "reservations" about the exclusion and said that "the case for it has not been made" with regard to energy derivatives.

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December 18, 2001

Senator Eyes End To Enron-Type Special-Purpose Entities

Dow Jones Newswires

WASHINGTON -- U.S. Senate Commerce Committee Chairman Fritz Hollings, D-S.C., pledged Tuesday to introduce legislation to eliminate the sorts of financial accounting that led to the financial collapse of Enron Corp. (ENE).

At a committee hearing on the Enron debacle, Hollings called for legislation to eliminate the use of special-purpose entities, which are partnerships or trusts through which companies keep their debt off the books and, in Enron's case, overstate earnings.

Hollings said such off-the-balance-sheet transactions should end in order to protect investors. Hollings also was highly critical of the amount of insider stock selling by top Enron officials. He noted that Enron Chairman Kenneth Lay and former Chief Executive Jeffrey Skilling each sold shares in recent months for more than \$60 million, while members of Enron's board sold shares worth more than \$160 million.

"The selling of Enron was prolific," Hollings said, calling the insider selling "a screaming red flag."

If Enron officials felt the stock was undervalued, as they publicly attested, "why were they cashing in?" Hollings said.

Hollings also said there was plenty of blame for the "shenanigans" associated with Enron's collapse, which he likened to a "cancer." He cited Enron's role in persuading the Commodity Futures Trading Commission against the Clinton administration's call for regulation of energy derivatives, and subsequent congressional action to exempt from regulation the highly complex energy derivatives Enron's special-purpose entities engaged in.

"We are all guilty for letting it happen," Hollings said of Enron's collapse.

Sen. Byron Dorgan, D-N.D., chairman of the committee's consumer affairs panel, described Tuesday's hearings as the first of several that will delve into the roles in Enron's financial collapse played by: Enron officials; Arthur Andersen, Enron's outside auditor; Wall Street analysts, and regulators.

"This is about an energy company that morphed into a trading company involved in hedge funds and derivatives. It took on substantial risks, created secret off-the-books partnerships and, in effect, cooked the books under the nose of their accountants and investors," Dorgan said.

Dorgan noted that Lay, Enron's chairman and chief executive, has agreed to testify at a future hearing. Dorgan also said the committee will invite Skilling, Enron's former chief executive, and Andrew Fastow, Enron's former chief financial officer, to testify at the same hearing.

"Was this just bad luck, incompetence and greed, or were there some criminal or illegal actions, as has been suggested by the accounting firm that reviewed Enron's books?" Dorgan said.

Wiedman, Mark

From: Lori.Santamorena@bpd.treas.gov
Sent: Thursday, January 03, 2002 1:49 PM
To: Mark.Wiedman@do.treas.gov
Subject: NYT: Collapse of Enron May Reshape the Battlefield of Deregulation

Mark- luckily, still had this article on Enron...as we talked about at lunch

Lori

----- Forwarded by Lori Santamorena/BPD on 12/04/01 01:50 PM -----

Norman.Carleton@do.treas.gov To: Sheila.Bair@do.treas.gov, Steve.Berardi@do.treas.gov, Timothy.Hitsberger@do.treas.gov, Jill.Cetina@do.treas.gov, Matthew.Kichner@do.treas.gov, Jose.Gabilondo@do.treas.gov, Jared.Gross@do.treas.gov, Viva.Hammer@do.treas.gov, lsantamorena@bpd.treas.gov, Peter.Nickoloff@do.treas.gov, Michael.Novey@do.treas.gov, Fred.Pietrangeli@do.treas.gov, Brian.Roseboro@do.treas.gov, HeidiLynne.Schultheiss@do.treas.gov, James.Sharer@do.treas.gov, Jean.Whaley@do.treas.gov, Mark.Wiedman@do.treas.gov
12/04/01 12:57 PM
CC:
Subject: NYT: Collapse of Enron May Reshape the Battlefield of Deregulation

December 4, 2001

BUSINESS

Collapse of Enron May Reshape the Battlefield of Deregulation

By JOSEPH KAHN and JEFF GERTH

WASHINGTON, Dec. 3 - The bankruptcy of Enron (news/quote) has Washington debating the way it oversees the \$200 billion power industry. But there is no consensus on erasing the legacy of deregulation that the company's political largesse helped forge.

Congressional leaders and top regulators are moving forward on what had been Enron's No. 1 objective: a push to reduce local control of electricity transmission lines so that energy merchants like the Enron Corporation can use them to transport and sell power.

But the politics of power are shifting, and some of Enron's longstanding opponents - chief among them the Southern Company of Atlanta, which owns many local power monopolies - see a fresh chance to slow deregulation, or even roll it back.

Among those who have called for inquiries into Enron's collapse are Representative Billy Tauzin, a prominent Republican from Louisiana who is chairman of the House Energy and Commerce Committee; the Senate majority leader, Tom Daschle, and Senator Jeff Bingaman, a Democrat of New Mexico who is chairman of the Senate Energy and Natural Resources Committee.

All are vowing to get to the bottom of one of the most precipitous business reversals in history. And some members of Congress say Enron's downfall, on the heels of California's energy meltdown early this year, proves that

01/16/2002

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Washington must demand more disclosure from energy traders, holding them at least to the standards of Wall Street firms.

"Enron is the sequela to California, it's all part of the one-year story line," said Representative Edward J. Markey, Democrat of Massachusetts, who focuses on energy regulatory issues in the House. "We can't leave energy products in the regulatory shadows. It hurts both investors and consumers."

Other influential officials are in no rush to turn back the clock on deregulation.

"We have had a number of false starts, and it would be crazy not to take a look at the lessons we can learn," said Nora Brownell, one of President Bush's appointees this year to the Federal Energy Regulatory Commission. "But we should not leap to the conclusion that competitive markets do not work."

The Bush administration, along with some Democrats - including Mr. Bingham and William Massey, a Democrat on the energy commission - continue to favor plans advanced by Enron that would pry open regional electricity markets.

"We have to look carefully at the causes of consequences of Enron's collapse," Mr. Bingham said. "But I don't see anything in this that would keep us from moving ahead with open transmission access and these types of things."

The durability of such views is a sign of how effective Enron was during the last decade in keeping Washington at bay as the company pushed to restructure the electricity industry and limit government oversight of new energy markets.

Enron and its employees were the largest contributors to President Bush's campaigns over the years, and Enron gave more money to politicians in the last election cycle than did any other energy company. Since 1993, its employees and its chairman, Kenneth L. Lay, have donated nearly \$2 million to Mr. Bush. In the 2000 election cycle, more than \$1 million was donated to federal political campaigns, most of it to Republicans.

Mr. Lay also had powerful friends. He recruited Wendy L. Gramm, the top commodities regulator in the administration of President Bush's father and the wife of Senator Phil Gramm, Republican of Texas, to serve on Enron's board in 1993. The appointment came just five weeks after Ms. Gramm helped push through a ruling at the Commodity Futures Trading Commission that exempted many energy contracts from regulation.

Last year, as Congress and the Clinton administration debated whether to exercise more oversight of the financial instruments used by Enron and other companies to trade energy contracts, Mr. Lay courted Linda Robertson, a senior Treasury official who was the department's liaison with Congress.

Ms. Robertson twice accepted paid trips to talk with company executives while she was still employed at the Treasury, her financial disclosure shows. The measure that became law, the Commodity Futures Modernization Act of 2000, specifically exempted energy trading from the regulatory scrutiny applied to brokers of money, securities and commodities.

Ms. Robertson, who became the head of Enron's Washington office, did not return a phone call seeking comment.

Last spring, when the Bush administration drafted a new national energy policy, Mr. Lay had a 30-minute meeting with Vice President Dick Cheney to discuss the report. The policy blueprint endorsed breaking up monopoly control of electricity transmission networks, an Enron goal that was spelled out in a memorandum Mr. Lay discussed during his meeting with Mr. Cheney.

Enron also had an unusual opportunity to influence Mr. Bush's choices for the Federal Energy Regulatory Commission, which oversees the markets in which Enron operates. Mr. Lay met Mr. Bush's personnel adviser, Clay Johnson, to discuss nominees. When Mr. Bush picked people to fill two vacant Republican slots on the five-member commission, both had the backing of Enron as well as other companies.

Enron did not always get its way in Washington. It failed to win regulatory exemptions for some futures products it wanted to trade, for example. And with Enron now discredited, its longtime nemesis like the Southern Company hope to turn the regulatory agenda in a direction that favors their interests.

The Southern Company has long been Enron's main challenger for influence in Washington. The company has nurtured a loose coalition of Southeast lawmakers - the Senate minority leader, Trent Lott of Mississippi, most

prominent among them - in support of its view that the states should retain leeway in deciding the pace and scope of energy deregulation.

So far this year, its political action committees have outspent all other energy companies, including Enron and big oil companies like Exxon Mobil (news/quote), in supporting members of Congress, according to the U.S. Public Interest Research Group. Southern strongly opposes efforts to diminish the power of local regulators to supervise electricity pricing, production and transmission.

"We have long felt that Enron's vision of open markets does not work with electricity," said Dwight Evans, executive vice president of the Southern Company. "I think our credibility has been enhanced by recent events."

Mr. Evans said that the Federal Energy Regulatory Commission under Mr. Bush had tried to "design systems that meet what Enron needs." Congress should slow the commission, Mr. Evans argued, or risk a fresh bout of instability and volatile prices.

Some states have halted the introduction of open markets for electricity. Nevada, Oklahoma and New Mexico are among those that have put off deregulation, while California and a few other states that once promoted unfettered competition are debating ways to reimpose regulatory control.

Enron's assiduous efforts to keep its energy trading free of government interference could be another casualty of its collapse.

As the value of energy contracts soared into the hundreds of billions of dollars - at one point up to half all electricity and natural gas transactions passed through Enron's trading operation, by some estimates - Enron scrambled to hold off Congress and regulators.

But some regulatory experts now say that Enron's collapse is reminiscent of the failure of Long-Term Capital Management. Long-Term Capital was the hedge fund based in Greenwich, Conn., that operated without direct federal oversight and, by some accounts, threatened world markets when its elaborate portfolio of derivatives crumbled in late 1998.

With its exemption from scrutiny in hand, Enron revealed relatively little about its trading portfolio, leaving analysts guessing how it had made its profits. Enron's secrecy was one factor that caused investor confidence to plummet in recent weeks, after the company revealed some unorthodox financial arrangements that benefited top executives.

"Enron was getting very heavily into derivatives, and along with Wall Street banks, they went to bat to keep us away," said Michael Greenberger, who was director of trading and markets at the Commodities Futures Trading Commission until September 1999. "This should be as scary for regulators and Congress as Long-Term Capital was."

Representative Markey agreed that Congress should demand more oversight of energy trading. He said regulators should begin requiring transparency from companies like Enron, while examining the adequacy of their capital and the stability of their trading portfolio, much as banking and securities regulators do for companies in their domain.

"We'll do it now," he said, "or we'll do it when we get the next shock."

Wiedman, Mark

From: Wiedman, Mark
Sent: Friday, January 11, 2002 6:10 PM
To: Carleton, Norman
Subject: RE: 1BN) Treasury's O'Neill Comments on Enron Calls, Disclosur

I haven't heard from Sheila on the e-mails, though I've checked. [(b)(5)]
 Thanks.

-----Original Message-----

From: Carleton, Norman
Sent: Friday, January 11, 2002 9:47 AM
To: Cetina, Jill; Bair, Sheila; Berardi, Steve; Bitsberger, Timothy; Eichner, Matthew; Gabilondo, Jose; Gross, Jared; Hammer, Viva; Lori Santamorena (E-mail); Nickoloff, Peter; Novey, Michael; Pietrangeli, Fred; Roseboro, Brian; Schultheiss, Heldilynne; Whaley, Jean; Wiedman, Mark
Subject: FW: 1BN) Treasury's O'Neill Comments on Enron Calls, Disclosur

-----Original Message-----

From: Lori.Santamorena@bpd.treas.gov [mailto:Lori.Santamorena@bpd.treas.gov]
Sent: Friday, January 11, 2002 8:40 AM
To: norman.carleton@do.treas.gov
Subject: 1BN) Treasury's O'Neill Comments on Enron Calls, Disclosur

----- Forwarded by Lori Santamorena/BPD on 01/11/02 08:39 AM -----

PUBLIC DEBT, US DEPT OF TREASURY

<GSR@bloomberg.net>

To: lsantamorena@bpd.treas.gov

cc:

Subject: 1BN) Treasury's O'Neill Comments o
 Enron Calls, Disclosur

01/11/02 08:17 AM

Treasury's O'Neill Comments on Enron Calls, Disclosure Rules
 2002-01-10 19:35 (New York)

Washington, Jan. 10 (Bloomberg) -- The following are comments from U.S. Treasury Secretary Paul O'Neill on his conversations with Enron Corp.'s chairman Ken Lay prior to Enron's bankruptcy and a review by government regulators of the adequacy of corporate disclosure rules. O'Neill spoke during interviews on Cable News Network and CNBC.

"My first call from Ken Lay was for him to give me a heads-up that they were struggling and to offer the president of his company to speak with the Undersecretary of Domestic Finance (Peter Fisher) to understand the positions they had so we could make sure that we were taking care of our responsibility, which is to make sure that the U.S. capital markets work," O'Neill told CNN.

"That was the purpose of Ken's call to me, to let me know we were welcome to have access to information so we could understand what they were doing and the possible exposure to the world's capital markets.

"The second call, Ken called me to tell me they were in

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discussions with Dynergy and it was an information-only call. Subsequently, (Commerce Secretary) Don Evans called me to say he'd had a call and that Ken had told him that rating agencies were looking at them and there was real concern if the rating agencies downgraded then that that could effectively scupper the deal with Dynergy," he said.

On what he did following the call:

"I subsequently asked (Fisher) to speak with the Enron people, which he did, so that we could satisfy ourselves that the Enron affairs were not going to have a negative impact on U.S. capital markets," O'Neill told CNBC.

On whether he thinks ethics rules were broken:

"I thought it was business as usual," he told CNBC. "I get calls every day from the big players in the world. Enron was the biggest trader of energy in the world. So I was not surprised at all that I would get a call saying we've got a problem over here and you should know about it."

On whether he was he asked by Ken Lay for a government bailout:

"Absolutely not," he told CNBC. "One of things I enjoy about Treasury is I don't have a lot of giveaway programs so if he wanted a giveaway from the government he sure wouldn't have called me. I don't know if one were inclined to make bailouts why there would be a bailout for a company that's gotten itself into trouble. If you want to look at recent Chapter 11 filings or Chapter seven filings you can look at Bethlehem Steel and Sunbeam and they don't call the government for a bailout. I ran a Fortune 50 company, it never would have occurred to me to call the government for a bailout if I got my company in trouble."

On what President George W. Bush has asked him to do today:

"The president tasked me to one, head a committee that includes Don Evans and (Labor Secretary) Elaine Chao to look at the Enron case and other bankruptcy cases to pay special attention to the question of whether we need to amend the rules that govern pension plans and 401k plans to provide a greater deal of assurance to individuals who have a stake in pension plans and 401k plans," he told CNN. "That is driven by the president's concern about the individual employees. The president said to me we need to see if there is something we need to do so that we learn from this. If there is a weakness in our rules let's fix the rules."

"And the second committee the president asked me to convene is one that's a standing committee, the president's economic committee. That includes myself and Alan Greenspan, the head of (the Commodities Futures Trading Commission) and Harvey Pitt of the SEC. The charge the president's given us is to look at the Enron case and other cases and see if we need to adjust the disclosure rules so that shareholders and employees have all the information they need to make intelligent decisions. This is not about Enron, this is about making sure the rules that govern the way our economic system works are worthy of the conditions that we're dealing with these days to assure that individuals are not hurt because of a weakness in our rules."

--Simon Kennedy in the Washington newsroom (202) 624-1834, or at skennedy@bloomberg.net /jo

Story illustration: For graph of Enron's stock price, type:
{ENE US <Equity> GPO D <GO>}

ENE US <Equity> CN

NI TRF
NI SEC
NI SCR
NI LAW
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Wiedman, Mark

From: Wiedman, Mark
Sent: Friday, January 11, 2002 6:06 PM
To: 'Mike Allen'
Subject: RE: If you..

[OUTSIDE SCOPE; (b)(6)]

January 11, 2002

PRESS GAGGLE
BY
ARI FLEISCHER

Aboard Air Force One
En route Conshohocken, Pennsylvania

Q Ari, is there any one point person who is going to serve as a clearing house for the administration on the congressional Enron investigations?

MR. FLEISCHER: I'm not sure what you mean by that. You know, the White House always operates pretty collegially and whoever --

Q I mean, is somebody coordinating the response -- you're going to be getting a lot of questions from a lot of different committees and --

MR. FLEISCHER: Whoever would be most relevant. Some of it will be Office of Legislative Affairs, some of it will be the Counsel's Office, whatever is most relevant and direct to the questions.

Q Office of Legislative Affairs or the Counsel's Office?

MR. FLEISCHER: Whoever is most relevant to any of the questions.

Q That's interesting. I mean --

MR. FLEISCHER: The usual people. For example --

Q The indication we got yesterday was that it would not be -- it would not go far enough for Mr. Gonzales to get involved.

MR. FLEISCHER: I'm stating the obvious. You've seen Counsel Addington's response to letters that were received from Mr. Waxman. So, again, that's the Counsel's Office. That's the Vice President Counsel Office, in that case, because it was relevant to that inquiry. So whoever is most relevant to

the inquiry, and that can be any number of people. That's why I say that, Wendell.

Q On the Enron, is there concern that the White House and the administration is in kind of a no-win situation -- one, if you all, and Cabinet officers, if they had taken action, that could be interpreted as helping a corporate -- back a political sponsor; or, on the other hand, not doing enough at a time when people's savings are going down the drain?

MR. FLEISCHER: The President's approach is that people need to be helped. And this needs to be fully investigated to determine if there was any criminal wrongdoing by Enron. And the administration has launched a criminal investigation at the Department of Justice. The Department of Labor has been looking into this since early December, in terms of wrongdoing by Enron, in an effort to protect people's pensions.

And the President is focused not only on a criminal probe, through his administration, but on policy changes, because there are lessons to be learned to protect pensioners and investors and employees in other companies who are going to retire. That's the President's focus. And if anybody else wants to focus on politics, that's their prerogative; but the President's focus is on getting to the bottom of this fully, thoroughly criminal investigation and a thorough policy review.

Q Aside from the policy changes and the lessons in that, would he consider some kind of help for the Enron employees who were basically stuck, unable to sell their stock as their pensions dwindled?

MR. FLEISCHER: You should take a look at a release put out by the Department of Labor in the first week of December, where they announced the investigation of Enron and the pensioners. The Department of Labor has a pension and welfare division that is responsible for that. This is the largest bankruptcy in America's history; but, obviously, our vibrant economy has had many bankruptcies -- bankruptcies are not uncommon affairs in a vibrant economy.

And there are other employees who worked at companies where the companies went bankrupt. The Department of Labor has provisions that are designed to protect workers from bankruptcies, dealing with the obligations and the credits of bankrupt organizations. So Department of Labor is on the case, doing its job.

Q As the President's communicator, what do you make of all of the many newspaper headlines today that say this is going to dog him for the rest of the administration?

MR. FLEISCHER: The headlines I saw today, as the front page of the USA Today, one of the widest read papers in America, said "Bush Launches Probe to Protect 401(k)s."

Q Well, there were other headlines that say this is going to dog him for the rest of -- I mean, are you concerned about that?

MR. FLEISCHER: This dog won't hunt. That's a reference to the politics of it.

Q Ari, you may have answered this question already, but did the President ever hold any Enron stock, or is it among his personal stock holdings?

MR. FLEISCHER: It's all publicly disclosed, so take a look. I don't know off the top of my head.

Nickoloff, Peter

From: Carleton, Norman
Sent: Saturday, December 29, 2001 11:27 AM
To: Schultheiss, Heidilynne; Nickoloff, Peter
Subject: FW: DJ: Senator Eyes End To Enron-Type Special-Purpose Entities

-----Original Message-----

From: Bair, Sheila
Sent: Wednesday December 26, 2001 8:23 AM
To: Carleton, Norman
Cc: Roseboro, Brian
Subject: RE: DJ: Senator Eyes End To Enron-Type Special-Purpose Entities

[(b)(5)]

December 18, 2001

Senator Eyes End To Enron-Type Special-Purpose Entities

Dow Jones Newswires

WASHINGTON -- U.S. Senate Commerce Committee Chairman Fritz Hollings, D-S.C., pledged Tuesday to introduce legislation to eliminate the sorts of financial accounting that led to the financial collapse of **Enron Corp.** (ENE).

At a committee hearing on the **Enron** debacle, Hollings called for legislation to eliminate the use of special-purpose entities, which are partnerships or trusts through which companies keep their debt off the books and, in Enron's case, overstate earnings.

Hollings said such off-the-balance-sheet transactions should end in order to protect investors. Hollings also was highly critical of the amount of insider stock selling by top **Enron** officials. He noted that **Enron** Chairman Kenneth Lay and former Chief Executive Jeffrey Skilling each sold shares in recent months for more than \$60 million, while members of Enron's board sold shares worth more than \$160 million.

"The selling of **Enron** was prolific," Hollings said, calling the insider selling "a screaming red flag."

If **Enron** officials felt the stock was undervalued, as they publicly attested, "why were they cashing in?" Hollings said.

Hollings also said there was plenty of blame for the "shenanigans" associated with Enron's collapse, which he likened to a "cancer." He cited Enron's role in persuading the Commodity Futures Trading Commission against the Clinton administration's call for regulation of energy derivatives, and subsequent congressional action to exempt from regulation the highly complex energy derivatives Enron's special-purpose entities engaged in.

"We are all guilty for letting it happen," Hollings said of Enron's collapse.

Sen. Byron Dorgan, D-N.D., chairman of the committee's consumer affairs panel, described Tuesday's hearings as the first of several that will delve into the roles in Enron's financial collapse played by: **Enron** officials; Arthur Andersen, Enron's outside auditor; Wall Street analysts, and regulators.

"This is about an energy company that morphed into a trading company involved in hedge funds and derivatives. It took on substantial risks, created secret off-the-books partnerships and, in effect, cooked the books under the nose of their accountants and investors," Dorgan said.

Dorgan noted that Lay, Enron's chairman and chief executive, has agreed to testify at a future hearing. Dorgan also said the committee will invite Skilling, Enron's former chief executive, and Andrew Fastow, Enron's former chief financial officer, to testify at the same hearing.

"Was this just bad luck, incompetence and greed, or were there some criminal or illegal actions, as has been suggested by the accounting firm that reviewed Enron's books?" Dorgan said.

Nickoloff, Peter

From: Carleton, Norman
Sent: Friday, January 04, 2002 5:30 PM
To: Roseboro, Brian; Bair, Sheila; Gross, Jared; Wiedman, Mark; Bitsberger, Timothy; Smith, Amy
Cc: Schultheiss, Heidilynne; Nickoloff, Peter; Ellett, Martha; Gabilondo, Jose; Sutton, Gary
Subject: FW: Draft Memo on Enron/CFMA Articles

Attached is a memo that details our first attempt to clarify what the press has been saying in regards to Enron and the Commodity Futures Modernization Act.

I talked to the Ken Raisler, a New York lawyer, about this. He told me that Enron did not directly lobby the administration about the CFMA but was part of an energy coalition, which Mr. Raisler represented, that did lobby on this issue. The exempt commodity/electronic trading facility provision in the CFMA did not directly benefit Enron since EnronOnline was not structured as a trading facility as defined in the CFMA. Therefore, the major beneficiaries of these provisions are Enron's competitors, such as the InterContinental Exchange and TradeSpark, which are structured as electronic trading facilities. Enron did get the legal certainty it wanted that the CFTC cannot regulate EnronOnline. [(b)(5)]

Ken also told me that he had talked to then Assistant Secretary Lee Sachs about the exempt commodity issue. According to Ken, Lee told him that the Treasury would not oppose the CFMA because of the exempt commodity issue but encouraged the industry to reach a compromise with the CFTC. In the end, Wall Street firms, energy firms, and the futures industry, as well as the PWG (including the CFTC) all supported passage of the CFMA.

-----Original Message-----

From: Schultheiss, Heidilynne
Sent: Friday, January 04, 2002 5:10 PM
To: Carleton, Norman
Subject: Draft Memo on Enron/CFMA Articles

Attached is the draft memo on the Enron articles that asserted that the CFTC and PWG objected to the energy exclusion provisions of the CFMA. The three news articles are downloaded as the latter pages.



enroncfma.doc

DRAFT
January 4, 2002

TO: Norman Carleton
Director
Office of Federal Finance Policy Analysis

FROM: Heidilynne Schultheiss
Financial Economist
Office of Federal Finance Policy Analysis

SUBJECT: Dow Jones Newswires and Washington Post Articles on Enron and the
Commodity Futures Modernization Act of 2000

BACKGROUND

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ISSUE AND DISCUSSION

[(b)(5)]

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CONCLUSION

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Campaign Gifts, Lobbying Built Enron's Power In Washington

By Dan Morgan and Juliet Eilperin
Washington Post Staff Writers
Tuesday, December 25, 2001; Page A01

During the administration of the first President George Bush, a new party fundraiser named Kenneth L. Lay was invited to spend the night at the White House. The sleepover was an early coup for the chairman of Enron Corp. and a harbinger of things to come.

Over the following decade, Lay and Enron poured millions of dollars into U.S. politics, cultivating unequalled access and using the entree to lobby Congress, the White House and regulatory agencies for action that was critical to the energy company's spectacular growth. Now, with Enron's sudden bankruptcy, public attention has turned not only to the financial practices that brought the company down, but to what its far-flung political operations say about the country's campaign finance system.

Some Democrats in Congress are spoiling for an opportunity to use Lay and Enron to embarrass the Republican Party, which received most of the company's largess over the years. They want to look into such things as Enron's relationship with Phil Gramm (R-Tex.), ranking minority member on the Senate Banking Committee and chairman of the committee at a time when his wife, Wendy L. Gramm, was serving on Enron's board. Last year, Gramm's committee approved legislation that included a key provision exempting parts of Enron's massive energy trading operation from federal oversight.

"I think the Enron story is going to turn out to be an enormous political story," said Rep. Henry A. Waxman (D-Calif.), ranking minority member on the House Energy and Commerce Committee.

The ties of Lay to the White House and GOP leaders, he added, were so multilayered that Republicans are likely to be reluctant to pursue them. But he made clear that he intends to do so and expects the Democratic-controlled Senate to follow suit.

Enron also cultivated relationships with Democrats, however. Lay played golf in Vail, Colo., with President Bill Clinton, and Enron gave hundreds of thousands of dollars to Democratic campaign committees and Democrats in the House and Senate, including Sen. Charles E. Schumer (N.Y.) and Rep. Martin Frost (Tex.), the ranking minority member on the House Rules Committee.

A Routine Cost for Some

Advocates of campaign finance reform say the Enron case vividly illustrates the ties between politics and big money, though it's unclear that the company's political operations were radically different from others for whom political contributions have become a routine cost of doing business.

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"There are aspects of [the Enron case] that remind us of the savings and loan scandal, in the sense that a powerful institution used big money to buy influence and protect itself while ordinary citizens ended up losing their life savings," said Fred Wertheimer, president of Democracy 21, a Washington interest group, referring to a banking controversy in the 1980s. Enron's ties to Republicans and the present Bush administration were especially close. Lay raised large sums for George W. Bush's campaign.

Enron, Lay and its employees have contributed \$572,350 to him over his career, far more than any other company, according to the Center for Public Integrity in Washington.

Several top administration officials have been Enron advisers or stockholders. Enron, Lay and other senior executives contributed \$1.7 million in soft-money donations to politicians in the 2000 election cycle, two-thirds of it to Republicans, according to the Center for Responsive Politics.

Republicans clearly are sensitive to the potential political dangers. The National Republican Senatorial Committee recently returned a \$100,000 check collected from Enron in November, after deciding that "it was appropriate to give it back," spokesman Dan Allen said. The Republican Governors Association last week returned an Enron donation of \$60,000. What was unique about Enron, competitors and allies agree, was a brash and sometimes counterproductive political style.

Stories of Enron's hardball style are legion. In October 1999, for example, Jeffrey K. Skilling, then Enron's president, expressed his displeasure at Rep. Joe Barton's position on a deregulation bill pending in the energy subcommittee Barton chairs.

The meeting grew "heated and awful," said one person who was present, until Barton (R-Tex.), a usually mild-mannered man who keeps a Bible on his desk, exploded. "Jeffrey Skilling, I may not have your millions of dollars, but I am not an idiot," one witness recalled Barton saying. The meeting ended without Enron getting the changes it wanted. "Skilling did not get Washington," the source added.

"In their lobbying, they acted like the 800-pound gorilla they were," said Christopher Horner, a Washington lawyer who briefly directed Enron's government relations in 1997. Lay and Skilling declined interview requests, but Enron officials say they have no regrets about their use of money. "It got us name recognition," company spokesman Mark Palmer said. "Given the aggregation of our foes, we had to make sure that people knew what our argument was."

Jump-Starting Deregulation

Almost from its start in 1985 as a gas pipeline company, Enron needed help in Washington, and it got it in a series of actions by Congress and the Federal Energy Regulatory Commission (FERC) that undermined the traditional monopoly of utility companies over power plants and transmission lines.

Enron lobbied for several of the initial actions that set the stage for the era of a deregulated wholesale electricity market.

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It supported the 1992 Energy Policy Act, which opened the utility companies' wires to electricity merchants such as Enron. It also worked with the Commodity Futures Trading Commission -- then chaired by Wendy Gramm -- for a regulatory exemption for futures trading in energy derivatives, which later became Enron's most lucrative business. Soon after Gramm stepped down in 1993, she was appointed to Enron's board.

Independent sources knowledgeable about these dealings, however, said Enron was not the main interested party. They said the lead was taken by several major oil companies, including British Petroleum Co. and Phillips Petroleum Co., which were concerned about the effect of CFTC regulation on their offshore trading in crude oil contracts. Wendy Gramm, an apostle of free markets, needed little convincing, the sources said.

That same year, Lay served as chairman of the committee organizing the Republican National Convention in Houston. Hedging its bets, Enron made a major contribution to a "street fair" in honor of Sen. John Breaux (D-La.), a key energy policymaker, at the Democratic convention. Key orders by FERC in 1996 also supported Enron's transformation into a freewheeling trader of gas, electricity and more exotic products, such as telecommunications services and sulfur-dioxide emissions credits.

The new rules ensured that Enron and other merchant companies could buy electricity from independent power plants and sell it to distant customers, using transmission lines borrowed from utility companies.

Even Enron's harshest critics credit Lay with putting new issues -- such as electricity deregulation -- on the Washington agenda. Lay, a former Interior Department official with a PhD in economics, became "the ambassador" for deregulation, one former employee said.

Throughout the 1990s, Enron's agenda was opposed by coal-burning utilities, especially ones in the Southeast, which viewed the emerging wholesale electricity market as a threat to their turf. Many of these, such as Atlanta-based Southern Co., had impressive political funding and connections of their own.

But with the explosive growth of Enron and the GOP takeover of Congress in 1995, the company's soft-money donations -- unregulated and unlimited gifts to political parties and organizations -- jumped sharply. They went from about \$136,000 in the 1993-94 election cycle, to \$687,000 in 1996 and \$1.7 million in 2000, according to the Center for Responsive Politics.

Frustrated by Washington

For all its connections, sources say, Enron often found Washington frustratingly slow and unreliable.

The company placed a substantial bet on federal support for limits on the greenhouse gases causing global warming. Enron officials hoped to exploit a new market in industry for carbon-emissions credits, similar to the one that developed for sulphur credits after clean-air legislation was enacted in 1990.

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Lay joined the Union of Concerned Scientists and environmental groups in calling for curbs on carbon in the atmosphere. The Clinton administration was supportive, but this year the Bush administration reneged on a campaign pledge to impose limits on greenhouse gas emissions from coal-burning power plants.

A multimillion-dollar lobbying campaign in Congress to secure legislation requiring states to institute retail electricity deregulation fared even worse.

Enron hired former New York representative Bill Paxon, a leading conservative, to run Americans for Affordable Electricity, which commissioned studies and recruited business support for deregulation. But the legislation never made it out of a congressional subcommittee. At the same time, Enron was growing restive over the slow pace of deregulation in the wholesale electricity market, the core of its business. Large parts of the country, especially the Southeast, were still monopolized by regulated utilities that limited the opportunity for trading gas, electricity and energy derivatives.

Political Pragmatism

Enron's political pragmatism was demonstrated in the 1998 New York Senate election, when it dropped its support of the Republican incumbent, Alfonse M. D'Amato, after Democrat Schumer endorsed Enron's goal of wholesale deregulation, sources said. Lay reciprocated by hosting several fundraisers for Schumer, and Enron's political action committee contributed \$7,500 to the Schumer campaign.

The company's lobbying team expanded along with its political spending. It outgrew the two-person operation that existed in 1989 and began to reflect Enron's interest in everything from pipeline safety and derivatives trading to Overseas Private Investment Corp. loan guarantees. By last year, its lobbying expenses exceeded \$2 million a year and covered a raft of big-name consultants, such as former Montana governor Marc F. Racicot, the new Republican National Committee chairman, and former top aides to House Majority Leader Richard K. Arney (R-Tex.) and House Majority Whip Tom DeLay (R-Tex.)

The hazards of Enron's efforts to connect with both parties were evident last year, when shortly before the November election, the company picked a Clinton administration Treasury official, Linda Robertson, to run its Washington office.

A perturbed DeLay, whose campaign and related funds had received more than \$100,000 from Enron and Lay, briefly "excommunicated" Enron, a House source said. Robertson was not invited to a series of meetings of electricity lobbyists held in DeLay's office last July, though an Enron official did finally attend the sessions.

Enron had more success when Congress overwhelmingly approved legislation last year containing a provision precluding the Commodity Futures Trading Commission (CFTC) from regulating Enron's trading in energy derivatives. These instruments are traded largely between electricity dealers and big wholesale consumers, which use them to hedge against price swings that could adversely affect their businesses.

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The exemption, tucked into broader legislation that established the legality of unregulated derivatives trading by banks, was not supported by a Clinton administration working group, largely because of opposition from the CFTC. Since the departure of Wendy Gramm, some in the agency had lobbied for tighter control over the exploding energy derivatives market. The legislation passed through the Senate Banking Committee, then chaired by Phil Gramm, who has received \$97,350 from Enron employees and its political action committee since 1989. A Gramm spokesman said the senator does not recall talking to his wife, an Enron director, about the energy provision and played "no role" in negotiating it. Wendy Gramm did not return phone calls seeking comment.

Enron was a primary player, with Koch Industries Inc., a large, privately held oil and gas company based in Wichita, in pushing for the exemption, a source said. But the company's main effort was focused on the House Agriculture Committee, where the legislation originated. Its chairman and ranking Democrat, Texas Reps. Larry Combest (R) and Charles W. Stenholm (D), respectively, were among the top recipients of Enron campaign donations in the House since 1989.

The CFTC objected strenuously to the initial draft marked up by the committee, but the Texas congressmen helped work out a compromise between Enron and the agency. The compromise was then offered by Rep. Jerry Moran (R-Kan.), the home-state congressman of Koch Industries and a recipient of campaign donations from Enron and Koch in the last election cycle. Moran did not return a phone call seeking a comment.

Early this year, Lay seemed to be at the height of his political power, getting a private meeting with Vice President Cheney to discuss the administration's energy policy proposals and weighing in on key nominations to FERC.

Curtis Hebert Jr., FERC's chairman at the time, has reported that Lay called him and implied that Enron would urge the newly installed Bush administration to keep him in the job -- if he changed his views to support Enron's position for faster electricity deregulation. Lay contended that Hebert called him to ask for support.

Hebert was not reappointed. He was replaced by Texas lawyer Pat Wood III, a strong advocate of deregulation who had the backing of Lay and Enron.

Ironically, since Enron's fall, both FERC and Congress seem to be moving in the direction of the deregulated markets Lay and Enron lobbyists had pushed for.

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CORRECTION

Wednesday, December 26, 2001; Page A02

A Dec. 25 article incorrectly reported the action taken by the Senate Banking Committee, chaired by Phil Gramm (R-Tex.), on a bill that exempted much of Enron Corp.'s trading activities from federal regulation. The legislation was approved by the Senate Agriculture Committee.

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Enron Executives Face Subpoenas

Senate Panel Also Orders Testimony of Directors

By Peter Behr and Dan Morgan

Washington Post Staff Writers

Thursday, January 3, 2002; Page E01

A Senate committee announced yesterday that it is subpoenaing top executives and directors of the bankrupt Enron Corp. to determine their roles in the Houston company's epic collapse.

Three other congressional committees already are digging into the Enron failure, but the subpoenas announced yesterday are believed to be the first of the congressional probes. Among the likely recipients is Wendy Gramm, an Enron director who is the wife of Sen. Phil Gramm (R-Tex.).

Sen. Carl M. Levin (D-Mich.), chairman of the Governmental Affairs Committee's permanent subcommittee on investigations, said the panel also will subpoena financial and trading records from Enron and audit documents from its accountant, Arthur Andersen LLP.

Enron's attorney, Robert Bennett, called the subpoenas "totally unnecessary" and said "we are fully cooperating with Congress."

Although Enron Chairman Kenneth L. Lay did not show up for two earlier congressional hearings on Enron's bankruptcy, he has agreed to testify next month before the Senate Commerce Committee, Bennett said.

Enron has turned over nearly three dozen boxes of documents to the House Energy and Commerce Committee, Bennett said. "I don't question the legitimacy of an inquiry [into Enron's failure], but it's not a measured approach to have a half-dozen different committees doing this at the same time," he said. "It can lead to a circus atmosphere and a lot of wasted time and effort." The full Governmental Affairs Committee has scheduled a hearing for Jan. 24 on Enron's use of a large number of partnerships that kept billions of dollars of corporate debt off the company's books. The hearing will also examine whether federal regulators missed warning signs of the company's trouble.

Accounting errors involving the private partnerships caused Enron to overstate its earnings by half a billion dollars over the past four years. Enron's disclosure of the overstatement, in November, triggered a final plunge in the company's stock price and the company's bankruptcy filing Dec. 2.

Sen. Joseph I. Lieberman (D-Conn.), chairman of the full committee, said, "The focus is, how did this corporation collapse, and what can we do to make sure that something like this never happens again?"

Lieberman's committee joins an already crowded field of Enron inquiries. The House Energy and Commerce Committee has sent investigators to interview Enron officials in Houston.

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Subcommittees of the House Financial Services Committee and the Senate Commerce Committee have already held hearings.

But Lieberman's panel is the top investigative committee of the Senate. Under Republican leadership during the Clinton administration, then-chairman Fred D. Thompson (R-Tenn.) headed an investigation of Bill Clinton's 1996 presidential campaign fundraising.

Levin and Lieberman said they intend to look into the close ties between Lay and President Bush, a connection that some Democratic Party officials say they hope to take advantage of in this year's congressional election campaigns.

Levin said he wants to know what advice Lay, who was a large contributor to the Bush campaign, gave to officials of the new administration as it formulated energy policy a year ago. Enron "also had close relationships with some Democrats, it's fair to say," Lieberman acknowledged. He said he expected the inquiry to be bipartisan and to have Thompson's support. "We are going to work together," Lieberman said.

Lieberman said the committee also wants to learn whether federal regulators have the authority to adequately oversee the complex commodity trading and financial transactions that were the foundation of Enron's rapid growth over the past three years.

Lieberman noted that much of Enron's trading in energy derivatives was exempt from regulation by the Commodity Futures Trading Commission, and he said a focus of the inquiry would be whether this allowed the company to hide some transactions.

Enron was an active player in lobbying for the exemption beginning in the early 1990s, according to sources. The exclusion was initially approved by the CFTC in 1992, and in 2000 Congress endorsed it as part of the Commodity Futures Modernization Act, despite concerns of some senior regulators.

At a joint hearing on the legislation by the Senate Banking and Agriculture committees in June 2000, then-CFTC chairman William J. Rainer spelled out his "reservations" about the exclusion and said that "the case for it has not been made" with regard to energy derivatives.

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December 18, 2001

Senator Eyes End To Enron-Type Special-Purpose Entities

Dow Jones Newswires

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Dorgan noted that Lay, Enron's chairman and chief executive, has agreed to testify at a future hearing. Dorgan also said the committee will invite Skilling, Enron's former chief executive, and Andrew Fastow, Enron's former chief financial officer, to testify at the same hearing.

"Was this just bad luck, incompetence and greed, or were there some criminal or illegal actions, as has been suggested by the accounting firm that reviewed Enron's books?" Dorgan said.

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Nickoloff, Peter

From: Carleton, Norman
Sent: Thursday, January 10, 2002 1:20 PM
To: Gabilondo, Jose
Cc: Schultheiss, Heidilynne; Nickoloff, Peter
Subject: FW: Enron Chairman Gave Warning to Bush Officials on Company's Collapse.htm



Enron Chairman Gave
Warning to...

[(b)(5)]

relevant.
Norman

The attached article may be

-----Original Message-----

From: Nickoloff, Peter
Sent: Thursday, January 10, 2002 1:16 PM
To: Carleton, Norman; Schultheiss, Heidilynne
Subject: Enron Chairman Gave Warning to Bush Officials on Company's Collapse.htm

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The New York Times
ON THE WEB

January 10, 2002

Enron Chairman Gave Warning to Bush Officials on Company's Collapse

By THE ASSOCIATED PRESS

Filed at 12:57 p.m. ET

WASHINGTON (AP) -- Enron (news/quote) Chairman Kenneth L. Lay reached out to two of President Bush's Cabinet officers when the energy company was collapsing, the White House disclosed Thursday as the Justice Department opened a criminal investigation of Enron's bankruptcy.

Bush, who received significant campaign contributions from Lay and other Enron executives, said he himself has never discussed Enron's financial problems with its embattled corporate chairman. The president said he last saw Lay in Texas at spring fund-raiser for former first lady Barbara Bush's literacy foundation.

Lay also was among a group of some 20 business leaders who came to the White House early in the Bush administration to discuss the state of the economy, Bush said.

Many Enron employees lost their life savings when the company filed for bankruptcy Dec. 2.

"What anybody's going to find out is that this administration will fully investigate issues such as the Enron bankruptcy, to make sure we can learn from the past and make sure workers are protected," Bush said.

But Lay did seek the ear of other top-level administration officials last fall.

According to White House press secretary Ari Fleischer, Lay telephoned Treasury Secretary Paul O'Neill amid Enron's collapse "to advise him about his concern about the obligations of Enron and whether they would be able to meet those obligations."

Lay also told O'Neill that Enron "was heading to bankruptcy," Fleischer said.

O'Neill received calls from Lay on Oct. 28 and Nov. 8, said Treasury spokeswoman Michele Davis. It was on Oct. 16 that Enron made its stunning disclosure of a \$638 million third-quarter loss.

In a separate phone call to Commerce Secretary Don Evans, Lay similarly

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worried that the company might have to default on its obligations. He brought to the secretary's attention "that he was having problems with his bond rating and he was worried about its impact on the energy sector," Fleischer said.

After that conversation, Evans spoke to O'Neill "and they both agreed no action should be taken to intervene with their bond holders," Fleischer said.

The spokesman had said Wednesday he did not know of anyone in the White House who discussed Enron's financial situation.

Fleischer also brushed aside talk of any conflict in the Justice Department investigation and said there was no reason to turn the probe over to a special counsel.

Lay gave \$25,000 to a leadership committee headed by then-senator and now Attorney General John Ashcroft, according to the Center for Public Integrity.

An attorney for Enron welcomed Ashcroft's inquiry, the latest in a series of governmental probes into the company's demise, saying the investigation would "bring light to the facts."

"We want to get to the bottom of this too," said Robert Bennett, a Washington attorney representing the Houston-based company. "A lot of decent and honorable people work at Enron and we should wait until the facts are out."

Bush ordered a separate review Thursday of pension and corporate disclosure rules that could jeopardize workers' savings. "There has been a wave of bankruptcies that have caused many workers to lose their pensions and that is deeply troubling to me," Bush said.

The Justice Department is forming a national task force to look into the company's dealings. The group will be headed by lawyers at the department's criminal division and include prosecutors in Houston, San Francisco, New York and several other cities, said a Justice Department official, speaking on condition of anonymity.

The official declined to say when the investigation began. Enron faces civil investigations by the Labor Department and the Securities and Exchange Commission and subpoenas from congressional committees.

All are looking into the energy trading company's collapse, the largest bankruptcy filing in U.S. history.

The failure hit employees and investors hard. Workers were prohibited from selling company stock from their Enron-heavy 401(k) retirement accounts as the company's stock plummeted. Many lost their life's savings.

Enron executives cashed out more than \$1 billion in stock when it was near its peak.

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Former Enron chief executive Jeffrey Skilling, who left the helm nearly two months before the company's swift descent, welcomes the investigation, said spokeswoman Judy Leon. Skilling has said he had no idea, despite Enron's falling stock values, that the company was on the brink of failure.

Formed in 1985, Enron had 20,000 employees and was once the world's top buyer and seller of natural gas and the largest electricity marketer in the United States. It also marketed coal, pulp, paper, plastics, metals and fiber-optic bandwidth.

One likely focus of the Justice Department investigation is possible fraud based on Enron's heavy reliance on off-balance-sheet partnerships which took on Enron debt. The partnerships masked Enron's financial problems and left its credit ratings healthy so it could obtain the cash and credit crucial to running its trading business.

The Houston-based company went bankrupt after its credit collapsed and its main rival, Dynegy Inc. (news/quote), backed out of an \$8.4 billion buyout plan late last year.

Just a year ago, stock of Enron, the nation's largest buyer and seller of natural gas, traded at \$85 per share. Today it is less than \$1.

Lay has close ties to Bush and his father, the former president. Lay was a top contributor to the younger Bush's 2000 presidential campaign.

The company played a key role earlier this year when a White House task force met with business executives and other interests to fashion a national energy policy. The task force was headed by Vice President Dick Cheney.

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Nickoloff, Peter

From: Roseboro, Brian
Sent: Tuesday, January 15, 2002 7:18 AM
To: Nickoloff, Peter; Kmalimgre (E-mail)
Subject: FW: financial mkts working group

FYI

-----Original Message-----

From: Clarida, Richard
Sent: Monday, January 14, 2002 6:40 PM
To: Clarida, Richard; Warshawsky, Mark; Smetters, Kent; Worth, John; Huffman, Lucy; Wiedman, Mark; Roseboro, Brian; Myers, Julie
Cc: Flanagan, Rosemary; Fisher, Peter
Subject: RE: financial mkts working group group



SEC Speech
Advancing Investors...

[Clarida, Richard] I found this speech by SEC chief accountant very useful

[Home](#) | [Previous Page](#)

U.S. Securities and Exchange Commission

Speech by SEC Staff: Advancing Investors' Interests

Remarks by

Robert K. Herdman

*Chief Accountant
U.S. Securities and Exchange Commission*

**American Institute of Certified Public Accountants'
Twenty-Ninth Annual National Conference on Current SEC Developments
Washington, D.C.**

December 6, 2001

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Introduction

Jim and Amy, thank you for the kind introduction. I am pleased to be back at this podium.

Some of you may be old enough to remember that I spoke at this conference 3 times in the early 1980s. Twice I spoke as a Professional Accounting Fellow in the Chief Accountant's Office and another time as a member of a panel discussing a rule-making proposal I helped draft as a member of the staff. That proposal, which would have required disclosure of interim segment information, was considered "revolutionary" at the time. Ultimately, it crashed and burned, unfortunately, around the time of the conference. Now, of course, similar requirements are embedded in FASB Statement 131, issued in 1997.

I guess you could sum it up this way. Basically, every 20 years, I speak at this conference, and then 15 years later the profession adopts my proposals! I guess the point of my story is, if you're not planning to be practicing accounting in 15 years, this is probably a good time to go return phone calls!

Given my past experience, I never expected to speak at this conference again, let alone as Chief Accountant-and I am sure that none of you expected it either. It is a great honor and privilege and it is an excellent opportunity both to embrace the strength of the SEC as an agency and to

help lead it through a period of innovative change as it strives to advance investors' interests.

Before I move on, let me remind you that the views I express here today are my own, and do not necessarily reflect the views of the Commission, the Commissioners, or other members of the Commission's staff. That disclaimer applies to all members of the staff who are speaking at this conference.

I have now been on the job for a couple of months and that time has provided me the opportunity to check and refine the perceptions and observations I developed during the last 17 years since leaving the SEC. One thing that has remained constant is the opportunity to work closely with incredibly talented people on the staff who are dedicated to protecting investors.

I began my career as a professional accountant 32 years ago this month. And while I spent almost all of that time with one firm, there were two hiatuses that were enormously instructive. In addition to my 2 years as a PAF, I spent two years as a corporate controller of a public company. I have worked with countless professionals — on various "sides of the desk" — and I have deep respect for your efforts to produce credible financial reporting. I know that it is in your interest to do so for a variety of reasons, just as I know that the outcome is in the public's interest.

Mission

Let me start by discussing how I intend to carry out the mission of the Office of the Chief Accountant.

There is no question that the unique power of the SEC enables it to have a profound influence on accounting and financial disclosure. I am firmly convinced that proactive use of that power can lead to great things. However, we must be judicious in its use.

I believe that the Office of the Chief Accountant should work with the leaders of the accounting profession—as they coordinate the profession's activities and give it direction. The SEC has a unique position out on the front line by virtue of its legislative authority, regulatory review and enforcement activities.

And, I believe that the intelligence gained from those activities should be very valuable to domestic and international standard setters, including their implementation groups like the EITF, as they set their agendas.

Through its oversight role, the SEC has the ability to interact with the various standard setters, which may be especially important if they start heading in divergent directions. This coordination is particularly important as we work towards global convergence of accounting standards.

I also recognize that the SEC must be careful how it weighs in, to provide guidance in a respectful manner and to not dictate the way at every turn or the outcome. To do otherwise undermines the significant contributions of all involved. Now that you have a sense of my *modus operandi*, let's talk more

about my plans.

Three-point Plan to Advance the Interests of Investors

I want to discuss with you a three-point plan for the SEC, the corporate community, the accounting profession, and private sector standard-setting bodies to work together to advance, not just protect, the interests of investors.

Why do I make that distinction? As you all know, we at the SEC are sworn to protect investors. And doing so can include a wide variety of actions. I believe that by taking a proactive, inclusive approach we can do better than that — we can actually make investors better off by providing them with higher quality and more timely information. To do that means that we at the SEC adopt Chairman Pitt's philosophy that government is a service industry. It means that you all have roles to play, as well. And, with that said, here are the three points:

- First, working together to get it right the first time. Our capital markets are much more efficient if the financial statements you prepare, or audit, reflect appropriate accounting policies and contain appropriate disclosures. Getting it right after a restatement resulting from a staff review or enforcement action by the Commission will still be possible, but it's far less desirable.
- Second, working together to improve the effectiveness of the standard setting processes. To maximize the effectiveness of standard setting, we must work together to ensure that the appropriate parties are working on the right things and doing so in a timely manner. By working better together, we can make our world class system of standard setting and the application of those standards more responsive to the information needs of investors.
- Third, working together to modernize financial reporting and disclosure. I envision this part of the plan as a series of incredibly fun things we can do together to shape financial reporting and disclosure for the future. This effort will include looking at the types of information disclosed and the nature and timing of how disclosure occurs. This also will include the knotty issue of international accounting. More modern financial reporting should equate to more transparency to investors and more efficient capital markets.

Point 1—Working Together to Get it Right the First Time

Now, to point 1—working together to get it right the first time. Over the years, one of the things that has truly distinguished the SEC as an agency has been the willingness and ability of its staff to provide interpretative guidance. We want to enhance that process!

In the area of accounting, the method of interpretation that first comes to mind is the pre-clearance process. Many of you are aware of and have utilized the pre-clearance process—in which you discuss an anticipated event, a planned transaction or other accounting matter with the staff. You ask us to concur with—and hope that we will respond that we do not object to—your proposed accounting.

Pre-clearing accounting issues is not a new idea. The staff originally asked registrants to pre-clear novel or unusual accounting issues in footnote 4 of SAB 57. Ironically, that footnote appears in a staff accounting bulletin of which I was a principal author. I believed in it then and I continue to believe in it today!

Of course, other vehicles for obtaining guidance are available, such as the EITF, but that takes time since it only meets every other month and registrants and their auditors must deal in "real-time."

Our Part

We understand that registrants have to deal with issues on a real-time basis in order to issue their financial statements on a timely basis and to get deals done. Auditors also must deal with issues on a real-time basis to complete their reviews and audits. And we understand that talking to the staff takes time. So here is what we are going to do to enhance our ability to work with you.

First of all, we are revising our process for dealing with registrants. The PAFs will describe the changes in more detail later. However, I will pull a little rank and share a few highlights.

- We will have early involvement of one of my deputies or me.
- We will get back to you promptly—let you know who is on the issue—and ask "top of the mind" questions from reading your submission.
- We will tell you whether we think resolution of your issue could be expedited through a face-to-face meeting.

I don't know what has happened over the years, but I have been back for 2 months and only recently have I had a couple of requests to meet face to face with a registrant on an accounting issue that arose in the review and comment or pre-clearance process. I hope it's not something I said! Seriously, I want you all to know we welcome the opportunity to meet and discuss issues freely.

The process of writing back and forth can be important to "getting all of the facts," but it has diminishing returns. A face-to-face meeting can accelerate the understanding and resolution of your accounting issues.

When you come in, we may not always agree with you. But I promise two things:

- One, we understand that GAAP is subject to interpretation and that legitimate differences of opinion can exist. We will not insist on our personal preferences provided investors are adequately protected by your approach and it has a legitimate basis under GAAP.
- Two, while you won't always like what we say, we hope you will conclude that we listened to you with respect and that your views were fairly considered.

The Pre-clearance Process Is Not Utopia

Despite my enthusiasm for the pre-clearance process, I realize it is not utopia. As I mentioned earlier, you must work in real time. You need an answer and we must protect investors. Furthermore, as the recent report by the GAO on our procedures for dealing with registrant matters points out, our pre-clearance conclusions often are not publicized.

So, we are going to try something new—something that I have advocated to my predecessors for at least the last 10 years. And that is that after we address issues that reasonably would apply to more than a minimal number of other registrants, we will refer them to the EITF for their consideration.

We will make those decisions based on our judgment, which also will be informed by the frequency of similar questions and consideration of the overall environment (for example, accounting for troubled debt restructurings in today's economy).

Of course, there are pros and cons to this approach. Let me share a couple of hypothetical outcomes:

- Example one. We agree with you but the EITF, after it has devoted more time and resources, does not. Okay, we have thick skin and will typically accept the EITF's answer. We aren't pushovers, but when one deals with emerging issues on a real time basis there is a risk that with more resources, deliberation and time, one might reach a different conclusion.
- Example two. We don't agree with you. Let's say that you have a good case—good facts and analysis of GAAP—but we are concerned that it would be a precedent that might be subject to a decline in the quality of financial reporting through inappropriate analogy in the future. Well, the EITF's process is terrific at creating fences, qualifications, and the like and, once they do, we would accept the EITF's answer assuming, as we expect, that it would adequately protect investors.

I strongly believe that it can work. And I believe the November 2001 EITF meeting gave a flavor, or preview, of how it will work.

For example, as discussed in that meeting, we asked that the EITF address the effect on consolidation accounting of surrendering voting rights. Recently, we have had to answer several questions in this area and are hopeful that the EITF can build a model that results in consistent, high quality, transparent financial reporting.

In another example, the FASB staff decided to make a staff announcement on a derivatives question that we had dealt with on a specific registrant basis. Our analysis revealed a diversity in practice. We talked the matter over with the FASB staff and they decided to make a staff announcement that we think will resolve the inconsistency.

Registrants' and Auditors' Responsibilities

Now let me talk about the responsibilities of registrants and auditors when working together with the SEC staff to get it right the first time.

As has been said before, we encourage registrants to pre-clear with us novel and unusual accounting questions. When you do so, please follow our protocol and send us a clear and comprehensive submission. The submission should explain the business purpose of the transaction, accounting alternatives considered, and the reasons for your proposed accounting treatment.

If you elect to pre-clear an issue with us, you should discuss it with your auditors, including their national office technical experts, before coming in to see us. We will want their insight prior to giving you an answer. Often times, their technical experts can provide you with an appropriate answer.

Do your best to think of the related questions we inevitably must consider and provide us with your thoughts on those issues as well. For example, we recently received an industry paper arguing that the intangibles fundamental to their business should be afforded an indefinite life that results in no amortization under new FASB Statement 142.

It was an excellent paper. It thoroughly explained the facts, including the historical impact of the governmental and regulatory environment in which the industry operates. In other words, it was compelling! Well, almost.

It did not tell us anything about how impairment would be evaluated. Since objective impairment testing is fundamental to an appropriate application of Statements 141 and 142, we must consider those issues as well. And while we can deal with that situation by asking questions, it slows things down.

We have updated our protocol to include this idea of addressing the follow-on questions, and we are going to ask you to include your proposed disclosure as part of your submission.

As I mentioned before, once a particular practice is accepted, many view it as a precedent, so transparent disclosure is essential to ensure inappropriate analogies do not get started. And, even more important, quality disclosure is key for investors.

In addition, when you submit your issue to the staff, we would like you to tell us about your audit committee's views about your proposed accounting treatment.

Point 2—Working to Improve the Effectiveness of Standard Setting

The second of my three points is working to improve the effectiveness of standard-setting. As I stated at the outset, the SEC staff is on the front line of financial reporting by virtue of our day-to-day activities. From that vantage point, we will sometimes see issues that look to us like they require a broader resolution in the form of new or revised standards. Chief Accountants at the SEC have made formal recommendations to the FASB on such issues in the past, such as Mike Sutton with the accounting for business combinations, and Clarence Sampson with measuring financial instruments at fair value. And, in a speech last summer, my predecessor

urged the Board to produce guidance for consolidation of special purpose entities.

Some find it controversial when this is done formally, because the SEC is sometimes seen as "dictating FASB's agenda." But such involvement with agendas of standard-setters is an important part of our job, and I intend to work hard to keep open lines of communication with the standard-setters.

Let me give you an example. With over 50% of SEC enforcement cases being related to revenue recognition, there is a clear need for broad-based principles. The FASB is considering adding such a project to its agenda and, as Ed Jenkins knows I encourage it to do so.

Once standard setters have added projects to their agendas, they incur an obligation to get the job done in a quality, timely and operational manner.

Standard-setting is a very difficult business. Standard-setters must consider the interests of and input from many constituencies as they strive to ensure companies provide investors with transparent, neutral information about their performance. That is why groups like the FASB and IASB operate in an open forum subject to a full comment process.

I think standard-setters should keep one word in mind as they develop standards-balance. This includes avoiding complexity while providing sufficient implementation guidance to ensure comparability among companies and ensuring that relevant information is reliable. We all play a part in this effort and need to realize that for the product as a whole to be its best we will not always get our favorite rule or exception.

And lastly, in this Internet age, speed to completion is a key attribute for standard-setters.

Another issue facing standard-setters is the need for convergence of domestic and international accounting standards. Converging accounting standards is critical to a continued, efficient expansion of our global capital markets. Standard-setters should be cognizant of the effects on international accounting as they carry out their activities in the future, and I hope that convergence becomes a more near-term objective. Time does not permit a full discussion of my views on international accounting today, but it will be a major focus for the Chief Accountant's Office.

With the continuing pressure to increase the efficiency of our global markets, there is plenty of work ahead for the standard setters and I look forward to working with them.

No Rule-Making By Speeches

The first time I spoke with Chairman Pitt about my coming to the SEC we compared notes about our priorities. As you might expect by virtue of the fact that I am here today, we found much in common. And near the top of both lists was a commitment to address concerns that there has been *rule making by speeches*!

As I mentioned earlier, the GAO recently reviewed the operations of the

Office of the Chief Accountant in dealing with registrant matters. One of the criticisms was the communication of our views through speeches. A suggestion that arose as part of that report was that our speeches be codified if we were going to expect registrants to follow them.

Our accounting literature is now so voluminous that it literally fills rooms. Can you imagine adding 250 or so speech topics to this volume? Suffice it to say, we have considered the suggestion and decided that it is not realistic.

With that said, I recognize that a speech posted to the website offers a quick and effective means of communication about how the staff concluded on a particular fact pattern, which can be helpful for many of you to know. However, such speeches can cause confusion as well.

First, the speeches are hard to keep track of—even in today's Internet age. Second, many of the speeches are old and out of date and an effective means for updating them does not exist. Most deal with specific questions that sometimes are analogized to inappropriately. And sometimes they can bump up against ingrained practice and raise questions about an adequate notice and comment process. Too much emphasis on these speeches can undermine GAAP and our private sector standard-setting activities.

So, we are doing something different this year and the PAFs will fill you in on the details, including telling you what we are doing with the old speeches that have been on our website. We'll stick to rulemaking by rulemaking

And, to go back to the subject of the volume of accounting literature, I think that the FASB's consideration of a project on codification and simplification of GAAP affords an excellent opportunity to balance operationality and conceptuality.

Point 3—Modernizing Financial Reporting and Disclosure

Now let's turn to point 3-working together to modernize financial reporting and disclosure.

Our existing system of financial reporting and disclosure was developed back in the 1930s and is showing its age. During the last 70 years, technology has advanced to a point where computers and the Internet are a part of our everyday lives. But relatively few changes have been made to the Commission's rules regarding what financial information is disseminated and how it is communicated. As a result, it seems like no better time exists than now to consider modernizing the system. So, we will take a fresh look, one that is no-holds barred in terms of being open to new ideas. Let me give you a flavor for some of the issues:

- Whether investors would be better served, in this era of instant communications, by supplementing our existing periodic disclosure with a new concept of current disclosure.
- Whether investors would be better served if public companies were encouraged to disclose trend information more broadly.

- Whether investors would be better served if disclosures were simplified so that financial statements were more easily understood.
- Whether investors would be better served if our accounting model were updated to include disclosure about, or accounting for, intangibles.

Example of Such an Initiative

Let me give you an example of how an initiative for modernizing financial reporting and disclosure might work.

Seven or eight years ago, the SEC worked with Ray Groves to flesh out ideas he had to simplify financial statement disclosures and MD&A so that reasonably informed investors would find them time-efficient to use. Mr. Groves found that the volume of disclosure in MD&A had increased exponentially, and in the complex world in which we live, that has continued to be the case.

Working together with the SEC staff led to a proposal for abbreviated financial information, which would consist of "condensed financial statements" and abbreviated footnotes, and would be sent to shareholders with annual meeting proxy statements. Full disclosure would be maintained in Form 10-K. This proposal was not unlike the FEI and Deloitte & Touche initiatives in the early to mid-1980's that advocated a summary annual report.

Unfortunately, there was not much support for this initiative. (I know the feeling). Some in the business community saw it as being only additive, and others did not like it as they saw it as somehow jeopardizing GAAP, or depriving ordinary investors of the full product. Legal advisors were concerned that the approach might lead to more liability.

But now, with new technologies, investors might be able to start with summarized financial statements and footnotes and, if they want, hyperlink to the more detailed underlying information. The power of technology and the Internet has proven to enable assimilation of as much or as little information on a topic as the user wants.

Analysts still would get all the details they get today, but companies would be responsible for doing their own simplification, which would be available to all investors simultaneously.

Next Steps

This project is in its infancy and a lot of hard work lies ahead. The next step for the staff likely would be to put together, for consideration by the Commission, a thought leadership piece to sort out the issues and gather public input, which likely would be in the form of a concept release. Naturally, part of that process would include getting our arms around what has been done (for example, the efforts by the FASB and AICPA to explore a new business reporting model) and the various projects currently underway, such as IASB's project on reporting financial performance. These

efforts of the private sector standard setters, the profession, and the SEC will need to be coordinated.

I do not know how this project will ultimately turn out. But I do know that we will not throw out the current system, and we will be very sensitive to costs and benefits. We think there is much to be gained from harnessing better use of technology in terms of both delivery and design. And by doing so, investors win!

New Special Advisor

Now, as with many new ideas, this may be simpler to envision than to implement, and forming the project details, getting input, conceptualizing, and getting more input will be a prodigious task.

To help us move forward with this massive and crucial undertaking, I am pleased to announce that Robert Bayless has agreed to join the Office of the Chief Accountant as my Special Advisor to work on these tasks.

You all know Robert as a tireless, brilliant and eloquent member of the SEC staff for many years. Robert and I both look forward to working with you on this initiative.

You will be hearing much more about these ideas in upcoming months, and hopefully by the time of this conference next year, the staff will be up here with others, talking about concrete steps in our initiative to modernize financial reporting and disclosure.

Accounting and Auditing—and Regulating—in a Tough Economy

Now it's time to turn to the here and now. No speech by the Chief Accountant of the SEC at this time of year, in a year such as this one, would be complete without some comments about the issues raised by the economy. The year 2001 has been a terrible one for our economy. We've just learned from the experts in such matters that our country has been in a recession since March. And, of course, the economic consequences of the terrible atrocities of September 11th have been particularly severe for certain industries. When the topic is negative news, it's especially important to apply the myriad of applicable accounting and disclosure requirements, including MD&A, that others from the SEC staff will be reminding you about over the next two days.

Tough economic conditions also exacerbate the challenges faced by auditors. The need for due professional care and skepticism are never higher. And it has been a long time since our last recession, so many of you have not recently thought through these types of issues. Or perhaps when this last occurred some of you were in positions in your firm where more senior people had the responsibilities to make tough calls on issues such as going concern modifications of your reports. If so, now it's your turn!

To help you get it right the first time, the Professional Issues Task Force of the AICPA's SEC Practice Section, the profession's self-regulatory body, recently issued Practice Alert 2001-2, "Audit Considerations in Times of Economic Uncertainty." I won't repeat what the Practice Alert says; I do

urge each of you to read it, think about what it says, and apply it in each of your upcoming audits. And make sure your staff reads it, too.

Lastly, I want to comment on the Cautionary Advice release the SEC issued two days ago regarding the use of so-called "pro forma" financial information in earnings press releases. The tough economic times seem to have accelerated the trend toward companies releasing quarterly earnings on a basis other than GAAP. And, there were concerns that under certain circumstances pro forma information can mislead investors. So, the staff recommended, and the Commission agreed, that action should be taken before the next deluge of quarterly reporting.

The release makes several points:

- First, the antifraud provisions of the federal securities laws apply to a company issuing "pro forma" financial information. This is so even though quarterly earnings press releases are not required to be filed with the SEC.
- Second, departures from GAAP in these releases raise particular concerns if there isn't clear disclosure of the basis of the presentation.
- Third, statements about a company's results that are literally true may be misleading if they omit material information.
- Fourth, if done properly and with appropriate disclosure, pro forma financial information can serve useful purposes. The earnings press release guidelines jointly developed by the Financial Executives International and the National Investor Relations Institute specify a plain English disclosure of how the announced results deviate from GAAP, as well as the amounts of those deviations.

If the SEC staff finds instances where these types of disclosures would mislead investors, I am sure we will recommend appropriate enforcement action.

So, in a nutshell, be careful about making a non-GAAP presentation. If you decide to do so, get it right the first time! And if you don't get it right...well, I think you get the picture.

Confidence in our System of Financial Reporting

Finally, no speech by the Chief Accountant this year should conclude without some remarks about the events of the last few weeks. The stunning collapse of a Fortune 10 company in such a short period of time gives pause to all of us who care about financial reporting-and about its customers-the investors. As has been widely publicized, the SEC is investigating the Enron matter. So, neither I nor any other staff member is allowed to comment on any of the specifics.

However, here is what I can say: Not only is the collapse of Enron in and of itself stunning, but it comes on top of several other widely publicized problems and restatements. One has to conclude that there is a threat to the confidence in our system of financial reporting and our capital markets.

01562

In the coming weeks and months, we will learn more about what really happened. But, improvements cannot wait until a full analysis of all of the facts is completed.

In that regard, I commend the 5 largest firms and the AICPA for their announcements on Tuesday describing their initiatives that are designed to improve financial disclosure and audit performance in the near term. In light of those actions, it is clear that the profession recognized the need to move forward in a positive way.

The profession is planning to provide guidance for this reporting season to enhance disclosures and improve auditing coupled with additional rule-making that would provide longer term solutions. This guidance would strive to build on the recommendations of the Panel on Audit Effectiveness. It would include guidance for company managements and audit committees on deterring fraud. We at the SEC stand ready to facilitate those efforts.

The fact that the 5 largest firms and the AICPA are working together to improve auditing is realistic and positive. I encourage the profession to think more expansively about what can be done in this area, just as they will be thinking about needed improvements in self-regulation.

In the meantime, here is something that I encourage preparers and auditors to think carefully about during this year's upcoming reporting season: Look carefully at your accounting policies and identify the top 3 or 4 or 5 that require significant judgment or involve complex estimation process to apply. Think hard about the sufficiency of the disclosures -not just about the policies themselves-but also about the explanatory information of the amounts included in the financial statements that is subject to those judgments and estimates. Ask yourself whether investors know enough about the impact of those judgments and estimates on the financial statements. Then challenge yourself to improve these disclosures in either the financial statements or in MD&A. Appropriate, transparent disclosure is the most effective way to mitigate the potential for negative surprises and to advance the interests of investors.

I would be happy to take questions.

<http://www.sec.gov/news/speech/spch526.htm>

Nickoloff, Peter

From: Roseboro, Brian
Sent: Tuesday, January 15, 2002 7:20 AM
To: Nickoloff, Peter; Kmalimgre (E-mail)
Subject: FW: financial mkts working group

FYI

-----Original Message-----

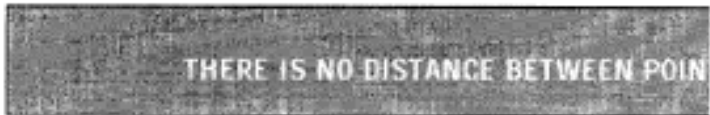
From: Clarida, Richard
Sent: Monday, January 14, 2002 6:43 PM
To: Clarida, Richard; Warshawsky, Mark; Smetters, Kent; Worth, John; Huffman, Lucy; Wiedman, Mark; Roseboro, Brian; Myers, Julie
Cc: Flanagan, Rosemary; Fisher, Peter
Subject: RE: financial mkts working group group



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[Clarida, Richard]

A recent interview with Mr Pitt



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Harvey Pitt: "Violate the Law, You Will Pay"

The SEC chairman talks about Enron, auditing, and his commitment to enforcement policies that dispel the temptation to play fast and loose

Securities & Exchange Commission Chairman Harvey L. Pitt has now launched a formal investigation into the collapse of Enron Corp., which he calls "a tragedy" for investors. On Dec. 10, Pitt met in his office with *BusinessWeek* Senior Washington Correspondent Mike McNamee to talk about how the Enron debacle affects his proposed reforms in accounting and enforcement. Here, in an extended form, are edited excerpts from that conversation which will appear in the Dec. 24 issue of *BusinessWeek*:

Q: Enron is drawing attention in part because of the company's strong political connections. Are you feeling any heat from the White House or Capitol Hill?

A: No, I don't think so. The only aspect of Enron we're focused on is what happened to investors and whether the proper compliance with all our securities laws and rules applied.

Q: What do you make of Enron's auditors, [Arthur Andersen LLP]?

A: I can't comment on anything specific about who, if anyone, is responsible. What I can comment on is that, while our staff is doing a complete and thorough and expeditious investigation, we have to focus on assuring people that the problems of Enron won't likely reoccur. We have a whole agenda of items that will hopefully minimize the likelihood of any similar events.

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First, we want to supplement our existing periodic disclosure system with a [more] current disclosure system. Second, we want to ensure the ability of companies to make affirmative disclosures about unquestionably material events, as well as trend information. We believe modern technology will enable us to use that as an overlay on periodic reports, so that nobody will have to give up anything that they already have. Third, we believe that financial reports need to be put in plain English so that investors can look at a financial statement and tell readily what a company's financial status is. Again, the more detailed financial statements would also be available. But our goal is to create a system of financial reports that nonexperts can read, digest, and understand.

We are going to take steps to strengthen the role of audit committees. We believe that it is appropriate for audit committees affirmatively to review with management, and also with outside auditors, the three, four, or five critical accounting principles that have the greatest impact on the company's financial posture. It's not now a duty.

We also think that there's a need for a comprehensive and transparent system of professional self-regulation by the audit profession -- something that heads of the five major accounting firms and the AICPA [American Institute of Certified Public Accountants] endorsed last week.

We think it's better for investors if we can prevent these problems before they arise. We'll never be able to prevent all of them. But those that we can't prevent, we will have to handle them after the fact forcefully and vigorously.

Q: You want to build a new model of financial reporting -- but this looks like a case where the auditors didn't get the GAAP [generally accepted accounting principles] right.

A: I can't comment on whether GAAP was correct or not [in Enron's case]. There was a restatement, and restatements are taken when the original accounting was wrong or mistaken. But the demise we have seen is attributable to much more than any \$500 million or so restatement. This was like a run on the bank.

Q: Do you plan any steps for guidance or clarification for auditors for this fiscal year?

A: We put out a release for guidance on the use of pro forma [earnings statements]. It talked about what happens when companies deviate from GAAP and ways in which the deviation can create a false or misleading impression. We expect to put out a release [issued Dec. 12 and available at www.sec.gov/pdf/33-8040.pdf] that will alert companies, audit committees, and outside auditors to a number of the approaches that should be taken at yearend to make certain that the proper accounting principles have been selected -- and to make certain that there has been full and fair disclosure of how they were applied. With respect to other issues [such as related-party transactions], I'm reasonably confident we're going to be studying the situation.

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Q: Last year, your predecessor [former SEC Chairman Arthur Levitt Jr.] fought unsuccessfully to separate the Big Five's auditing from consulting in the name of auditor independence. Enron paid Andersen \$25 million for its audit, but also \$27 million for consulting. Does that raise independence questions?

A: Independence is very important to the audit function. But the problems that exist are really not a function of independence questions. They go to the integrity and structure of internal control systems and the audit process itself. Is the audit done professionally and competently? Independence is kind of off to the side.

In 1933, Congress made a decision to have auditors be in the private sector and allow them to charge fees for their audit work. And once you've done that, anyone who wants to be cynical would say, with or without consulting work, that firms dependent on audit fees might not perform as professionally as might be desired. But we know that's not so. To a firm like Arthur Andersen, as significant as the dollars are, they don't make a significant ripple in their overall financial structure-whether it's \$27 million or \$25 million.

Q: Obviously Enron did not turn itself in-so this will not be a test case of your Seaboard doctrine [giving credit to companies that cooperate with SEC investigations].

A: It does not make sense for me to comment on any aspect of what will or will not happen with Enron. I will say that the release we put out on the benefits of cooperation pointed out that even if a company cooperated completely and superbly, there were cases in which a company might well receive no credit for cooperation. We also referred to the fact that getting a pass was expected to be a rare occurrence.

Q: You came into office as part of a Republican Administration, which many people think is inclined to favor corporate interests. Your first speech promised the accountants a friendlier SEC, and you've offered lighter sanctions to companies that cooperate. Do investors have any reason to feel less secure because of the directions you're taking?

A: If the question is vigorous enforcement in cases of financial fraud, we are at least as committed to vigorous enforcement as has ever been the case. Indeed, the new director of enforcement was the deputy director under Mr. Levitt, and I appointed him as director. So if I were uninterested in a vigorous approach, I would have found someone else to appoint.

We are now seeing the Enron situation. It is a tragedy. I grieve for the investors who have lost their life savings, the employees. But Enron occurred in a system in which all of the emphasis was on after-the-fact enforcement.

After-the-fact enforcement is absolutely critical. If people do not believe there is a sanction for misconduct, they will be encouraged to cut corners. But it stands to reason that preventing a problem before it arises has to be

better for investors than being limited solely to going after the problem after it's arisen.

We're not changing after-the-fact enforcement. But what we're trying to do is help companies and auditors get it right, up front. My message was, is, and will be: If you violate the law, you will pay for it, and we will be aggressive. But if you are truly concerned about getting it right, we will help you. And we will try to protect investors in more than one way.

Q: The other profession that has not covered itself with glory is Wall Street's analysts.

A: Again without commenting on what specifically occurred in the Enron situation -- I think that analysts have to know why they're recommending a company, and have to understand its true financial position. It's one thing if analysts are deceived by sharp operators. But we cannot have a situation in which recommendations are made without a full understanding of the company's posture.

The public is entitled to know either that there are no conflicts of interest [between an analyst's research and banking roles], or precisely what conflicts there are. I believe that the securities industry will come up an effective program for dealing with that. If they don't, then we will make sure that investors are protected.

Edited by Douglas Harbrecht

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Nickoloff, Peter

From: Roseboro, Brian
Sent: Tuesday, January 15, 2002 7:24 AM
To: Nickoloff, Peter; Kmalmgre (E-mail)
Subject: FW: op-ed by Chairman Pitt

FYI

-----Original Message-----

From: Wiedman, Mark
Sent: Monday, January 14, 2002 6:55 PM
To: Clarida, Richard; Warshawsky, Mark; Smetters, Kent; Worth, John; Huffman, Lucy; Roseboro, Brian; Myers, Julie
Cc: Flanagan, Rosemary; Fisher, Peter
Subject: op-ed by Chairman Pitt

Here's a good op-ed from Chairman Pitt.



SEC Public Statement
How to Pr...

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U.S. Securities and Exchange Commission

Public Statement by SEC Chairman: How to Prevent Future Enrons

by

Chairman Harvey L. Pitt

"Op-Ed" for the *Wall Street Journal*

December 11, 2001

These remarks reflect solely the personal views of Mr. Pitt, and do not necessarily reflect the views of the Commission, the individual members of the Commission, or its Staff.

The Securities and Exchange Commission is investigating Enron's meltdown and its tragic consequences. Until all the facts are known, there is nothing that can or should be said about who may be responsible for this terrible failure. The public can be confident, however, that we will deal with any wrongdoing and wrongdoers swiftly and completely, to ensure full protection of investor interests.

Even before the Enron situation, we were working to improve and modernize our disclosure system -- to make disclosures more meaningful, and intelligible, to average investors. Our immediate concern in the wake of this tragedy should be to understand how to prevent more events like this. Of course, those with intent and creativity can override any system of checks or restraints. Believing that we can create a foolproof system is both illusory and dangerous. But investors are entitled to the best regulatory system possible, and we can achieve more than we presently do if we focus attention on finding solutions instead of scapegoats.

Our current reporting and financial disclosure system has needed improvement and modernization for quite some time. Disclosures to investors are now required only quarterly or annually, and even then are

issued long after the quarter or year has ended. This creates the potential for a financial "perfect storm." Information investors receive can be stale on arrival and mandated financial statements are often arcane and impenetrable.

To reassure investors and restore their confidence, the public and private sectors must partner to produce a sensible and workable approach that includes, in addition to our existing after-the-fact enforcement actions:

- A system of "current" disclosure. Investors need current information, not just periodic disclosures, along with clear requirements for public companies to make affirmative disclosures of, and to provide updates to, unquestionably material information in real time.
- Public company disclosure of significant current "trend" and "evaluative" data. Providing current trend and evaluative data, as well as historical information, would enable investors to assess a company's financial posture as it evolves and changes. It would also preclude "wooden" approaches to disclosure, and encourage evaluative disclosures that begin where line-item and Generally Accepted Accounting Principles disclosures end. This information, upon which corporate executives and bankers already base critical decisions, can be presented without confusing or misleading investors, prejudicing legitimate corporate interests, or exposing companies to unfair assertions of liability.
- Financial statements that are clear and informative. Investors and employees concerned with preserving and increasing their retirement funds deserve comprehensive financial reports they can easily interpret and understand.
- Conscientious identification and assessment by public companies and their auditors of critical accounting principles. Public companies and their advisers should identify the three, four or five most critical accounting principles upon which a company's financial status depends, and which involve the most complex, subjective or ambiguous decisions or assessments. Investors should be told, concisely and clearly, how these principles are applied, as well as information about the range of possible effects in differing applications of these principles.
- Private-sector standard setting that responds expeditiously, concisely and clearly to current and immediate needs. A lengthy agenda that achieves its goals too slowly, or not at all, like good intentions, paves a road to the wrong locale.
- An environment that encourages public companies and auditors to seek our guidance in advance. The SEC must be, and must appear to be, a constructive resource and hospitable sounding board for difficult and complex accounting issues before mistakes are made. We will always need, and utilize, after-the-fact enforcement, and we can, and will, improve our review of financial reports. But by now it is painfully clear that preventing problems is infinitely superior, and far less damaging, than acting after investor funds, retirement accounts or life savings are dissipated.

01570

- An effective and transparent system of self-regulation for the accounting profession, subject to our rigorous, but non-duplicative, oversight. As the major accounting firm CEOs and the American Institute of Certified Public Accountants recently proposed, the profession, in concert with us, must provide assurances of comprehensive and effective self-regulation, including monitoring adherence to professional and ethical standards, and meaningfully disciplining firms or individuals falling short of those standards. Such a system has costs, but those who benefit from the system should help absorb them.
- More meaningful investor protection by audit committees. Audit committees must be proactive, not merely reactive, to ensure the quality and integrity of corporate financial reports. Especially critical is the need to improve interaction between audit committee members and senior management and outside auditors. Audit committees must understand why critical accounting principles were chosen, how they were applied, and have a basis for believing the end result fairly presents their company's actual status.
- Analyst recommendations predicated on financial data they have deciphered and interpreted. Analysts and their employers should eschew expressing views without an adequate data foundation, or when confused by company presentations.

Our system can be improved and modernized. In a crisis, some seek easy answers to difficult problems by pointing fingers. But true reform requires rigorous analysis, respect for competing views, and compromise and statesmanship by all concerned. We are up to the task, but only if we are able to tap our best minds to produce our most creative solutions, and only if we are able to discuss these issues openly and honestly. We are committed to that end, and we seek participation from everyone with an interest in our capital markets. Together, in partnership, we can make a difference. That is our vision, and our mission.

<http://www.sec.gov/news/speech/spch530.htm>

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Modified: 12/11/2001

Nickoloff, Peter

From: Roseboro, Brian
Sent: Tuesday, January 15, 2002 7:25 AM
To: Nickoloff, Peter; Kmalmgre (E-mail)
Subject: FW: financial mkts working group

FYI

-----Original Message-----

From: Clarida, Richard
Sent: Monday, January 14, 2002 7:27 PM
To: Clarida, Richard; Warshawsky, Mark; Smetters, Kent; Worth, John; Huffman, Lucy; Wiedman, Mark; Roseboro, Brian; Myers, Julie
Cc: Flanagan, Rosemary; Fisher, Peter
Subject: RE: financial mkts working group group



[Clarida, Richard] One more before I go home - this from the perspective of the big five


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January 4, 2002

Money & Investing

Big Five Accounting Firms Urge SEC To Issue New Disclosure Guidelines


 By JUDITH BURNS
 Dow Jones Newswires


WASHINGTON -- Big Five accounting firms have petitioned the Securities and Exchange Commission to issue new guidance to improve disclosure in corporate annual reports.

In the wake of huge financial restatements last year, including a \$569 million restatement by Enron Corp., the Big Five firms suggested the SEC consider new rules setting minimum standards for corporate disclosure.

As a short-term fix, the Big Five firms asked the SEC to provide "immediate guidance" on disclosing off-balance sheet transactions, over-the-counter derivatives contracts and related party transactions, three hot-button areas in Enron's financial debacle.

Without mentioning Enron by name, accounting firms said their proposal targets "issues that recently have resulted in impaired investor confidence in our financial reporting system."

 Enron Debacle Will Test Leadership of SEC's New Chief Harvey Pitt (Dec. 31, 2001)

 SEC's Herdman Urges Accounting Firms to Improve Auditing, Citing Enron's Fall (Dec. 7, 2001)

"There are compelling reasons for the Commission to act quickly," the Big Five firms said in a letter posted on the SEC's Web site (www.sec.gov) Friday. The accounting firms urged the SEC to issue an interpretative release "as soon as possible" to improve 2001 annual reports by beefing up disclosure in the management discussion and analysis section.

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companies provide boilerplate" that contains "little or no meaningful information," the Big Five said.

Big Five firms suggested firms provide more details on off-balance sheet transactions, including guarantees, commitments, lease and debt arrangements, and any standby agreements that could reduce the company's credit rating, earnings, cash flow or stock price.

Companies ought to describe off-balance sheet arrangements they have, the purpose of the deals and why they aren't accounted for on the company's books, the Big Five firms said. They also suggested companies provide a table that clearly summarizes "contractual cash obligations" such as long-term debt and lease obligations, and other commercial commitments, such as guarantees and standby letters of credit.

Energy-trading companies, weather-trading companies and any firms that trade commodity contracts over-the-counter, rather than on an exchange, should provide more information on fair valuation of those contracts, the Big Five firms added. They recommend firms provide more details on derivatives trading, including whether their "fair value" price is based on quoted prices, external data or internal models.

Related-party transactions are a third area targeted for improvement. Although SEC rules require disclosure of related-party transactions, Big Five firms said companies should provide more information on entities that don't fall under that definition but are able to negotiate deals on terms not available to independent third parties. The accounting firms said regulators and shareholders need to understand the purpose of these transactions, their effect on the company's financial statements and any "special risks or contingencies" they might create.

The letter was signed by Arthur Andersen LLP, which audited Enron, and by Deloitte and Touche LLP, Ernst & Young LLP, KPMG LLP, PricewaterhouseCoopers LLP, and the American Institute of Certified Public Accountants.

In a prepared statement, SEC chief accountant Robert Herdman said the agency's staff will consider the petition "on an expedited basis and expects to make recommendations for consideration by the commission."

Regardless of what the SEC does, Mr. Herdman said public companies would do well to consider improvements to corporate annual reports, particularly in the three areas outlined in the accounting industry's petition.

"This represents a shot across the bow to corporate America," said former SEC chief accountant Lynn Turner, now director of the Center



for Quality Financial Reporting at Colorado State University. Ms. Turner praised efforts to improve corporate reporting, but said suggestions from the Big Five firms won't solve two basic problems -- companies that rely heavily on off-balance-sheet transactions and accountants unwilling to blow the whistle on corporate "earnings management."

Michael Young, a partner at the New York law firm of Willki Farr & Gallagher who specializes in accounting, predicts the SEC will embrace the Big Five's plea for tougher standards and better disclosure, especially in light of Enron's collapse.

Enron, once a high-flying energy trading company, went bankrupt late in 2001 after announcing it overstated net income by \$586 million over almost five years. Its restatement reflected adjustments in off-balance-sheet "special purpose entities" and partnerships tied to former Chief Financial Officer Andrew Fastow. The Houston firm faces numerous lawsuits and is under investigation by Congress, the SEC and the Justice Department.

Enron's restatement comes on the heels of restatements by Sunbeam Corp. and Waste Management Inc., both Andersen clients, as well as Cendant Corp. and MicroStrategy Inc.

"The accountants are saying the real culprit is the inadequacy of some of the rules," said Mr. Young. "If the rules aren't good enough, then all the accounting industry can do is take it on the chin."

Mr. Young acknowledged that improving disclosure in 2001 annual reports, which must be filed by March 31, is an ambitious timetable, but said it appears that Big Five accounting firms are prepared to tackle the task.

"Corporate executives are being dragged kicking and screaming into a world of improved disclosure. Whether they will embrace the Big Five's request for enhanced standards, particularly on this aggressive timetable, is anybody's guess," Mr. Young added.

Write to Judith Burns at judith.burns@dowjones.com

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The bad news is you can't beat the market.

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Nickoloff, Peter

From: Schultheiss, Heidilynne
Sent: Tuesday, January 02, 2001 2:23 PM
To: Squitieri, Ray; Sachs, Lee; Paulus, Michael; Greene, Michelle; Gross, Jared
Cc: Carleton, Norman; Nickoloff, Peter; Soares, Chris; Cetina, Jill
Subject: SF Chronicle Article on Cal Energy Situation

This was sent to me by a former DoE employee who now works for an private-sector energy company in Houston. It's a good, comprehensive background piece. Unfortunately I don't have it in electronic form, and the hardcopy (margin) format is a bit strange.

> December 31, 2000 (SF Chronicle)
> Genesis Of State's Energy Fiasco/String of bad decisions on deregulation
> could end up costing consumers \$40 billion
> Christian Berthelsen
>
>
> Next month, about 10 million Californians may begin paying as much as
> 30 percent more for electricity, in a maddening coda to one of the most
> costly public policy mistakes ever made.
> When the state's leaders started moving the energy system toward
> deregulation six years ago, they envisioned a brand new day in which
> utility companies' long-standing monopoly would be broken and rates would
> decline by as much as 25 percent.
> Instead, when it is over, it may cost customers of the state's
> investor-owned utilities \$40 billion, perhaps more. In the coming year, it could
> harm the world's sixth-largest economy and send a ripple effect throughout
> the globe for those dependent on California's continued prosperity.
> This is the story of what went wrong with deregulation, and how
> planning lapses, serious policy blunders -- and warnings that came too late -- set
> California's two main utilities, Pacific Gas & Electric Co. and Southern
> California Edison, toward a train wreck.
> Power plant construction lagged while demand expanded. Leaders
> misjudged how much competition there would be to supply California with juice. And
> flawed deregulation laws left utilities and their customers at the mercy
> of power companies, extracting the highest price for electricity.
> "There was a blind adherence to free-market ideology that couldn't
> possibly work," said Eugene Coyle, a former utility securities analyst,
> economist and early opponent of deregulation. "There were poorly
> thought-out specifics."
> In the early 1990s, businesses were fleeing the state amid the worst
> economic times since the Great Depression. Energy rates were 50 percent
> higher than they were on average across the nation, because of commitments
> to more expensive, environmentally friendly power and cost overruns for
> nuclear power plant construction.
> Large customers such as steel makers, mining concerns and cement
> makers, for which electricity costs make up 25 percent of their overhead, saw that
> independent power producers were offering power much more cheaply. They
> began to insist on change.
> The United States had deregulated long-distance telephone service,
> airlines and a host of other industries, often with resulting competition
> that was a boon to consumers. Why not do the same for electricity?
> So California embarked on a pioneering experiment. In 1993 and 1994,
> the California Public Utilities Commission began to draft such a policy. It
> allowed large users to buy power directly from independent producers and
> froze customer rates at artificially high levels so utilities could
> recover their investments in costly plants.
> The utilities sought to have the terms codified in law, and in early
> 1996, a number of bills were introduced in the Legislature to do so.
>> Some observers say that what happened next contributed to the overall
> plan's flaws. Months passed while the discussion meandered and faltered,
> and at one point it even appeared that no law would be passed.

> That's when state Sen. Steve Peace took the reins and tried to make
> something happen.

> The San Diego legislator already had won the respect of his colleagues
> for his work on another complex piece of legislation, reform of the workers'
> compensation system.

> During a hurried two-week conference in August -- dubbed the "Steve
> Peace death march" for his propensity to keep negotiators at the table late into
> the night -- the fine points of the energy law were hashed out.

> Legislators entrusted their judgment to Peace and the few colleagues
> who worked on the bill. There was an abiding sense by a number of participants
> that few members of either house knew what was in the bill or even
> understood it. It was passed by both houses of the Legislature unanimously
> and signed into law the following month.

> "People were grateful to Peace and (former Sen. Diane) Martinez for
> taking it on," said Debra Bowen, D-Los Angeles, the current chair of the Senate
> energy committee. "Historically, utilities were a pretty boring topic, and
> I think term limits factored into it."

> The law was to end the monopolistic control that utilities held over
> both power production and supply by requiring them to sell off their
> generators. It set rates artificially high so they could recover money
> from bad investments. And it gave them nearly two years to prepare for
> competition.

> Moreover, residential customers would be granted an immediate 10
> percent rate cut.

> The system took effect April 1, 1998, and, at first, things seemed to
> work well. Soon, though, there were warning signs.

> It turned out the residential rate cut was actually going to be
> financed with \$7.5 billion in bonds that customers had to pay off. So the reduction
> in real terms was closer to only 3 percent, not 10 percent.

> Then in early 1999, the California Energy Commission, which tracks the
> state's supply and demand, was warning of coming supply shortfalls.

> Demand was skyrocketing, the agency pointed out in a Senate energy
> committee hearing, and no new significant generation had been built in a
> decade. Without more power, California was going to run out. But
> construction of new power plants takes at least two years from start to
> finish, and the state was already running behind in accommodating the
> growth.

> Back in the early 1990s, however, the energy commission had painted a
> far different picture. At that time, California had an oversupply of power,
> perhaps as much as 30 percent more than it needed.

> There was so much that when the utilities commission set up an auction
> for the construction of new facilities in the early 1990s, Edison and San
> Diego Gas and Electric Co. appealed to the Federal Energy Regulatory
> Commission to halt the auction, arguing there was already too much
> generation in California. The FERC obliged.

> "If anybody had told us in 1996, or even in 1998, that we would
> experience (such) load increases, we would have said, 'You're crazy,' " said D.J.
> Smith, a lobbyist for the California Large Energy Consumers Association
> and one of the top advocates of deregulation. "Nobody had ever seen load
> go up like that in a mature situation."

> Still, production figures from Edison Electric Institute, which provide
> a crude indicator of demand, show consumption grew by 4 percent in 1996, 3.4
> percent in 1997, nearly 5 percent in 1999, and a whopping 10 percent this
> year.

> And surrounding states, including Arizona, Nevada, Oregon and
> Washington, began to experience the same demand growth. Since California imported as
> much as 25 percent of its power from those states, the amount available
> was suddenly reduced by as much as half.

> But considering the long time it takes to build plants, in part because
> of public opposition, the warnings were too little, too late. In fact, the
> situation remained far off the radar screen of consumers, since most were
> still insulated from price spikes by a rate freeze.

> Then this summer, things started to spiral out of control.

> San Diego was the first region to meet the conditions necessary for
> full deregulation, and as hot summer months added to demand, customers' bills
> suddenly tripled.

> The debt load of PG&E and Edison began to balloon -- to what will be an

> estimated \$11 billion by the end of 2000 -- as they borrowed to pay for
> power while being barred from passing that cost on to consumers.
> Suddenly, the glow of deregulation had lost its luster.
> It immediately became clear that California's failure to build power
> plants as its rapidly growing economy pushed demand upward was a serious
> problem. Increasingly, the state's growing technology economy depended on
> electricity, and new home construction concentrated in hot areas like
> Riverside and San Bernardino counties, where air conditioning is a must.
> And for all the talk of competition, there was a serious flaw that made
> the market singularly uncompetitive.
> In order to encourage generators to create as much power as possible,
> deregulation guaranteed the highest price for wholesale electricity.
> Through a practice known as the "market clearing price," the last bidders
> -- who are invariably the most expensive -- set the price everyone would
> receive. In other words, if the first generator bids \$30 for a certain amount of
> megawatts but the last bids \$100, those two bidders and everyone in
> between receive \$100. As the wholesale price of electricity skyrocketed to
> \$1,500 per megawatt hour this month from \$30 before the storm, the high
> cost has been compounded by the fact that everyone receives that amount.
> Further, the law had encouraged utilities to sell their generators and
> existing electricity supply without guaranteeing access to affordable
> power.
> Rather than arranging to buy power on long-term contracts that could
> have saved money, they were put in the position of having to buy their power on
> a market where profit was the ultimate goal, and they and their consumers
> had to pay the price.
> Perhaps in the biggest misjudgment, policymakers neglected the huge
> amount of money it takes to run power companies and attract customers. Thus, they
> overestimated how much competition would flourish in the market.
> Running power companies is so costly -- \$500 million to build a new
> plant -- that only a handful of companies bought into the market. And once they
> were here, the marketing cost of signing up new customers was
> astronomical.
> Indeed, since choice has become available to California, less than
> 1 percent of residential customers has changed electricity providers.
> The same goes for just 15 percent to 20 percent of industrial customers -- the
> class that advocated deregulation in the first place.
> At the end of the day, this experiment in deregulation has come at a
> staggering cost: \$40 billion. That includes the \$23 billion already paid
> by customers when rates were frozen at artificially high levels, and the
> \$7.5 billion in bonds financing consumers' own rate reduction.
> Now a new tab is running -- whatever share of the \$11 billion in debt
> that state utility regulators decide customers should pay.
> The state's leaders are now casting around desperately for solutions to
> put Humpty Dumpty back together again.
> The FERC is encouraging the utilities to enter long-term contracts with
> suppliers, and market clearing pricing is under review. The state's
> utilities commission will decide Jan. 4 how much of a rate increase to
> grant to PG&E and Edison. And a dozen or so power plants are under
> construction.
> Meanwhile, consumer advocates are backing a state ballot measure that
> would not only re-regulate utilities but essentially make energy supply a
> government function. And they are challenging the utilities' efforts to
> pass on their debts to consumers, noting they have also reaped windfall
> profits from selling electricity.
> For example, in the quarter covering the summer months when power costs
> first went haywire, PG&E's profits amounted to \$225 million, a 22 percent
> increase over the same period in the previous year.
> In the short term, the state is considering ways to encourage energy
> conservation the same way it did with water. And the question now being
> asked is whether a commodity as central to the well-being of the economy
> should ever have been placed almost entirely under the control of free
> enterprise.
> "There's a discussion on how much we want to rely on market forces
> alone when it comes to electricity," Bowen said. "Do we want to subject
> ourselves to times when rates are really low and really high?"

>> -----
> POWER DEREGULATION CHRONOLOGY --
> -April 1994: California Public Utilities Commission indicates it favors deregulation.
> -October 1995: Framework of deregulation laid out in memorandums between large users,
> energy providers and utilities. --
> -January 1996: Bills introduced in legislature to codify
> deregulation plan. --
> -August 1996: The "Steve Peace death march" hashes out fine points of law. It passes both
> houses unanimously. --
> -Sept. 23, 1996: Gov. Pete Wilson signs the deregulation bill. --
> -April 1, 1998: After a four-month delay, deregulation begins. --
> -June 2000: San Diego has satisfied conditions for deregulation, and the rate cap there is
> lifted. Shortages drive prices up 300 percent in some cases. --
> -September 2000: The utilities begin to warn of billions in mounting debt and seek an end
> to the rate cap that has prevented them from passing costs on to customers. --
> -November, December 2000: More shortages put energy system in state of perpetual crisis,
> despite fall being a season of traditional low demand; state regulators consider
> utilities' requests for rate increases. A decision is expected Jan. 4.

> ----- PLAYERS IN THE DEREGULATION DRAMA --
> -Steve Peace:
> Took control of the legislative process while a state senator and drove
> deregulation into law. --
> -D.J. Smith:
> Lobbyist for large, industrial electricity customers and an early
> advocate of deregulation. --
> -Diane Martinez:
> As state senator, helped with the deregulation legislation. --
> -Greg Conlan:
> Sympathetic to industrial consumers with high bills while serving on
> the California Public Utilities Commission. --
> -Pete Wilson:
> Saw deregulation as an answer to California's then-ailing economy. --
> -Kenneth Lay:
> Noted in 1997, as chief executive of Enron Corp. in Houston, that
> little competition had emerged. "It's like California announced a party but
> nobody's showing up," he said. --
> -Gordon Smith:
> As chief executive of PG&E, supported deregulation, at one point noting
> there had been a "ceiling on our profits" under the old system.
> E-mail Christian Berthelsen at cberthelsen@sfchronicle.com.
> -----
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Nickoloff, Peter

From: Nickoloff, Peter
Sent: Tuesday, December 11, 2001 5:37 PM
To: Schultheiss, Heidilynne
Subject: Enron hearing

Two subcommittees of the House Financial Services Committee are holding a hearing on Enron tomorrow morning (12/12) at 10:00 in room 2128 Rayburn. The press release is copied below. I was going to go, but I want to be around here to take care of the Tax appendix and the transmittal letter, and to get the report into final clearance. Just letting you know about the hearing in case you were interested and wanted to go.

PN

	CURRENCY Committee on
--	------------------------------

Financial Services

Michael G. Oxley, Chairman

For Immediate Release: Tuesday, December 11, 2001	Contact: Peggy Peterson at 226-0471
-------------------------------------------------------------	--------------------------------------------

**Two Financial Services Subcommittees
To Begin Enron Investigation Wednesday**

On the heels of Enron's bankruptcy filing, the House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises and the Subcommittee on Oversight and Investigations will hold a hearing at 10 a.m. Wednesday, December 12, in Room 2128 of the Rayburn House Office Building.

Entitled "The Enron Collapse: Impact on Investors and Financial Markets," the hearing will begin the Committee's investigation into one of the largest company collapses in history. Among the subjects to be investigated are the impact on commodity markets, the reasons behind Enron's overstated earnings, mishandling of the employee 401 (k) plan, potential securities fraud, and accounting irregularities.

Scheduled to testify are:

Panel I

- Robert K. Herdman, Chief Accountant, Securities and Exchange Commission

Panel II

- Joseph F. Berardino, Chief Executive Officer, Arthur Andersen LLP
- Charles L. Hill, Director of Research, Thomson Financial/First Call
- Richard Trumka, Secretary-Treasurer, AFL-CIO

###

Tracking:

Recipient
Schultheiss, Heidlynn

Read
Read: 12/12/01 9:57 AM

Nickoloff, Peter

From: Nickoloff, Peter
Sent: Thursday, January 10, 2002 1:16 PM
To: Carleton, Norman; Schultheiss, Heidilynne
Subject: Enron Chairman Gave Warning to Bush Officials on Company's Collapse.htm



Enron Chairman Gave
Warning to...

www.nytimes.com

The New York Times
ON THE WEB

January 10, 2002

Enron Chairman Gave Warning to Bush Officials on Company's Collapse

By THE ASSOCIATED PRESS

Filed at 12:57 p.m. ET

WASHINGTON (AP) -- Enron ([news/quote](#)) Chairman Kenneth L. Lay reached out to two of President Bush's Cabinet officers when the energy company was collapsing, the White House disclosed Thursday as the Justice Department opened a criminal investigation of Enron's bankruptcy.

Bush, who received significant campaign contributions from Lay and other Enron executives, said he himself has never discussed Enron's financial problems with its embattled corporate chairman. The president said he last saw Lay in Texas at spring fund-raiser for former first lady Barbara Bush's literacy foundation.

Lay also was among a group of some 20 business leaders who came to the White House early in the Bush administration to discuss the state of the economy, Bush said.

Many Enron employees lost their life savings when the company filed for bankruptcy Dec. 2.

"What anybody's going to find out is that this administration will fully investigate issues such as the Enron bankruptcy, to make sure we can learn from the past and make sure workers are protected," Bush said.

But Lay did seek the ear of other top-level administration officials last fall.

According to White House press secretary Ari Fleischer, Lay telephoned Treasury Secretary Paul O'Neill amid Enron's collapse "to advise him about his concern about the obligations of Enron and whether they would be able to meet those obligations."

Lay also told O'Neill that Enron "was heading to bankruptcy," Fleischer said.

O'Neill received calls from Lay on Oct. 28 and Nov. 8, said Treasury spokeswoman Michele Davis. It was on Oct. 16 that Enron made its stunning disclosure of a \$638 million third-quarter loss.

In a separate phone call to Commerce Secretary Don Evans, Lay similarly

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worried that the company might have to default on its obligations. He brought to the secretary's attention "that he was having problems with his bond rating and he was worried about its impact on the energy sector," Fleischer said.

After that conversation, Evans spoke to O'Neill "and they both agreed no action should be taken to intervene with their bond holders," Fleischer said.

The spokesman had said Wednesday he did not know of anyone in the White House who discussed Enron's financial situation.

Fleischer also brushed aside talk of any conflict in the Justice Department investigation and said there was no reason to turn the probe over to a special counsel.

Lay gave \$25,000 to a leadership committee headed by then-senator and now Attorney General John Ashcroft, according to the Center for Public Integrity.

An attorney for Enron welcomed Ashcroft's inquiry, the latest in a series of governmental probes into the company's demise, saying the investigation would "bring light to the facts."

"We want to get to the bottom of this too," said Robert Bennett, a Washington attorney representing the Houston-based company. "A lot of decent and honorable people work at Enron and we should wait until the facts are out."

Bush ordered a separate review Thursday of pension and corporate disclosure rules that could jeopardize workers' savings. "There has been a wave of bankruptcies that have caused many workers to lose their pensions and that is deeply troubling to me," Bush said.

The Justice Department is forming a national task force to look into the company's dealings. The group will be headed by lawyers at the department's criminal division and include prosecutors in Houston, San Francisco, New York and several other cities, said a Justice Department official, speaking on condition of anonymity.

The official declined to say when the investigation began. Enron faces civil investigations by the Labor Department and the Securities and Exchange Commission and subpoenas from congressional committees.

All are looking into the energy trading company's collapse, the largest bankruptcy filing in U.S. history.

The failure hit employees and investors hard. Workers were prohibited from selling company stock from their Enron-heavy 401(k) retirement accounts as the company's stock plummeted. Many lost their life's savings.

Enron executives cashed out more than \$1 billion in stock when it was near its peak.

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Former Enron chief executive Jeffrey Skilling, who left the helm nearly two months before the company's swift descent, welcomes the investigation, said spokeswoman Judy Leon. Skilling has said he had no idea, despite Enron's falling stock values, that the company was on the brink of failure.

Formed in 1985, Enron had 20,000 employees and was once the world's top buyer and seller of natural gas and the largest electricity marketer in the United States. It also marketed coal, pulp, paper, plastics, metals and fiber-optic bandwidth.

One likely focus of the Justice Department investigation is possible fraud based on Enron's heavy reliance on off-balance-sheet partnerships which took on Enron debt. The partnerships masked Enron's financial problems and left its credit ratings healthy so it could obtain the cash and credit crucial to running its trading business.

The Houston-based company went bankrupt after its credit collapsed and its main rival, Dynegy Inc. (news/quote), backed out of an \$8.4 billion buyout plan late last year.

Just a year ago, stock of Enron, the nation's largest buyer and seller of natural gas, traded at \$85 per share. Today it is less than \$1.

Lay has close ties to Bush and his father, the former president. Lay was a top contributor to the younger Bush's 2000 presidential campaign.

The company played a key role earlier this year when a White House task force met with business executives and other interests to fashion a national energy policy. The task force was headed by Vice President Dick Cheney.

^-----

On the Net:

<http://www.enron.com>

<http://usdoj.gov>

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1/15/02

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Nickoloff, Peter

From: Nickoloff, Peter
Sent: Thursday, December 13, 2001 2:44 PM
To: Eichner, Matthew
Subject: RE: WSJ on Enron

Thanks

-----Original Message-----

From: Eichner, Matthew
Sent: Thursday, December 13, 2001 2:35 PM
To: Schultheiss, HeidiLynne; Nickoloff, Peter; Carleton, Norman
Subject: WSJ on Enron

Here's today's article in electronic form...

<< File: wsj.pdf >>

Tracking:	Recipient	Read
	Eichner, Matthew	Read: 12/13/01 2:44 PM

Nickoloff, Peter

From: Eichner, Matthew
Sent: Thursday, December 13, 2001 2:45 PM
To: Nickoloff, Peter
Subject: RE: WSJ on Enron

Sure. Having subscribed to the WSJ online, I'm happy to send a pdf or hyperlink of an article any time you wish. Just let me know.

-----Original Message-----

From: Nickoloff, Peter
Sent: Thursday, December 13, 2001 2:44 PM
To: Eichner, Matthew
Subject: RE: WSJ on Enron

Thanks

-----Original Message-----

From: Eichner, Matthew
Sent: Thursday, December 13, 2001 2:35 PM
To: Schultheiss, Heidi Lynne; Nickoloff, Peter; Carleton, Norman
Subject: WSJ on Enron

Here's today's article in electronic form...

<< File: wsj.pdf >>

Nickoloff, Peter

From: Wiedman, Mark
Sent: Friday, January 11, 2002 9:10 AM
To: Carleton, Norman; Schultheiss, Heidilynne
Cc: Nickoloff, Peter; Bitsberger, Timothy; Stokes, Veronica
Subject: enron meeting -- 12:00?

Tim would like to go over the Enron paper you folks put together at 12. Can you make that?

Nickoloff, Peter

From: Wiedman, Mark
Sent: Friday, January 11, 2002 10:30 AM
To: Carleton, Norman; Bitsberger, Timothy; Schultheiss, Heidilynne; Nickoloff, Peter
Subject: RE: enron meeting -- 12:00?

[(b)(5)]

Thanks.

-----Original Message-----

From: Carleton, Norman <Norman.Carleton@do.treas.gov>
To: Wiedman, Mark <Mark.Wiedman@do.treas.gov>
CC: Schultheiss, Heidilynne <Heidilynne.Schultheiss@do.treas.gov>
Sent: Fri Jan 11 09:52:30 2002
Subject: RE: enron meeting -- 12:00?

[(b)(5)]

-----Original Message-----

From: Wiedman, Mark
Sent: Friday, January 11, 2002 9:10 AM
To: Carleton, Norman; Schultheiss, Heidilynne
Cc: Nickoloff, Peter; Bitsberger, Timothy; Stokes, Veronica
Subject: enron meeting -- 12:00?

Tim would like to go over the Enron paper you folks put together at 12. Can you make that?

Nickoloff, Peter

From: Stokes, Veronica
Sent: Friday, January 11, 2002 11:42 AM
To: Wiedman, Mark; Carleton, Norman; Schultheiss, Heidilynne
Cc: Nickoloff, Peter; Bitsberger, Timothy
Subject: RE: enron meeting -- 12:00?

This meeting is now at 12:15.

-----Original Message-----

From: Wiedman, Mark
Sent: Friday, January 11, 2002 9:10 AM
To: Carleton, Norman; Schultheiss, Heidilynne
Cc: Nickoloff, Peter; Bitsberger, Timothy; Stokes, Veronica
Subject: enron meeting -- 12:00?

Tim would like to go over the Enron paper you folks put together at 12. Can you make that?

Nickoloff, Peter

From: Devlin, Christine
Sent: Thursday, January 17, 2002 9:15 AM
To: Auffhauser, David; Clarida, Richard; Fisher, Peter; Flanagan, Rosemary; Hubbard, Glenn; Huffman, Lucy; Kroszner, Randall; Malignen, Pippa; Murphy, Edward; Myers, Barbara; Nickoloff, Peter; Roseboro, Brian; Smetters, Kent; Warshawsky, Mark; Wiedman, Mark; Worth, John
Subject: FW: [Fwd: AICPA response to Enron Bankruptcy]

FYI - from Mark Warshawsky

-----Original Message-----
From: Warshawsky, Mark
Sent: Thursday, January 17, 2002 9:12 AM
To: Devlin, Christine
Subject: FW: [Fwd: AICPA response to Enron Bankruptcy]

FYI.

-----Original Message-----
From: Fred Mittelstaedt [mailto:H.F.Mittelstaedt.1@nd.edu]
Sent: Thursday, January 17, 2002 8:28 AM
To: Mark.Warshawsky@do.treas.gov
Subject: [Fwd: AICPA response to Enron Bankruptcy]

I thought that you might like to see this. Fred

AICPA_Management wrote:

> January 16, 2002
>
>
> To Members of the AICPA:
>
> As you are aware, the bankruptcy of Enron has put unprecedented focus on the accounting profession and its
> self-regulatory system. The AICPA, in recognition of its public interest responsibilities, and at the insistence of the
> SEC, is developing a new regulatory model that represents a significant and substantive change from current
> self-regulatory processes. This model would affect all firms doing SEC audits.
>
> The accounting profession has a successful, 100-year tradition of self-regulation, which has contributed to the most
> respected financial reporting system in the world. This is a tradition to which we have been and are deeply committed.
> To maintain this commitment to excellence and support public confidence in America's security markets, we have always
> responded to valid criticisms and addressed market changes and environmental issues that demanded our scrutiny.
>
> With this commitment in mind, we are diligently working to improve the profession's peer review and disciplinary process
> as it relates to auditors of SEC registrants. Our objectives are to include public participation and increase
> transparency, effectiveness, and timeliness.
>
> While the current self-regulatory model provides for significant public oversight over the SECPS peer review process,
> there is no public oversight over discipline. Under the new model being explored, there would be significant public

> participation in the peer review and disciplinary systems for members and firms auditing SEC registrants.

>
> The new disciplinary and peer review system for members and firms auditing SEC registrants would be managed by a Board,
> a majority of whom would be public members.

>
> The new peer review system would enhance the reviews for the largest firms, requiring a more rigorous and continuous
> form of monitoring the quality of the audit process. The reviews would be administered by the staff of the new Board.

>
> On Thursday, January 17, 2002, SEC Chairman Harvey Pitt will hold a press conference regarding these matters. As a
> result, we expect stories to run in all national and trade media. The developments over the next few weeks and months
> will no doubt be rapid. We will keep you updated through [Http://www.AICPA.org](http://www.AICPA.org) as solutions are solidified.

>
> The AICPA has been and will remain actively engaged in developing a new model for those conducting SEC audits and in
> demonstrating leadership and responsibility to the public interest.

>
>
> James G. Castellano, CPA
> Chair of the AICPA Board of Directors

>
>
> Barry C. Melancon, CPA
> AICPA President and CEO

>
>
>

--
H. Fred Mittelstaedt
Professor of Accountancy
374 Mendoza College of Business
University of Notre Dame
Notre Dame IN 46556-5646

E-mail: mittelstaedt.1@nd.edu
Phone: (219) 631-5087
FAX: (219) 631-5255

Schultheiss, Heidilynne

From: Squitieri, Ray
Sent: Thursday, December 21, 2000 2:13 PM
To: Cetina, Jill; Greene, Michelle; Gross, Jared; Nickoloff, Peter; Paulus, Michael; Sachs, Lee; Schultheiss, Heidilynne
Cc: Soares, Chris
Subject: LA times 12/21 on power crisis developments



Special Report
California's De...

This is OK, but better is today's WSJ article, page 2.

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Deepening Crisis Raises Specter of Power Rationing

■ Electricity: Amid fears that blackouts might begin this weekend--and possible downgrading of big utilities' credit ratings--pressure on state to let rates rise grows intense.

By DAN MORAINCHRIS KRAUL and MITCHELL LANDSBERG, Times Staff Writers

California's energy crisis took an ominous turn Wednesday when Southern California Edison threatened to begin rationing electricity over the Christmas weekend and a major Wall Street agency warned that it might downgrade the credit ratings of the state's two biggest utilities to junk bond status.

With the power emergency beginning to devolve into a political game of chicken, the California Public Utilities Commission was expected to begin laying the groundwork today for an electricity rate increase that could be approved as early as Jan. 4. How much more consumers will be paying in the months ahead is still unknown.

A top aide to Gov. Gray Davis said Edison warned the administration that unless speedy action is taken, the utility could be forced to begin rationing electricity as soon as Friday, a step that could leave some of its 11 million customers without power for hours at a time. Davis has said he fears that power could be cut to traffic lights and even hospitals.

For weeks, state regulators have been warning of rolling blackouts throughout California because of inadequate supply. But in Edison's case, apparently the problem is not a shortage of electricity, but of money to buy it. Turning off the juice would save the company the cost of purchasing electricity in the state's haywire wholesale market.

A spokesman for Edison would neither confirm nor deny the company's rationing plan. He would only say that the governor's aide, who is involved in the effort to solve the crisis, was wrong about the timing.

"I'm only responding to the idea we'd start rationing on Friday," Steve Conroy said. "There is no such plan." Asked if rationing could be imposed after Friday, he replied, "It's unclear what circumstances would dictate

x

- [Deepening Crisis Raises Specter of Power Rationing](#)
- [Rate Hike Needed to Rescue Electric Utilities, Davis Says \(12/20/00\)](#)
- [Damage Control a Priority for Davis, Utilities \(12/20/00\)](#)
- [Willing to Conserve, but Only if Tree Is Bright \(12/20/00\)](#)
- [Power Sales to California Heat Tempers in Northwest \(12/19/00\)](#)
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- [Power Crisis Puts Spotlight on Middlemen \(12/18/00\)](#)
- [State Critical as U.S. Tries to Keep Power On \(12/16/00\)](#)
- [U.S. Sets Rules to Ensure Electricity Sales to State \(12/15/00\)](#)
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- [State Waits for Break in Power Crisis \(12/12/00\)](#)
- [How State's Consumers Lost With Electricity Deregulation \(12/9/00\)](#)
- [Under Threat of Blackouts, Some Users Conserve but Others Make Light \(12/9/00\)](#)
- [Graphic: Power Plants' Estimated Profits \(12/9/00\)](#)
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initiation of a rationing plan at this time."

The prospect of utility blackouts has been discussed privately with state officials during several meetings, including one Tuesday. Davis met for several hours with legislative leaders and top executives of Pacific Gas & Electric and Edison. Among those attending was former Secretary of State Warren Christopher, a member of Edison's board of directors.

Christopher gave what one participant described as a lecture to Davis about the nature of leadership, and the need for the governor to take control of the situation.

"My sense is that they [Edison officials] are quite serious," said the participant. "There is no question that what Edison said will come to pass. If there is no [state] action, you only can buy what you can buy."

The Public Utilities Commission, which will meet in San Francisco, does not have the authority to immediately grant requests by Edison and PG&E, which have asked for rate increases of between 10% and 17%.

However, Davis' aide, requesting anonymity, said the commission intends to act quickly on a series of requirements leading up to a rate increase, which could be granted at its Jan. 4 meeting or later in the month.

Although Davis has not said what he would do if Edison makes good on its threat of blackouts, a California governor has extraordinary emergency power.

The state could use its own purchasing power to buy electricity for use in California. In the extreme--a step that no official will discuss--Davis could direct the National Guard and California Highway Patrol to seize power plants within the state's borders and order that they supply electricity.

While those measures remain in the hypothetical realm, most discussion on Wednesday swirled around the inevitability of bigger bills for utility customers.

As the rate increase began to take on the buzz of inevitability, a coalition of consumer groups launched a withering attack on Davis for what they perceived to be his role as an advocate for the utilities.

"This falls into a new, lower level of sellout than I've ever seen . . . in Sacramento," said Harry Snyder, a top official in the West Coast branch of Consumers Union, the advocacy group that publishes Consumer Reports magazine. He said he was particularly outraged that Davis had been negotiating with the utilities over the possibility of a rate hike without including any representatives of the state's ratepayers.

"It's been easy to solve the problem," Snyder said. "You get a bunch of people in a room, and the person who's paying the bills isn't in the room. Then it's easy."

Davis said he had no choice but to negotiate one-on-one with the utilities. Because the utilities sued the PUC recently for blocking rate relief, the talks are being held

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under the rubric of legal settlement negotiations. Under the law, he said, third parties aren't allowed to participate.

But Davis promised to involve the public soon. In a brief interview with The Times, the governor said his office was starting to reach out to consumer groups. "At the end of the day, consumers will be full partners in the decision as to whether the utilities survive and the lights stay on," he said.

Representatives of two consumer groups said Davis' office had called them to set up discussions.

Other Western States Not Sympathetic

As the rhetoric escalated Wednesday, Western governors met in Denver to consider broader solutions to what is fast becoming a regionwide crisis--and to take turns pummeling California for its role as the 800-pound, electron-eating gorilla.

"Frankly," said Wyoming Gov. Jim Geringer, "if we got to the point where everyone is suffering like this and we found out that California wasn't doing absolutely everything to solve its problems, we'd start to see some real resentment."

California was a national pioneer when it passed legislation deregulating its electricity market in 1996, freeing its major investor-owned utilities from government price restrictions on energy. That experience turned sour this year when electricity prices, instead of going down, soared skyward, and electricity supplies in California could not accommodate the load.

Edison said Tuesday that it would be forced to declare bankruptcy next month if it is not granted relief in the form of a rate hike and a federal cap on energy prices. PG&E officials avoided use of the word "bankruptcy" but said they would soon be unable to buy power to serve their customers.

The Los Angeles Department of Water and Power and some other municipally owned utilities have been largely unscathed by the crisis. DWP, in fact, announced Wednesday that it was running at a sizable, 1,000-megawatt surplus, most of which was being sold to help its ailing counterparts such as Edison and PG&E.

Standard & Poor's, a major Wall Street debt-rating agency, agreed Wednesday that Edison and PG&E are headed toward insolvency, and said it could downgrade the utilities' credit ratings as early as today unless state officials take steps to increase electric rates paid by consumers.

The two utilities say they have spent \$8 billion more on wholesale electricity purchases than they have been allowed to collect from consumers because rates are frozen under terms of the state's electricity deregulation. Consumer groups say the true figure is probably half

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that much.

S&P, which in October put both utilities on "negative watch," said the utilities are "running out of cash" and could default on payments due on \$15 billion in total direct debt early next year. As a result, S&P warned that it could downgrade the two utilities from their current sterling "A+" ratings to "below investment grade"--"reflecting the likelihood of imminent default"--unless it gets clear signals within the next 24 to 48 hours that rates are headed upward.

Such a downgrade could increase the utilities' costs for borrowing money and depress their stock prices. It also could compound California's problems by making out-of-state power generators even warier of selling energy in the state, which some companies are doing only because U.S. Energy Secretary Bill Richardson has ordered them to do so.

"We are not advocates--not taking a position either on the side of the utilities or ratepayers--but keeping investors apprised as to the risks associated with their investments," said David Bodek, a director of Standard & Poor's in New York.

The California Public Utilities Commission cannot act unilaterally to raise consumer rates at its meeting today. But to avoid the downgrade, Paul Fremont, a utility analyst with the investment firm Jefferies & Co., said the commission must at the very least send an unmistakable signal that consumer rates are headed upward and that the utilities will recoup some of their losses.

Severin Borenstein, director of the UC Energy Institute in Berkeley, said the PUC has little choice but to authorize an increase to avert the utilities' running aground.

"It's clearly going to happen--the only question is the structure of what's going to happen and how much," he said. "We clearly are not going to keep rates at this level. Some pain will be borne by consumers; we are just arguing over how much."

The perception of the utilities' problems worsened in the last week after Edison disclosed it was having difficulty finding loans to finance the continuing purchases of wholesale electricity in light of the growing pile of debt related to undercollections.

PG&E had to borrow \$2.7 billion in such funds in October alone, and Edison \$1.3 billion. The critical date for refinancing that debt is "just weeks away," Bodek said, yet it is not at all clear that lenders will front the money without action by California to assure investors of repayment.

Another Stage 2 Emergency Declared

The state's electricity reserves sank low enough Wednesday afternoon to trigger a Stage 2 emergency,

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the 34th of the year. The California Independent System Operator, which is charged with keeping energy flowing through the state, was forced to declare the emergency in large part due to congestion on the main electricity transmission path that brings power from Southern California plants to Northern California.

Anticipating just such a problem, Cal-ISO on Tuesday had asked the U.S. Department of Energy to use its emergency authority and force power generators across the West to sell any surplus electricity to California.

The request, which was quickly granted, helped bring the state enough electricity Wednesday to serve between 300,000 and 400,000 homes.

Most of the extra supplies came from small power plants within California that had not been running at full capacity because their federally mandated contracts did not allow them to recover the full cost of the natural gas used to generate the electricity. The U.S. Energy Department's emergency order allows those power plant owners to get a price high enough to cover their gas prices, which have jumped tremendously in the last several months.

U.S. Energy Secretary Richardson said Wednesday that he was extending his order by a week. Speaking to the Western governors in Denver, he proposed a regional electricity price cap. The governors rejected the idea, offering a five-point plan of their own to stave off what many called an impending energy crisis in a region that holds eight of the nation's 10 fastest growing states.

The tone of the five hours of meetings among governors, utilities officials and federal regulators was far from neighborly toward California, whose absent officials were scolded for not having done enough to solve their own problems. Some governors wondered aloud why their constituents should have to pay for a neighboring state's inaction.

"In Colorado, we've been building the power plants to serve our energy needs," said Gov. Bill Owens. "It's tough, no one wants one in their backyard. It takes political will. Gov. Davis is a new governor but you can't brag on the one hand that California is No. 3 or No. 4 in the world as an economic force and on the other can't supply your own energy needs. I don't want Coloradans to pay higher rates because someone else can't build plants and transmission stations. It's going to take political will to build the generating capacity."

Some also questioned whether California was operating its power stations at full capacity and whether the state's citizens were being asked to conserve energy as much as their smaller, less affluent neighbors in the interior West.

In its five-point action plan, the group said California must take prompt steps to conserve energy and

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straighten out its unraveling market.

The governor's proposals also called for an investigation by the Federal Energy Regulatory Commission of the implications of regional price caps and bilateral contracts, and an answer as to why Western electricity prices are higher than in the rest of the nation. The group asked President-elect George W. Bush to form a team to work with the governors on the issue.

Davis already has said he intends to earmark \$1 billion in next year's budget for energy conservation efforts. The initiative could include tax credits for people to buy energy-efficient appliances.

The governor collected \$464,000 in campaign donations from energy producers, marketers and utilities between the time he took office in January 1999 and last June. Unions representing electrical workers, including many who work for utilities, gave him \$113,500 during his first 18 months in office.

Davis won't report any donations from the second half of 2000 until early next year.

Utilities themselves have accounted for \$239,263 of that amount. Edison accounted for \$105,000. PG&E reported giving his campaign \$72,500, and Sempra, the parent company of SDG&E, has given him \$56,763.

Enron, the Houston-based firm that is among those that have profited during California's energy crisis, has given Davis' campaign \$42,000.

The utilities also have a large stable of lobbyists. PG&E is among the clients of Davis' 1998 campaign finance chairman, Darius Anderson.

Morain reported from Sacramento, Kraul and Landsberg from Los Angeles. Also contributing to this story were Times staff writers Nancy Vogel in Sacramento, Julie Cart in Denver and Stuart Silverstein and researcher Vicki Gallay in Los Angeles.

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Schultheiss, Heidilynne

From: DaleC [DaleC@SEC.GOV]
Sent: Tuesday, January 02, 2001 1:54 PM
To: heidilynne.schultheiss@do.treas.gov
Subject: FW: SF Gate: Genesis Of State's Energy Fiasco

HL: FYI.

CD

Forward Header

Subject: FW: SF Gate: Genesis Of State's Energy Fiasco/String of bad
Author: "Manicke; Robert" <SMTP:Manicke.Robert@EPEnergy.com> at OPC
Date: 01/02/2001 10:23 AM

> -----Original Message-----

> From: Cooper, Sean
> Sent: Tuesday, January 02, 2001 5:55 AM
> To: EPME All
> Subject: SF Gate: Genesis Of State's Energy Fiasco/String of bad
> decisions on deregulation could end up costing consumers \$40 billion
>
> Excellent summary of events leading to the current situation in
> California.
>
> This article was sent to you by someone who found it on SF Gate.
> The original article can be found on SFGate.com here:
> <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2000/12/>

> 31/MN167927.DTL

> -----
> December 31, 2000 (SF Chronicle)
> Genesis Of State's Energy Fiasco/String of bad decisions on deregulation
> could end up costing consumers \$40 billion
> Christian Berthelsen

>
> Next month, about 10 million Californians may begin paying as much as
> 30
> percent more for electricity, in a maddening coda to one of the most
> costly public policy mistakes ever made.
> When the state's leaders started moving the energy system toward
> deregulation six years ago, they envisioned a brand new day in which
> utility companies' long-standing monopoly would be broken and rates would
> decline by as much as 25 percent.
> Instead, when it is over, it may cost customers of the state's
> investor-
> owned utilities \$40 billion, perhaps more. In the coming year, it could
> harm the world's sixth-largest economy and send a ripple effect throughout

> the globe for those dependent on California's continued prosperity.
> This is the story of what went wrong with deregulation, and how
> planning
> lapses, serious policy blunders -- and warnings that came too late -- set
> California's two main utilities, Pacific Gas & Electric Co. and Southern
> California Edison, toward a train wreck.
> Power plant construction lagged while demand expanded. Leaders
> misjudged
> how much competition there would be to supply California with juice. And

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> flawed deregulation laws left utilities and their customers at the mercy
> of power companies, extracting the highest price for electricity.
> "There was a blind adherence to free-market ideology that couldn't
> possibly work," said Eugene Coyle, a former utility securities analyst,
> economist and early opponent of deregulation. "There were poorly
> thought-out specifics."
> In the early 1990s, businesses were fleeing the state amid the worst
> economic times since the Great Depression. Energy rates were 50 percent
> higher than they were on average across the nation, because of commitments

> to more expensive, environmentally friendly power and cost overruns for
> nuclear power plant construction.
> Large customers such as steel makers, mining concerns and cement
> makers,
> for which electricity costs make up 25 percent of their overhead, saw that

> independent power producers were offering power much more cheaply. They
> began to insist on change.
> The United States had deregulated long-distance telephone service,
> airlines and a host of other industries, often with resulting competition
> that was a boon to consumers. Why not do the same for electricity?
> So California embarked on a pioneering experiment. In 1993 and 1994,
> the
> California Public Utilities Commission began to draft such a policy. It
> allowed large users to buy power directly from independent producers and
> froze customer rates at artificially high levels so utilities could
> recover their investments in costly plants.
> The utilities sought to have the terms codified in law, and in early
> 1996,
> a number of bills were introduced in the Legislature to do so.
>
> Some observers say that what happened next contributed to the overall
> plan's flaws. Months passed while the discussion meandered and faltered,
> and at one point it even appeared that no law would be passed.
> That's when state Sen. Steve Peace took the reins and tried to make
> something happen.
> The San Diego legislator already had won the respect of his colleagues
> for
> his work on another complex piece of legislation, reform of the workers'
> compensation system.
> During a hurried two-week conference in August -- dubbed the "Steve
> Peace
> death march" for his propensity to keep negotiators at the table late into

> the night -- the fine points of the energy law were hashed out.
> Legislators entrusted their judgment to Peace and the few colleagues
> who
> worked on the bill. There was an abiding sense by a number of participants

> that few members of either house knew what was in the bill or even
> understood it. It was passed by both houses of the Legislature unanimously

> and signed into law the following month.
> "People were grateful to Peace and (former Sen. Diane) Martinez for
> taking
> it on," said Debra Bowen, D-Los Angeles, the current chair of the Senate
> energy committee. "Historically, utilities were a pretty boring topic, and

> I think term limits factored into it."
> The law was to end the monopolistic control that utilities held over
> both
> power production and supply by requiring them to sell off their
> generators. It set rates artificially high so they could recover money
> from bad investments. And it gave them nearly two years to prepare for
> competition.
> Moreover, residential customers would be granted an immediate 10
> percent

> rate cut.
> The system took effect April 1, 1998, and, at first, things seemed to
> work
> well. Soon, though, there were warning signs.
>
> It turned out the residential rate cut was actually going to be
> financed
> with \$7.5 billion in bonds that customers had to pay off. So the reduction
>
> in real terms was closer to only 3 percent, not 10 percent.
> Then in early 1999, the California Energy Commission, which tracks the
> state's supply and demand, was warning of coming supply shortfalls.
> Demand was skyrocketing, the agency pointed out in a Senate energy
> committee hearing, and no new significant generation had been built in a
> decade. Without more power, California was going to run out. But
> construction of new power plants takes at least two years from start to
> finish, and the state was already running behind in accommodating the
> growth.
> Back in the early 1990s, however, the energy commission had painted a
> far
> different picture. At that time, California had an oversupply of power,
> perhaps as much as 30 percent more than it needed.
> There was so much that when the utilities commission set up an auction
> for
> the construction of new facilities in the early 1990s, Edison and San
> Diego Gas and Electric Co. appealed to the Federal Energy Regulatory
> Commission to halt the auction, arguing there was already too much
> generation in California. The FERC obliged.
> "If anybody had told us in 1996, or even in 1998, that we would
> experience
> [such] load increases, we would have said, 'You're crazy,' " said D.J.
> Smith, a lobbyist for the California Large Energy Consumers Association
> and one of the top advocates of deregulation. "Nobody had ever seen load
> go up like that in a mature situation."
> Still, production figures from Edison Electric Institute, which provide
>
> a
> crude indicator of demand, show consumption grew by 4 percent in 1996, 3.4
> percent in 1997, nearly 5 percent in 1999, and a whopping 10 percent this
> year.
> And surrounding states, including Arizona, Nevada, Oregon and
> Washington,
> began to experience the same demand growth. Since California imported as
> much as 25 percent of its power from those states, the amount available
> was suddenly reduced by as much as half.
> But considering the long time it takes to build plants, in part because
>
> of
> public opposition, the warnings were too little, too late. In fact, the
> situation remained far off the radar screen of consumers, since most were
> still insulated from price spikes by a rate freeze.
> Then this summer, things started to spiral out of control.
>
> San Diego was the first region to meet the conditions necessary for
> full
> deregulation, and as hot summer months added to demand, customers' bills
> suddenly tripled.
> The debt load of PG&E and Edison began to balloon -- to what will be an
>
> estimated \$11 billion by the end of 2000 -- as they borrowed to pay for
> power while being barred from passing that cost on to consumers.
> Suddenly, the glow of deregulation had lost its luster.
> It immediately became clear that California's failure to build power
> plants as its rapidly growing economy pushed demand upward was a serious
> problem. Increasingly, the state's growing technology economy depended on
> electricity, and new home construction concentrated in hot areas like

> Riverside and San Bernardino counties, where air conditioning is a must.
> And for all the talk of competition, there was a serious flaw that made
> the market singularly uncompetitive.
> In order to encourage generators to create as much power as possible,
> deregulation guaranteed the highest price for wholesale electricity.
> Through a practice known as the "market clearing price," the last bidders
> -- who are invariably the most expensive -- set the price everyone would
> receive.
> In other words, if the first generator bids \$30 for a certain amount of
> megawatts but the last bids \$100, those two bidders and everyone in
> between receive \$100. As the wholesale price of electricity skyrocketed to
> \$1,500 per megawatt hour this month from \$30 before the storm, the high
> cost has been compounded by the fact that everyone receives that amount.
> Further, the law had encouraged utilities to sell their generators and
> existing electricity supply without guaranteeing access to affordable
> power.
> Rather than arranging to buy power on long-term contracts that could
> have
> saved money, they were put in the position of having to buy their power on
> a market where profit was the ultimate goal, and they and their consumers
> had to pay the price.
> Perhaps in the biggest misjudgment, policymakers neglected the huge
> amount
> of money it takes to run power companies and attract customers. Thus, they
> overestimated how much competition would flourish in the market.
> Running power companies is so costly -- \$500 million to build a new
> plant
> --
> that only a handful of companies bought into the market. And once they
> were here, the marketing cost of signing up new customers was
> astronomical.
> Indeed, since choice has become available to California, less than
> 1 percent of residential customers has changed electricity providers.
> The
> same goes for just 15 percent to 20 percent of industrial customers -- the
> class that advocated deregulation in the first place.
> At the end of the day, this experiment in deregulation has come at a
> staggering cost: \$40 billion. That includes the \$23 billion already paid
> by customers when rates were frozen at artificially high levels, and the
> \$7.5 billion in bonds financing consumers' own rate reduction.
> Now a new tab is running -- whatever share of the \$11 billion in debt
> that
> state utility regulators decide customers should pay.
>
> The state's leaders are now casting around desperately for solutions to
> put Humpty Dumpty back together again.
> The FERC is encouraging the utilities to enter long-term contracts with
> suppliers, and market clearing pricing is under review. The state's
> utilities commission will decide Jan. 4 how much of a rate increase to
> grant to PG&E and Edison. And a dozen or so power plants are under
> construction.
> Meanwhile, consumer advocates are backing a state ballot measure that
> would not only re-regulate utilities but essentially make energy supply a
> government function. And they are challenging the utilities' efforts to
> pass on their debts to consumers, noting they have also reaped windfall
> profits from selling electricity.
> For example, in the quarter covering the summer months when power costs
> first went haywire, PG&E's profits amounted to \$225 million, a 22 percent

> increase over the same period in the previous year.
> In the short term, the state is considering ways to encourage energy
> conservation the same way it did with water. And the question now being
> asked is whether a commodity as central to the well-being of the economy
> should ever have been placed almost entirely under the control of free
> enterprise.
> "There's a discussion on how much we want to rely on market forces
> alone
> when it comes to electricity," Bowen said. "Do we want to subject
> ourselves to times when rates are really low and really high?"
>
> -----
> POWER DEREGULATION CHRONOLOGY -- April 1994: California Public
> Utilities
> Commission indicates it favors deregulation. -- October 1995: Framework of
> deregulation laid out in memorandums between large users, energy providers
>
> and utilities. -- January 1996: Bills introduced in legislature to codify
> deregulation plan. -- August 1996: The "Steve Peace death march" hashes
> out fine points of law. It passes both houses unanimously. -- Sept. 23,
> 1996: Gov. Pete Wilson signs the deregulation bill. -- April 1, 1998:
> After a four-month delay, deregulation begins. -- June 2000: San Diego has
>
> satisfied conditions for deregulation, and the rate cap there is lifted.
> Shortages drive prices up 300 percent in some cases. -- September 2000:
> The utilities begin to warn of billions in mounting debt and seek an end
> to the rate cap that has prevented them from passing costs on to
> customers. -- November, December 2000: More shortages put energy system in
>
> state of perpetual crisis, despite fall being a season of traditional low
> demand; state regulators consider utilities' requests for rate increases.
> A decision is expected Jan. 4.
>
> ----- PLAYERS IN THE DEREGULATION DRAMA -- Steve Peace:
> Took control of the legislative process while a state senator and drove
> deregulation into law. -- D.J. Smith:
> Lobbyist for large, industrial electricity customers and an early
> advocate
> of deregulation. -- Diane Martinez:
> As state senator, helped with the deregulation legislation. -- Greg
> Conlan:
> Sympathetic to industrial consumers with high bills while serving on
> the
> California Public Utilities Commission. -- Pete Wilson:
> Saw deregulation as an answer to California's then-ailing economy. --
> Kenneth Lay:
> Noted in 1997, as chief executive of Enron Corp. in Houston, that
> little
> competition had emerged. "It's like California announced a party but
> nobody's showing up," he said. -- Gordon Smith:
> As chief executive of PG&E, supported deregulation, at one point noting
>
> there had been a "ceiling on our profits" under the old system.
> E-mail Christian Berthelsen at cberthelsen@sfchronicle.com.
> -----
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Schultheiss, Heidilynne

From: Squitieri, Ray
Sent: Tuesday, January 02, 2001 2:34 PM
To: Soares, Chris; Cetina, Jill; Greene, Michelle; Gross, Jared; Nickoloff, Peter; Paulus, Michael; Sachs, Lee; Schultheiss, Heidilynne
Subject: FW: California Hearings Continue, CPUC Decision Expected This Week

-----Original Message-----

From: Jone-Lin Wang [mailto:jwang@CERA.com]
Sent: Tuesday, January 02, 2001 2:31 PM
To: 'Ray.Squitieri@do.treas.gov'
Subject: FW: California Hearings Continue, CPUC Decision Expected This Week

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-----Original Message-----

From: IssueAlert [mailto:IssueAlert@scientech.com]
Sent: Tuesday, January 02, 2001 7:01 AM
Subject: California Hearings Continue, CPUC Decision Expected This Week

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IssueAlert for January 2, 2001

California Hearings Continue, CPUC Decision Expected This Week

**by Will McNamara
Director, Electric Industry Analysis**

Hearings aimed at giving consumer advocates and utility officials in California the chance to air their views on a looming electricity rate increase are expected to continue through today, setting the stage for a decision by regulators that very well may not please everyone. Officials from Southern California Edison (SCE) and Pacific Gas & Electric (PG&E) have asked the California Public Utilities Commission (CPUC) to grant immediate rate hikes of as much as 30 percent to help offset rising wholesale power prices. The CPUC board is expected to announce on Jan. 4 how much of rate hike it will allow, and under what terms.

Analysis: Despite the lull of the holiday week just now completed, the spotlight continues to grow more intense over California's energy market, both throughout the energy industry and across the mainstream media. As we wait with anticipation to hear what the CPUC will decide, let's recap some of the issues that will no doubt continue to cause great dissension among the primary players in California.

As has been well documented, PG&E and SCE are in a massive amount of debt due to uncollected costs they have accrued related to the purchase of power on the wholesale market. Due to rate freezes still in place, both utilities have been unable to charge customers for the dramatic increase in the price of wholesale power, which has placed them both on the brink of bankruptcy.

From several conversations with my contacts in California, here's my understanding of where the negotiations currently stand. The CPUC already has agreed in theory to a rate increase, but the sticking point is the specific amount of that increase. Reportedly, the CPUC and Gov. Gray Davis proposed a 15-percent rate hike to the two utilities. In sharp contrast, PG&E maintains that it needs to increase rates by as much as 40 percent, and SCE says that it wants an increase of 30 percent (or 76 percent over two years). In fact, PG&E already began notifying customers last week that it wants to boost their electric bills by that specific amount. Both utilities continue to argue that even if their proposed rate increases are accepted, they still may not be enough to cover wholesale costs, which are projected to rise through 2003 (see my IssueAlert from Dec. 29). In addition, PG&E and SCE also claim that their financial solvency still will

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not be guaranteed even if their rate increase proposals are accepted, and bankruptcy will be very likely if the CPUC only allows them to increase rates by 15 percent.

Over the last few weeks, pressure was put on the Federal Energy Regulatory Commission (FERC) to step in and solve the problem. However, FERC issued its own order in early December that mainly focused on mechanisms to keep power generators active in the state and did not adequately address the core issues of high wholesale prices and rate freezes. Due to the lukewarm response that FERC's order received, it has been generally concluded that the CPUC and Gov. Davis alone will have to solve the California energy crisis.

It is important to not overlook or discount the role that consumer advocates are playing in the negotiations. Harvey Rosenfield, a long-time critic of the state's utilities who led the failed attempt to overturn deregulation in California in 1998, remains very vocal that "the people of California should not have to pay one more penny to bail out the utilities for the mistakes they made." Consumer groups led by Rosenfield and Ralph Nader continue to put enormous pressure on Gov. Davis, a Democrat, to keep any rate increase given to the utilities to a minimum. In fact, last week Nader stated that Davis' political future "hangs by a kilowatt hour" and that any decisions made in California will "reverberate all over the country." In essence, consumer groups believe that utilities share the bulk of responsibility for the current mess in the state, as they played a large role in California's 1996 restructuring legislation. If mistakes were made in that legislation, consumer groups say, the utilities and not utility customers should be made to pay the price.

Speculation is growing that, on Jan. 4, the CPUC will approve an increase for extra costs that will be applied in increments over the course of 2001, resulting in an ultimate rate increase that is somewhere in the range of 15 percent to 30 percent (or more). This in effect will offer a compromise to both sides. The utilities will receive a rate increase closer to what they claim is necessary, and utility customers will not get slapped with an immediate, all-at-once increase in their electricity bills. However, the CPUC probably will not approve any back billing that the utilities have also demanded. Both PG&E and SCE have claimed that their stranded costs were probably paid off months ago, meaning that the rate freeze still in place for both utilities should have been lifted as a result. That theory being accurate, both companies want to bill their customers retroactively to the date that the rate freeze should have been lifted, which on its own could amount to several billions of dollars. Under the current arrangement, the rate freeze is scheduled to stay in effect until March 2002, unless lifted by the CPUC.

Meanwhile, the question about the financial solvency of both PG&E and SCE continues to loom. SCE's parent, Edison International, announced that it has eliminated its fourth-quarter dividend and reduced its work force by 400 jobs because of financial problems related to SCE. In a statement last week, PG&E CEO Gordon Smith acknowledged that PG&E has "virtually exhausted its financial resources" because it has borrowed on average \$1 million per hour to pay for power that it is obligated to provide to California consumers.

Both utilities have argued that the real cause of the problem in the state is the generators who unjustifiably continue to charge exorbitant rates for power on the wholesale market. There may be some validity to this theory as power generators who operate in California know that the state's IOUs have essentially been stripped of their own ability to generate power and thus are heavily dependent on power bought on the wholesale market. This has given an enormous amount of market power to the generators and allowed them to charge rates that are not reflective of their own costs. Some reports indicate that generators are charging as much as 30 times what it costs them to generate power. Yet, without a cap on wholesale rates, generators remain able to charge whatever price the market will bear.

Due to these high costs, some power generators have begun refusing to sell power to the California IOUs, out of fear that the utilities will not be able to pay their bills. In an ironic twist, the same companies that have expressed concern about selling power to PG&E and SCE actually own and control the plants that were divested by the two utilities as part of their agreements in the state's restructuring plan. Thus, companies outside of (and inside) California that own California plants are refusing to sell power back into the state, power produced at plants that were once owned by PG&E and SCE.

As a result, PG&E went on record last week saying that it may not have enough power to serve customers in February unless additional rulings come from the CPUC. PG&E says that it has enough power to supply customers through

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January, but that 15 to 20 suppliers have demanded payment up front before selling natural gas to the utility in February. Due to its current debt situation, PG&E claims that it cannot make any payments up front and thus may not be able to buy natural gas to serve its customers.

These issues have formed the landscape across which negotiations still rage on in California. Much pressure is now being placed on the CPUC to formulate an end-all solution to the state's problems, one that can appease all the dissenting stakeholders. Yet, much like FERC's order which was criticized for not going far enough, the CPUC is particularly challenged to make decisions that can once and for all solve the state's structural problems. As Enron's Kenneth Lay said a few months ago, the CPUC must avoid "putting band-aids on California's hemorrhaging wounds" and instead complete a successful reconstructive surgery.

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Schultheiss, Heidilynne

From: Carleton, Norman
Sent: Thursday, September 13, 2001 3:36 PM
To: Roseboro, Brian; Bair, Sheila; Malvey, Paul; Huther, Jeff; Pietrangeli, Fred; Schultheiss, Heidilynne; Nickoloff, Peter; Gross, Jared; Sharer, James; Cetina, Jill; Corfield, Anna; Byrne, Kathleen; Dulaney, Tim
Subject: Enron resumes market-making activity

Linda Robertson of Enron asked me to distribute the following press release.

Press Release

ENRON RESUMES MARKET-MAKING ACTIVITY IN NORTH AMERICAN NATURAL GAS AND POWER

FOR IMMEDIATE RELEASE: Wednesday, September 12, 2001

HOUSTON - Enron announced today it will resume its market-making activity in North American natural gas and power. Enron will buy and sell natural gas and power by phone and over its online transaction platform EnronOnline until noon CDT.

"We see no reason for North American natural gas and power markets to become unstable in the aftermath of yesterday's tragedies," said Greg Whalley, Enron president and chief operating officer. "These are domestic commodities, and the physical infrastructure is secure and operating."

Enron's markets outside of North America will operate according to their normal schedule.

Enron is one of the world's leading energy, commodities and services companies. The company markets electricity and natural gas, delivers energy and other physical commodities, and provides financial and risk management services to customers around the world. Enron's Internet address is www.enron.com <<http://www.enron.com>>. The stock is traded under the ticker symbol "ENE."

###

Schultheiss, Heidilynne

From: Wiedman, Mark
Sent: Tuesday, December 18, 2001 7:52 AM
To: Roseboro, Brian; Carleton, Norman; Nickoloff, Peter; Schultheiss, Heidilynne
Subject: FW: ENRON ADMITS IT'S REALLY ARGENTINA

-----Original Message-----

From: Jon Gross <jgross@projectgrad.org>
To: Mark Wiedman <Mark.Wiedman@do.treas.gov>; Mike Grunwald <grunwaldmr@washpost.com>; Anuj Gupta <agupta@mba1998.hbs.edu>; Eddy Daniels <eddy.daniels@enron.com>
Sent: Mon Dec 17 23:20:54 2001
Subject: FW: ENRON ADMITS IT'S REALLY ARGENTINA

-----Original Message-----

From: jmgross [mailto:jmgross@icademy.com]
Sent: Thursday, December 13, 2001 5:48 PM
To: Robert Vincent; Catherine Markman; Jonathan Gross
Subject: FW: ENRON ADMITS IT'S REALLY ARGENTINA

Too funny, on the slight chance you haven't already received this.

ENRON ADMITS IT'S REALLY ARGENTINA
Now Massive Ineptitude, Corruption Make More Sense, Analysts Say

Houston, Texas - Collapsed due to gross mismanagement and insurmountable debt, energy company Enron today confessed to what many observers had long suspected: it is actually Argentina.

Congressional leaders, who have called for an investigation into the biggest corporate failure in U.S. history, immediately dismissed Enron's claim, but Argentinians weren't so sure. "The shady deals. The crazy debt. I knew there was something familiar about those guys," said Banco del Argentina director Ernesto Caballo.

Enron chairman and CEO Kenneth Lay, speaking through an interpreter via phone from Buenos Aires, apologized for any confusion the subterfuge may have caused, and noted that as a sovereign nation, the company was immune from U.S. prosecution. Lay also insisted that he had not "fled" to Argentina, but had returned home to the capital to visit "mi familia."

While not directly stating it, Lay also hinted that he might in fact be Argentinian President Fernando de la Rúa. Reached in Buenos Aires, de la Rúa admitted he couldn't rule that out. "Things are pretty crazy around here. Who can say?"

But Enron creditors, clients, and shareholders, who stand to lose billions over their exposure to the company, weren't buying any of it. "While they may act like it, they are not a South American country, and Ken Lay is not the President of Argentina," declared J.P. Morgan Chase spokesman Alex Firtilly. "They are a malfessant U.S. corporation that has potentially caused us to lose \$500 million. And Ken Lay is from Missouri."

"¿Como?," Lay replied. "No hablo Ingles."

Recently ranked as high as No. 7 on the Fortune 500 list of the largest U.S. companies, Enron literally ran itself into the ground by fudging its books, making secretive deals that enriched company insiders, and relying too heavily on debt. Though it was formed in 1986 with the merger of Houston Natural Gas and InterNorth, Enron became Argentina only recently, said Lay, "on the advice of our attorneys."

That counsel came none too soon. As a South American state, all pending U.S. and European lawsuits are rendered harmless. And the company escapes what had been a daily fusillade of scorn from its former home.

Indeed, much as the French were baffled by America's obsession with President Clinton's sexual affairs, many South Americans say they don't understand why Enron and its leaders have been vilified. As former Colombian President Ernesto Samper explained: "In the United States, you look at corruption as an abomination. We look at it as an art."

EXTRADITION DENIED

The U.S. State Department has refused to recognize Enron as Argentina, and a spokesman said the Bush administration has officially requested the extradition of Lay and the officers who allegedly fled with him. Argentina, however, denied the request, explaining that an entire country cannot be extradited. And besides, they added, Lay had pledged to help pay off the nation's \$132 billion debt.

Asked where the bankrupt Enron got such a sum, Lay explained that after proclaiming its nationhood status, the company had received an emergency IMF loan. An IMF spokesman later confirmed the payment.

"From what we knew of their fiduciary practices, Enron appeared to have all the hallmarks of a typical IMF fundee," said IMF communications director Nestor Svingen. "At first, we did balk when they asked for \$232 billion, but when they explained that some of the money would go to repay overdue IMF loans, we thought, 'Oh, that's all right then.'"

"Not that we actually expect to see any money from anyone," Svingen added. "It's just this little game we all play. Great fun if you like numbers. Do you enjoy quadratic equations? I could do them all day."

Asked what Enron/Argentina had pledged to do with the extra \$100 billion it requested, Svingen said the application had specified funding for "civic infrastructure improvements."

"That usually means the president is going to build a palace," Svingen explained.

Bair, Sheila

From: Bair, Sheila
Sent: Thursday, January 10, 2002 4:54 PM
To: Carleton, Norman
Subject: RE: DJ: Arthur Andersen Says It Destroyed Documents Related to Enron Account

very interesting. Norm, these clips are helpful.

-----Original Message-----

From: Carleton, Norman
Sent: Thursday, January 10, 2002 4:50 PM
To: Cetina, Jill; Bair, Sheila; Berardi, Steve; Bitsberger, Timothy; Eichner, Matthew; Gabilondo, Jose; Gross, Jared; Hammer, Viva; Lori Sanatamorena (E-mail); Nicoloff, Peter; Novey, Michael; Pietrangeli, Fred; Roseboro, Brian; Schultheiss, HeidiLynne; Whaley, Jean; Wiedman, Mark
Subject: DJ: Arthur Andersen Says It Destroyed Documents Related to Enron Account

January 10, 2002

Major Business News

Arthur Andersen Says It Destroyed Documents Related to Enron Account

By **JUDITH BURNS**
Dow Jones Newswires

WASHINGTON -- Arthur Andersen LLP, already under fire for its audits of **Enron Corp.**, said it has destroyed documents sought by federal law enforcement officials investigating the Enron debacle.

In a statement issued Thursday, Andersen said it notified the U.S. Justice Department and the Securities and Exchange Commission that individuals at the firm "disposed of a significant but undetermined amount" of documents relating to its work for Enron. The Houston energy company declared bankruptcy in December after announcing it had overstated four-and-a-half years worth of earnings.

The document destruction includes paper documents and e-mail correspondence.

Andersen said it has instructed employees to retain all existing documents "until further notice."

In addition, the Chicago-based Big Five accounting firm said it has asked former Sen. John Danforth (R., Mo.) to conduct "an immediate and comprehensive review" of the firm's policies on document handling and recommend improvements.

Andersen said destruction of Enron documents occurred "in recent months" by individual employees involved in auditing the energy company.

Michael Donovan, a Philadelphia attorney with Donovan Searles, LLC, which has filed a class-action lawsuit against Andersen on behalf of Enron shareholders, said document destruction by an audit firm is shocking.

"Auditors save everything," including all work papers for audit clients, Mr. Donovan commented.

Enron was one of Andersen's largest clients, generating \$25 million a year in audit fees and \$27 million of fees for consulting. Enron, a high-flying energy company which last year ranked No. 7 on the Fortune 500 list, announced big losses last October in off-balance-sheet partnerships run by former Chief Financial Officer Andrew Fastow. In early November, Enron acknowledged it had overstated earnings by \$569 million over a four-and-a-half year period and said investors could not rely on its past financial statements.

The SEC launched a formal investigation into Enron's accounting on Oct. 31.

Write to Judith Burns at judith.burns@dowjones.com¹

Bair, Sheila

From: Bair, Sheila
Sent: Thursday, January 10, 2002 4:53 PM
To: Duncan, John
Subject: FW: DJ: Arthur Andersen Says It Destroyed Documents Related to Enron Account

FYI.

-----Original Message-----

From: Carleton, Norman
Sent: Thursday, January 10, 2002 4:50 PM
To: Cetina, Jill; Bair, Sheila; Berardi, Steve; Bitsberger, Timothy; Ekhner, Matthew; Gabilondo, Jose; Gross, Jared; Hammer, Viva; Lori Sanatamorena (E-mail); Nickoloff, Peter; Novey, Michael; Pietrangeli, Fred; Roseboro, Brian; Schultheiss, HeidiLynne; Whaley, Jean; Wiedman, Mark
Subject: DJ: Arthur Andersen Says It Destroyed Documents Related to Enron Account

January 10, 2002

Major Business News

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Dow Jones Newswires

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Write to Judith Burns at judith.burns@dowjones.com¹

Bair, Sheila

From: Bair, Sheila
Sent: Thursday, January 10, 2002 4:27 PM
To: Pat Parkinson (E-mail)
Subject: FW: Text of PResident's announcement today

Importance: High
Sensitivity: Confidential

FYI

-----Original Message-----

From: Davis, Michele
Sent: Thursday, January 10, 2002 4:10 PM
To: Bair, Sheila; Fisher, Peter; Holahan, Betsy; Nichols, Robert; Gross, Jared
Subject: Text of PResident's announcement today

[Home </index.html>](#) > [News & Policies </news/>](#) [</news/releases/2002/01/print/20020110-1.html>](#)
[</news/releases/2002/01/print/20020110-1.html>](#)

For Immediate Release Office of the Press Secretary January 10, 2002 **President Calls for Review of**

Pension Regulations and Corporate Disclosure Rules REMARKS BY THE PRESIDENT IN MEETING WITH HIS ECONOMIC TEAM REMARKS BY THE PRESIDENT IN MEETING WITH HIS ECONOMIC TEAM The Oval Office 9:42 A.M. EST THE PRESIDENT: Thank you all for coming. I met with my economic security team last week to talk about ways to create jobs. We're meeting again with the components of the team to talk about one part of economic security, and that's pension security. One of the things we're deeply concerned about is that there have been a wave of bankruptcies that have caused many workers to lose their pensions, and that's deeply troubling to me. And so I've asked the Secretary of Treasury, Secretary of Labor and Secretary of Commerce to convene a working group to analyze pensions, rules and regulations, to look into the effects of the current law on hard-working Americans, and to come up with recommendations how to reform the system to make sure that people are not exposed to losing their life savings as a result of a bankruptcy, for example. As well, Secretary of Treasury, along with the SEC, the Fed, and the CFTC, are going to convene a working group to analyze corporate disclosure rules and regulations. In light of the most recent bankruptcy, Enron, there needs to be a full review of disclosure rules, to make sure that the American stockholder, or any stockholder, is protected. And so, I think this is an important part of, obviously, other investigations that are ongoing. The Justice Department announced and informed us late yesterday that they're in the process of investigating aspects of the Enron bankruptcy. The administration is deeply concerned about its effects on the economy. We're also deeply concerned about its effects on the lives of our citizenry. I'll be glad to answer a few questions.

Bair, Sheila

From: Bair, Sheila
Sent: Wednesday, December 26, 2001 8:39 AM
To: DeMarco, Edward; McCall, Neal
Subject: FW: WSJ: Enron Workers Face Losses On Pensions, Not Just 401(k)s

[(b)(5)]

-----Original Message-----

From: Carleton, Norman
Sent: Wednesday, December 19, 2001 11:42 AM
To: Cetina, Jill; Bair, Sheila; Berardi, Steve; Bitsberger, Timothy; Eichner, Matthew; Gabilondo, Jose; Gross, Jared; Hammer, Viva; Lori Sanatamarena (E-mail); Nickoloff, Peter; Novey, Michael; Pietrangeli, Fred; Roseboro, Brian; Schuitheiss, HeidiLynne; Whaley, Jean; Wiedman, Mark
Subject: WSJ: Enron Workers Face Losses On Pensions, Not Just 401(k)s

December 19, 2001

Money & Investing

Enron Workers Face Losses On Pensions, Not Just 401(k)s

By ELLEN E. SCHULTZ

Staff Reporter of THE WALL STREET JOURNAL

Many **Enron** Corp. employees will suffer even greater losses to their retirement income than was immediately apparent in the wake of the energy-trading company's sudden downfall.

It is well known that many **Enron** employees will take big hits in their 401(k) retirement-savings plans because much of their investments were in company stock. What has been largely overlooked is that the pensions of many employees also will be reduced as a result of complex, interrelated changes involving pension and retirement-savings plans.

The decline wasn't caused by investments in the pension plan, which by law cannot invest more than 10% of its assets in the company stock. Rather, it stems from ways that companies such as **Enron** have increasingly coordinated their pensions, 401(k)s and employee stock ownership plans (ESOPs) to reduce costs for the company and shift investment decisions to employees. **Enron** had no comment.

Lawmakers, reacting to the decimation of the savings of many employees in **Enron's** 401(k) have begun calling for legislation that would hold savings plans to the same standards as pensions. Employees suffered steep losses in their 401(k) plans because more than 60% of the assets were in

Enron's stock at one point, and the stock has dropped to about 50 cents a share from a peak of \$90 last year.

But Enron's situation reveals that employees' retirement benefits are exposed to company stock in more than their 401(k) plans.

Employees share some of the responsibility for this overexposure. That's because to some extent employees could have limited their retirement-related holdings of **Enron**, if they had taken the right steps at the right time, though many didn't because the stock was long a highflier.

One of these is Kenneth Parrish, an electrician at Portland General Electric, an **Enron** subsidiary, who essentially has lost additional benefits related to his pension from Jan. 1, 1999. That was when the pension plan for unionized employees, including Mr. Parrish, was changed. The pension benefit they already had earned was frozen; instead of continuing to add to the pension, the company gave a cash contribution of 5% of employees' pay to their 401(k) plan, where they could put it into a variety of investments, including **Enron** stock.

Unfortunately, Mr. Parrish and many others elected to put the pension-related contribution into **Enron** stock, along with his own 401(k) savings. "It seemed like such a good investment," says Mr. Parrish, who is 43 years old. Moreover, the company's matching contribution to his 401(k) was in **Enron** stock that couldn't be sold till the employee turned 50. As a result, the value of his savings plan, including the pension amounts, fell from about \$200,000 to a couple of thousand dollars.

Mr. Parrish, a single father of two daughters, who are 16 and 17, now isn't sure what he will do. "I got doubly slammed," he says. "Not only did I lose all my retirement savings, I lost the pension savings, too." He is selling his house and planning to buy a trailer. "This ruined me," he says.

Meanwhile, salaried workers at **Enron** had a different kind of pension arrangement that exposed them to fluctuations in **Enron** stock. The company coordinated their pension plan and their employee stock ownership plan, so that the value of their ESOP accounts permanently erased benefits in their pensions.

That is because **Enron** had a "floor-offset" arrangement, which has been used by many companies, including Hewlett-Packard Co. and Airborne Inc. These arrangements are intended to provide participants with the "better of" the two plans, the savings plan (either an ESOP or a profit-sharing plan) and the pension.

In a simple floor-offset arrangement, if an employee leaves the company and his ESOP account is worth, say, \$60,000, the company figures out how much this would be worth if it were converted to an annual pension in retirement. In this case, the ESOP's equivalent value might be \$6,000 a year in retirement. If the employee has already earned a pension worth \$50,000 a year in retirement, the employee wouldn't get \$56,000 a year -- the combination of the two -- but just \$50,000. (The \$6,000 annual ESOP value is subtracted from the pension, so the person ends up with an annual pension of \$44,000, plus the \$6,000 a year from his ESOP account of \$60,000.)

If the ESOP performed really well, and was worth, say, \$70,000 a year if converted to a pension, the employee would simply keep the ESOP, and not get the pension. If the ESOP didn't perform well, the pension would serve as the "floor" benefit. In other words, even if the ESOP fell to zero, the employee would still have his full pension of \$50,000 a year.

But it didn't work this way at **Enron**, even though the ESOP accounts have become virtually worthless because of the decline in Enron's stock. In an unusual arrangement, **Enron** calculated the ESOP

"offsets" based on the price of the stock from 1996 to 2000, when it was trading between \$37.75 and \$43.44. It then used the locked-in value of the ESOP accounts to permanently offset the value of pensions that employees had earned between January 1987 and January 1995.

In other words, **Enron** has reduced the amount of the pension by subtracting the former -- and far higher -- value of the ESOP, even though the ESOP today has virtually no value and thus can't make up for the difference.

Employees might have been all right if **Enron** stock had continued to rise, because gains in the accounts could eventually have made up for the permanent offset. (The increases would have depended completely on stock appreciation, because the company stopped contributing to the ESOP in 1995.)

"It was as if someone assumed the stock would never drop," says Stephen Bruce, a pension lawyer in Washington, D.C. "It was a bad deal if the stock dropped," he says, because this precluded employees from ever making up for the permanent offset.

Employees will still receive their pensions -- albeit at the reduced values. How much employees lost depends on the size of the pension they had earned, and the value of their ESOP accounts from 1996 to 2000.

Employees did have some opportunity to protect themselves from the subsequent exposure to **Enron** stock in their ESOP. One time each year from 1996 to 2000, employees could transfer one-fifth of the value of their ESOP accounts into a 401(k) or an Individual Retirement Account and diversify out of company stock.

Separately, Sens. Barbara Boxer (D., Calif.) and Jon Corzine (D., N.J.) said Tuesday they will propose limits on the amount of company stock employees can hold as part of their 401(k) retirement plans.

The proposed legislation would limit employee 401(k) investments in company stock to 20%, and it would limit to 90 days the period of time an employer can require its workers to hold a matching stock contribution before divesting themselves of it.

-- *Bryan Lee contributed to this article.*

Bair, Sheila

From: Bair, Sheila
Sent: Wednesday, December 26, 2001 8:23 AM
To: Carleton, Norman
Cc: Roseboro, Brian
Subject: RE: DJ: Senator Eyes End To Enron-Type Special-Purpose Entities

[(b)(5)]

Sheila

-----Original Message-----

From: Carleton, Norman
Sent: Tuesday, December 18, 2001 11:07 AM
To: Cetina, Jill; Bair, Sheila; Berardi, Steve; Bitsberger, Timothy; Eichner, Matthew; Gabilondo, Jose; Gross, Jared; Hammer, Viva; Lori Sanatamarena (E-mail); Nickoloff, Peter; Novey, Michael; Pietrangeli, Fred; Roseboro, Brian; Schultheiss, Heidi; Whaley, Jean; Wiedman, Mark
Subject: DJ: Senator Eyes End To Enron-Type Special-Purpose Entities

[(b)(5)]

December 18, 2001

Senator Eyes End To Enron-Type Special-Purpose Entities

Dow Jones Newswires

WASHINGTON -- U.S. Senate Commerce Committee Chairman Fritz Hollings, D-S.C., pledged Tuesday to introduce legislation to eliminate the sorts of financial accounting that led to the financial collapse of **Enron Corp.** (ENE).

At a committee hearing on the **Enron** debacle, Hollings called for legislation to eliminate the use of special-purpose entities, which are partnerships or trusts through which companies keep their debt off the books and, in Enron's case, overstate earnings.

Hollings said such off-the-balance-sheet transactions should end in order to protect investors. Hollings also was highly critical of the amount of insider stock selling by top **Enron** officials. He noted that **Enron** Chairman Kenneth Lay and former Chief Executive Jeffrey Skilling each sold shares in recent months for more than \$60 million, while members of Enron's board sold shares worth more than \$160 million.

"The selling of **Enron** was prolific," Hollings said, calling the insider selling "a screaming red flag."

If **Enron** officials felt the stock was undervalued, as they publicly attested, "why were they cashing in?" Hollings said.

Hollings also said there was plenty of blame for the "shenanigans" associated with Enron's

collapse, which he likened to a "cancer." He cited Enron's role in persuading the Commodity Futures Trading Commission against the Clinton administration's call for regulation of energy derivatives, and subsequent congressional action to exempt from regulation the highly complex energy derivatives Enron's special-purpose entities engaged in.

"We are all guilty for letting it happen," Hollings said of Enron's collapse.

Sen. Byron Dorgan, D-N.D., chairman of the committee's consumer affairs panel, described Tuesday's hearings as the first of several that will delve into the roles in Enron's financial collapse played by: **Enron** officials; Arthur Andersen, Enron's outside auditor; Wall Street analysts, and regulators.

"This is about an energy company that morphed into a trading company involved in hedge funds and derivatives. It took on substantial risks, created secret off-the-books partnerships and, in effect, cooked the books under the nose of their accountants and investors," Dorgan said.

Dorgan noted that Lay, Enron's chairman and chief executive, has agreed to testify at a future hearing. Dorgan also said the committee will invite Skilling, Enron's former chief executive, and Andrew Fastow, Enron's former chief financial officer, to testify at the same hearing.

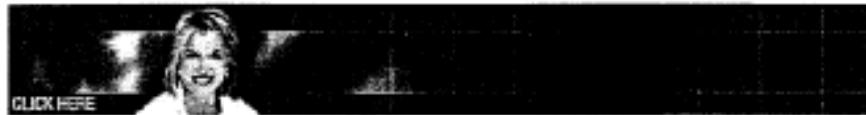
"Was this just bad luck, incompetence and greed, or were there some criminal or illegal actions, as has been suggested by the accounting firm that reviewed Enron's books?" Dorgan said.

DeMarco, Edward

From: Pedri, Melissa
Sent: Friday, January 11, 2002 2:52 PM
To: DeMarco, Edward
Subject: article

not sure if you saw this.....thought you might be interested.

<http://www.cnn.com/2002/LAW/01/11/enron/index.html>



CNN.com

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Justice picks prosecutor to head Enron investigation

(CNN) -- The Justice Department named a career federal prosecutor specializing in fraud and other white-collar crimes to lead the investigation into the collapse of Enron Corporation as the White House revealed more attempts by Enron executives to seek help for the failing company from the Bush administration.

Joshua Hochberg -- chief of the fraud section of the department's criminal division -- was named Friday to head what is expected to be a massive probe stretching coast to coast.

Enron filed for Chapter 11 bankruptcy protection last month, the largest such case in U.S. history.

Besides the Justice Department, the Labor Department, Congress and the Securities and Exchange Commission are also investigating the overnight collapse of the Houston-based energy giant.

Enron markets electricity and natural gas, delivers energy and other physical commodities, and provides financial and risk management services to customers around the world.

Lawyers for Enron Corp. confirmed Friday that UBS AG has won the bidding war for the energy firm's wholesale operations.

The value of the UBS offer was unknown. Salomon Smith Barney, a unit of Citigroup, also was in contention for the unit, and BP PLC had expressed interest in buying some of the assets. ([Full story](#))

Greenspan, Rubin and Ashcroft

Enron Corp.'s president called a top Treasury Department official several times late last year as the company was negotiating with bankers for a credit extension it needed to avoid bankruptcy, administration officials said Friday.

Undersecretary for Domestic Finance Peter Fisher interpreted the calls as a request for the administration to intervene and help, but he declined to do so, administration sources said.

A Treasury spokeswoman said that in one phone call Enron President Lawrence Whalley urged Fisher to "call Enron's banks."

CNN learned that former Clinton administration Treasury Secretary Robert Rubin also called Fisher late last year to ask if Fisher could place a call urging bond rating agencies to see whether there was a way to avoid an immediate downgrading of Enron's ratings

Rubin is now a senior official at Citigroup, which had a financial exposure to Enron.

According to two Bush administration officials, Fisher said he did not think intervening was appropriate and Rubin said he believed "that was a reasonable position" and did not press the issue, the officials said.

One of the officials said the call "is further evidence that Enron officials and others lobbied for administration action, intervention, but that nothing was done because officials did not believe it was the right thing to do."

In addition, Enron Chairman Kenneth Lay called Federal Reserve Chairman Alan Greenspan on October 26, said a Fed spokesman, who added Greenspan did not do anything in response to the call because "it would not have been appropriate."

Justice Department officials told CNN that Attorney General John Ashcroft -- who has recused himself from the Justice Department's criminal investigation -- met last year with Lay on February 22 at the annual meeting of the Business Council in Washington. ([Full story](#))

"The attorney general recalls one event where he spoke to a group of CEOs and was invited on behalf of the group by Ken Lay, who was serving as the group's vice chairman," a justice official said.

Congressional investigations

On Capitol Hill, lawmakers pledged to get to the bottom of what happened at Enron. Eight committees or subcommittees were preparing for separate hearings into Enron in coming weeks.

A Senate investigative subcommittee issued 51 subpoenas Friday to executives and the board of directors of Enron and Arthur Andersen, Enron's accounting firm. ([Full story](#))

"What is evident already is that the company appears to have deliberately misled investors and its employees and customers about its financial strength. That in and of itself is very troubling," said Sen. Susan Collins, R-Maine, a ranking member of the subcommittee.

Collins said, "So far, I have seen no evidence of improper influence with members of the administration, but I am sure that question will be fully explored in these hearings."

The Republican-controlled House Energy and Commerce Committee also said it wants top Arthur Andersen executives to turn over everything in their personal records relating to their accounting work for Enron.

The request came after the firm disclosed many documents related to Enron audits had been destroyed.

"We're going to do anything we can do to try to piece this puzzle together," said Ken Johnson, a spokesman for committee chairman Rep. Billy Tauzin, R-Louisiana.

'That dog won't hunt'

Top White House officials, meanwhile, urged what one called "context and perspective" in media coverage of the developments.

"There are some legitimate questions and some questions we view more as political," the senior official said.

"But remember this: There is not one allegation of wrongdoing by anyone in the federal government and it is this administration that decided to aggressively investigate the company and the related issues," he said.

White House press secretary Ari Fleischer said no single person or office at the White House has been designated to serve as a repository of information about administration contacts with Enron.

And, he said, if Democrats in Congress try to make a political issue of the Enron bankruptcy, "That dog won't hunt."

Sen. Russ Feingold, D-Wisconsin, issued a news release Friday urging the Bush administration to "take every step possible to remove the appearance of a conflict in all aspects of this case," including the appointment of a special counsel "if evidence of impropriety by any high-ranking official arises."

He also urged "insulating" the investigators and prosecutors involved in the case, and "immediate and complete disclosure ... of all communications between high-ranking administration officials and Enron executives."

Senior officials told CNN this week's disclosures were part of a White House-directed effort to check for all such contacts.

"It is just common sense," one top White House aide said. "We are going to get asked, so people are being asked to check and double check."

Find this article at:

<http://www.cnn.com/2002/LAW/01/11/enron/index.html>

Check the box to include the list of links referenced in the article.



DeMarco, Edward

From: Bair, Sheila
Sent: Wednesday, December 26, 2001 8:39 AM
To: DeMarco, Edward; McCall, Neal
Subject: FW: WSJ: Enron Workers Face Losses On Pensions, Not Just 401(k)s

[(b)(5)]

-----Original Message-----

From: Carleton, Norman
Sent: Wednesday, December 19, 2001 11:42 AM
To: Cetina, Jill; Bair, Sheila; Berardi, Steve; Bitsberger, Timothy; Eichner, Matthew; Gabilondo, Jose; Gross, Jared; Hammer, Viva; Lori Sanatamarena (E-mail); Nickoloff, Peter; Novey, Michael; Pietrangeli, Fred; Roseboro, Brian; Schultheiss, Heidi Lynne; Whaley, Jean; Wiedman, Mark
Subject: WSJ: Enron Workers Face Losses On Pensions, Not Just 401(k)s

December 19, 2001

Money & Investing

Enron Workers Face Losses On Pensions, Not Just 401(k)s

By ELLEN E. SCHULTZ

Staff Reporter of THE WALL STREET JOURNAL

Many **Enron** Corp. employees will suffer even greater losses to their retirement income than was immediately apparent in the wake of the energy-trading company's sudden downfall.

It is well known that many **Enron** employees will take big hits in their 401(k) retirement-savings plans because much of their investments were in company stock. What has been largely overlooked is that the pensions of many employees also will be reduced as a result of complex, interrelated changes involving pension and retirement-savings plans.

The decline wasn't caused by investments in the pension plan, which by law cannot invest more than 10% of its assets in the company stock. Rather, it stems from ways that companies such as **Enron** have increasingly coordinated their pensions, 401(k)s and employee stock ownership plans (ESOPs) to reduce costs for the company and shift investment decisions to employees. **Enron** had no comment.

Lawmakers, reacting to the decimation of the savings of many employees in **Enron's** 401(k) have begun calling for legislation that would hold savings plans to the same standards as pensions. Employees suffered steep losses in their 401(k) plans because more than 60% of the assets were in

Enron's stock at one point, and the stock has dropped to about 50 cents a share from a peak of \$90 last year.

But Enron's situation reveals that employees' retirement benefits are exposed to company stock in more than their 401(k) plans.

Employees share some of the responsibility for this overexposure. That's because to some extent employees could have limited their retirement-related holdings of **Enron**, if they had taken the right steps at the right time, though many didn't because the stock was long a highflier.

One of these is Kenneth Parrish, an electrician at Portland General Electric, an **Enron** subsidiary, who essentially has lost additional benefits related to his pension from Jan. 1, 1999. That was when the pension plan for unionized employees, including Mr. Parrish, was changed. The pension benefit they already had earned was frozen; instead of continuing to add to the pension, the company gave a cash contribution of 5% of employees' pay to their 401(k) plan, where they could put it into a variety of investments, including **Enron** stock.

Unfortunately, Mr. Parrish and many others elected to put the pension-related contribution into **Enron** stock, along with his own 401(k) savings. "It seemed like such a good investment," says Mr. Parrish, who is 43 years old. Moreover, the company's matching contribution to his 401(k) was in **Enron** stock that couldn't be sold till the employee turned 50. As a result, the value of his savings plan, including the pension amounts, fell from about \$200,000 to a couple of thousand dollars.

Mr. Parrish, a single father of two daughters, who are 16 and 17, now isn't sure what he will do. "I got doubly slammed," he says. "Not only did I lose all my retirement savings, I lost the pension savings, too." He is selling his house and planning to buy a trailer. "This ruined me," he says.

Meanwhile, salaried workers at **Enron** had a different kind of pension arrangement that exposed them to fluctuations in **Enron** stock. The company coordinated their pension plan and their employee stock ownership plan, so that the value of their ESOP accounts permanently erased benefits in their pensions.

That is because **Enron** had a "floor-offset" arrangement, which has been used by many companies, including Hewlett-Packard Co. and Airborne Inc. These arrangements are intended to provide participants with the "better of" the two plans, the savings plan (either an ESOP or a profit-sharing plan) and the pension.

In a simple floor-offset arrangement, if an employee leaves the company and his ESOP account is worth, say, \$60,000, the company figures out how much this would be worth if it were converted to an annual pension in retirement. In this case, the ESOP's equivalent value might be \$6,000 a year in retirement. If the employee has already earned a pension worth \$50,000 a year in retirement, the employee wouldn't get \$56,000 a year -- the combination of the two -- but just \$50,000. (The \$6,000 annual ESOP value is subtracted from the pension, so the person ends up with an annual pension of \$44,000, plus the \$6,000 a year from his ESOP account of \$60,000.)

If the ESOP performed really well, and was worth, say, \$70,000 a year if converted to a pension, the employee would simply keep the ESOP, and not get the pension. If the ESOP didn't perform well, the pension would serve as the "floor" benefit. In other words, even if the ESOP fell to zero, the employee would still have his full pension of \$50,000 a year.

But it didn't work this way at **Enron**, even though the ESOP accounts have become virtually worthless because of the decline in Enron's stock. In an unusual arrangement, **Enron** calculated the

ESOP "offsets" based on the price of the stock from 1996 to 2000, when it was trading between \$37.75 and \$43.44. It then used the locked-in value of the ESOP accounts to permanently offset the value of pensions that employees had earned between January 1987 and January 1995.

In other words, **Enron** has reduced the amount of the pension by subtracting the former – and far higher – value of the ESOP, even though the ESOP today has virtually no value and thus can't make up for the difference.

Employees might have been all right if **Enron** stock had continued to rise, because gains in the accounts could eventually have made up for the permanent offset. (The increases would have depended completely on stock appreciation, because the company stopped contributing to the ESOP in 1995.)

"It was as if someone assumed the stock would never drop," says Stephen Bruce, a pension lawyer in Washington, D.C. "It was a bad deal if the stock dropped," he says, because this precluded employees from ever making up for the permanent offset.

Employees will still receive their pensions -- albeit at the reduced values. How much employees lost depends on the size of the pension they had earned, and the value of their ESOP accounts from 1996 to 2000.

Employees did have some opportunity to protect themselves from the subsequent exposure to **Enron** stock in their ESOP. One time each year from 1996 to 2000, employees could transfer one-fifth of the value of their ESOP accounts into a 401(k) or an Individual Retirement Account and diversify out of company stock.

Separately, Sens. Barbara Boxer (D., Calif.) and Jon Corzine (D., N.J.) said Tuesday they will propose limits on the amount of company stock employees can hold as part of their 401(k) retirement plans.

The proposed legislation would limit employee 401(k) investments in company stock to 20%, and it would limit to 90 days the period of time an employer can require its workers to hold a matching stock contribution before divesting themselves of it.

-- Bryan Lee contributed to this article.

DeMarco, Edward

From: Carleton, Norman
Sent: Wednesday, December 19, 2001 3:43 PM
To: Wiedman, Mark; Bair, Sheila; Bieger, Peter; Bitsberger, Timothy; DeMarco, Edward; Dorsey, Karen; Ellett, Martha; Ellis, Dina; Gabilondo, Jose; Gross, Jared; Huffman, Lucy; Hughes, Gerry; McGivern, Tom; McInerney, Roberta; Nickoloff, Peter; Roseboro, Brian; Salladin, Anne; Schultheiss, Heidilynne; Smith, Amy; Sutton, Gary; Tishuk, Brian
Subject: Conversation with Frank Hampton and ABI Website: House Leaders Continue to Push Netting Provisions

According to Frank Hampton of TBMA, Dick Arney is also pushing the netting legislation. However, Sensenbrenner hopes to achieve a compromise on the larger bankruptcy legislation by February and is opposed to passing the netting legislation separately. In the Senate, Grassley is also opposed to a separate netting bill and is reportedly avoiding a meeting with Greenspan to discuss this.

Norman Carleton

ABI Website news:

December 19, 2001

House Leaders Continue to Push Netting Provisions

House leaders are trying to nudge forward legislation that seeks to prevent systemic financial crises by allowing creditors to "net out" their derivatives losses with major counter parties that have filed for bankruptcy, The American Banker reported. It is still unclear, however, whether even they will be successful in overcoming the political obstacles that have stalled it for more than a year - especially considering that Congress is expected to adjourn for the year as early as this week. Majority Whip Tom DeLay (R-Texas) "believes that it's important to get the netting provisions done, either within the context of bankruptcy reform or elsewhere," a spokesman said.

Such highly technical bills rarely attract the attention of top House or Senate leaders, but the recent collapse of Enron Inc. has given the netting legislation newfound relevance. Federal Reserve Board Chairman Alan Greenspan and Treasury Secretary Paul O'Neill say markets are at risk until a law is enacted that allows contracts to be quickly and easily netted out without the approval of slow-moving bankruptcy courts. Holding it up, however, is House Judiciary Committee Chairman James Sensenbrenner (R-Wis.), who heads the House-Senate bankruptcy legislation conference committee. The netting legislation is a part of the bankruptcy reform legislation. Sensenbrenner and some Senate Judiciary Committee members, including bill sponsor Charles Grassley (R-Iowa), oppose passing the netting authority separately because they still hope that the relatively uncontroversial provisions will propel the bankruptcy package.

Though industry sources said they have received commitments from House leaders that netting will be enacted by year-end or soon thereafter, they are not expected to force a vote without the support of Sensenbrenner. Even after a meeting last week with Greenspan, Sensenbrenner maintained that he was "going to try to keep it in the bankruptcy package," his spokesman said.

Hughes, Gerry

From: Hughes, Gerry
Sent: Wednesday, January 09, 2002 1:27 PM
To: Schultheiss, Heidilynne
Subject: RE:

Thanks.

-----Original Message-----

From: Schultheiss, Heidilynne
Sent: Wednesday, January 09, 2002 1:26 PM
To: Hughes, Gerry
Subject:

Thanks for the info. This FT article is interesting too:

COMPANIES & FINANCE INTERNATIONAL: Appointment may be probed

Financial Times; Jan 7, 2002
By NANCY DUNNE

Republican Texas Senator Phil Gramm and his wife, Wendy, former chairman of the Commodity Futures Trading Commission, have both been strong proponents of deregulation.

Before leaving her CFTC office in 1992, Mrs Gramm kick-started a rule-making process at the behest of various energy companies and Wall Street banks, which exempted energy swaps from government oversight.

But it was not instituted until after she left the post and her subsequent appointment to a seat on Enron's board a few months later is expected to come under scrutiny from one or more of the Senate committees investigating Enron's downfall.

At the time of the CFTC rule-making, Enron was a strong financial backer of Mrs Gramm's husband. Between 1996 and 2002, the company's employees, officials and political action committees contributed Dollars 233,000 to the senator's campaign war chest, according to the Center for Responsive Politics.

This included Dollars 22,000 given during the current Congress, although the senator is not running for re-election.

William Albrecht, who became acting CFTC chairman after Mrs Gramm's departure, says it was he who ultimately instituted the rule. Now an economics professor in Iowa, Mr Albrecht said the Commission had been directed by Congress to exempt certain energy derivatives from regulation.

"Everyone was on board for this," he said. "We had dozens of meetings. If Enron is trading derivatives with Dynegy, they don't need us in there watching it."

Deregulation, however, had its opponents, and they flourished for a while during the Clinton years. Former Congressman Glen English was chairman of the subcommittee with jurisdiction over the CFTC. He saw no difference between derivatives and futures traded on regulated exchanges.

"Regulation is not just for the traders but for the impact (of not having regulation) on the economy," he said. "It was the responsibility of the CFTC to deal with derivatives."

Brooksley Born, ex-president Bill Clinton's first appointee as CFTC chairwoman, was opposed to deregulation. But her ideas were anathema to the Republican Congress of the time, which threatened to fold the agency into the Securities and Exchange Commission, according to a former CFTC official.

In 1993, Mrs Gramm was offered a position on the Enron board. She became a member of the company's audit committee. Mrs Gramm declined to return the FT's calls but it is common for retiring regulators to move over to

industries they oversaw.

She was paid Dollars 22,000 a year for the first three years. Her annual salary grew to Dollars 50,000. Between 1993 and 2001, she earned Dollars 346,000 plus Dollars 176,000 for attendance fees, according to a recent report from Public Citizen, a liberal advocacy group.

She also received stocks and dividends worth between Dollars 915,317 and Dollars 1.85m over the period. Mr Gramm's tax returns last year listed his wife with assets of Dollars 250,001-Dollars 500,000 in an Enron Deferred Compensation Fidelity Balanced fund.

Mr Gramm played a key role in getting the Commodity Futures Modernisation Act passed in December 2000. The act, which deregulated all financial derivatives and relaxed oversight of commodity exchanges, had been languishing in the Senate.

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Tracking:

Recipient
Schultheiss, Heidi Lynne

Read
Read: 01/09/2002 1:27 PM

Hughes, Gerry

From: Schultheiss, Heidi Lynne
Sent: Wednesday, January 09, 2002 1:26 PM
To: Hughes, Gerry

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Bitsberger, Timothy

From: Bitsberger, Timothy
Sent: Tuesday, December 18, 2001 5:22 PM
To: Carleton, Norman
Subject: RE: DJ: Senators Aim To Prevent Future Enron-Type 401(k) Problems

[(b)(5)]

-----Original Message-----

From: Carleton, Norman
Sent: Tuesday, December 18, 2001 5:20 PM
To: Cetina, Jill; Bair, Sheila; Berardi, Steve; Bitsberger, Timothy; Eichner, Matthew; Gabilondo, Jose; Gross, Jared; Hammer, Viva; Lori Sanatamarena (E-mail); Nicoloff, Peter; Novey, Michael; Pietrangeli, Fred; Roseboro, Brian; Schultheiss, Heidi Lynne; Whaley, Jean; Wedman, Mark
Subject: DJ: Senators Aim To Prevent Future Enron-Type 401(k) Problems

December 18, 2001

Senators Aim To Prevent Future Enron-Type 401(k) Problems

Dow Jones Newswires

WASHINGTON – Two Senate Democrats unveiled legislation Tuesday that would limit the amount of company stock employees can hold as part of their 401(k) retirement plans.

The legislation is a response to the financial collapse of **Enron Corp.** (ENE), whose employees lost millions because they had concentrated their 401(k) plan holdings in company stock.

The legislation was announced by senators Barbara Boxer of California and Jon Corzine of New Jersey.

Boxer described the legislation during a Senate Commerce Committee panel hearing Tuesday featuring testimony from a handful of **Enron** employees who lost hundreds of thousands of dollars because their 401(k) plans were primarily invested in **Enron** stock.

Enron entered into bankruptcy protection Dec. 2 after questionable accounting practices led to a historic crash in the company's equity value. Shares that sold a year ago for more than \$80 are today worth less than a dollar.

Enron's shares had slid to the \$20s in October, when the company's 401(k) plan administrator "locked down" the program, keeping employees from divesting their **Enron** holdings.

Witnesses at Tuesday's hearing described how the bulk of the remaining equity crash occurred during the monthlong lockdown, causing them to lose more money than they would have had their accounts been unfrozen and they'd been able to sell their holdings.

Sen. Ron Wyden, D-Ore., likened the events to the sinking of the Titanic. **Enron** "locked the

workers in the boiler room" as the **Enron** ship sank, Wyden said.

Boxer said **Enron** may have violated a tax-law provision she authored in 1997 addressing diversification of 401(k) retirement funds.

The law prohibited companies from requiring employees to purchase company stock as part of 401(k) plan participation.

Boxer acknowledged that **Enron** workers willingly concentrated their investments in Enron's previously high-flying stock, but suggested that, through the plan lock-down, employees in effect were forced to buy the company's stock because they couldn't sell their holdings.

Boxer called for the Internal Revenue Service to redirect the tax breaks **Enron Corp. (ENE)** obtained for its contributions to employee retirement accounts to partially reimburse employees who lost their retirement savings through the company's 401(k) program.

The legislation Boxer sponsored with Corzine would limit employee 401(k) investments in company stock to 20%, and it would limit to 90 days the period of time an employer can require its workers to hold a matching stock contribution before divesting it.

Further, the bill would reduce to 50% the tax deduction an employer can take for its matching stock contributions. Cash contributions would retain the 100% tax break, Boxer said.

Also, the bill would lower to 35 year of age, with at least five years of company service, the trigger allowing employees to diversify their investments in employee stock ownership plans.

-By Bryan Lee, Dow Jones Newswires; 202-862-6647;
Bryan.Lee@dowjones.com

Bitsberger, Timothy

From: Carleton, Norman
Sent: Monday, January 07, 2002 2:18 PM
To: Bair, Sheila; Berardi, Steve; Bitsberger, Timothy; Eichner, Matthew; Gabilondo, Jose; Gross, Jared; Hammer, Viva; Lori Sanatamarena (E-mail); Nickoloff, Peter; Novey, Michael; Pietrangeli, Fred; Roseboro, Brian; Schultheiss, Heidilynne; Whaley, Jean; Wiedman, Mark
Subject: DJ: IntercontinentalExchange Trade Volume Grew 1,500% In 2001

[(b)(5)]

Norman

January 7, 2002

IntercontinentalExchange Trade Volume Grew 1,500% In 2001

NEW YORK -- IntercontinentalExchange, an online energy and metals marketplace, grew its trade volume 15-fold and increased the number of participating firms and users more than 400% in 2001, ICE said Monday.

ICE volume and new-user interest skyrocketed in the autumn as **Enron Corp.** (ENE) filed for bankruptcy protection and suspended trade on its EnronOnline Internet-based trading platform.

Capping off the year, ICE set a new daily record Dec. 27 with natural gas trading of 500 billion cubic feet, breaking by 18% the previous daily record set Dec. 4, ICE said.

More than 400 commodity trading firms execute trades on ICE. The platform matches many buyers and sellers, providing less counterparty credit risk than platforms offering the same counterparty in every deal.

Intercontinental Exchange, based in Atlanta, launched its metals trading on the Internet in August 2000 and its energy trading in October 2000.

ICE partners include American Electric Power Co. (AEP); Aquila Energy (ILA); BP Amoco PLC (BP); Deutsche Bank AG (G.DBK); Duke Energy (DUK); El Paso Corp. (EPG); Goldman Sachs Group (GS); Morgan Stanley Dean Witter & Co. (MWD); Reliant Energy (REI); Royal Dutch/Shell Group (RD); Societe Generale SA (F.SGF) unit SG Investment Banking; Mirant Corp. (MIR); TotalFina Elf SA (TOT); and Continental Power Exchange, which provided the trading technology and management team.

-By Stephen Parker, Dow Jones Newswires; 201-938-4426; stephen.parker@dowjones.com

Fisher, Peter

From: Gross, Jared
Sent: Thursday, January 10, 2002 1:05 PM
To: Fisher, Peter
Subject: FW: Economist: Rites of passage -- With Enron and Argentina, credit derivatives pass an important test

This is short but good.

-----Original Message-----

From: Carleton, Norman
Sent: Thursday, January 10, 2002 12:33 PM
To: Cetina, Jill; Sharer, James; Corfield, Anna; Bair, Sheila; Berardi, Steve; Bitsberger, Timothy; Eichner, Matthew; Gabilondo, Jose; Gross, Jared; Hammer, Viva; Lori Sanatamorenna (E-mail); Nickoloff, Peter; Novey, Michael; Pietrangeli, Fred; Roseboro, Brian; Schultheiss, Heidlynn; Whaley, Jean; Wiedman, Mark
Subject: Economist: Rites of passage -- With Enron and Argentina, credit derivatives pass an important test

Credit derivatives

Rites of passage

1/10/02 12:33 PM
Carleton, Norman

With Enron and Argentina, credit derivatives pass an important test

ARGENTINA'S debt default and the collapse of Enron, America's biggest bankruptcy, are together offering the greatest test yet faced by dealers in the still young market for credit derivatives. These are instruments that allow lenders to pass on to others the risk that borrowers will default-in return for a fee. Billions of dollars of credit-default swaps, one class of such derivatives, were written on Enron and on Argentina. Here is a chance, people who deal in credit derivatives think, to prove their products' worth.

In the early days, just a few years ago, the joke among traders at investment banks was that the busiest person on a credit-derivatives desk was the lawyer. In all too many cases, buyers of credit-derivative protection found that their interpretation of a contract differed vitally from that of the firm which had sold it. Legal wrangles ensued, harming the young product's reputation. Yet so far, to the relief of the six or so investment banks that dominate the market, there is no sign of trouble over the settlement of credit-default swaps written on Enron.

Argentina might be more of a problem. In November, the government announced a restructuring of its local debt on terms more favourable to itself. Some buyers of default protection on foreign-held debt believe that, although the restructuring was described as voluntary, it met their contracts' definition of a "credit event", meaning that they should receive the debt's full face value. One hedge fund in New York, whose default swap expired soon after the restructuring, plans to sue J.P. Morgan Chase, one of the banks most active in the market for credit derivatives, for rejecting their interpretation. But most owners of credit-default swaps are now clearly entitled to their money, after Adolfo Rodriguez Saa, briefly president of Argentina, announced in December that the country would stop paying interest on its foreign debt.

Even so, dealers and hedge funds are quarrelling over whether two particular government bonds, maturing in 2018 and 2031, are covered by the default protection. The argument springs from the fact that these bonds were issued as part of a debt exchange by the Argentine government last June. Some sellers of protection fear that, because of this, the bonds may be treated less favourably than other government debt in any future workout. Goldman Sachs and other credit-derivative dealers would prefer not to accept these bonds-although they are reluctantly doing so. Ron Tanemura, the firm's head of credit

derivatives, says that there is a grey area, but that Goldman will fall into line with market consensus, once there is one.

Disputes are thus still breaking out in the market. But dealers in credit derivatives have lately been keen to make their products more reliable. When lawyers were called in by buyers and sellers of protection on Railtrack, the owner of Britain's rail network that was forced into administration last year, they quickly brought in the industry trade body, the International Swaps and Derivatives Association, to sort things out.

At issue was whether Railtrack's convertible bonds were covered by default protection. The association opined, in favour of protection buyers, that they were. It did much last year to improve its rules on contracts for credit derivatives. Its new "modified restructuring" rule clarifies the issue, keenly debated over the past two years, of whether debt restructuring, as opposed to actual default or bankruptcy, should count as a credit event. The trade body has also offered guidelines for what should happen to default swaps on companies that demerge or spin off units.

With these improvements, growth in the market for credit derivatives is likely to continue apace. It has almost doubled each year since 1998, to a total of nearly \$700 billion in value, according to the Bank for International Settlements. Credit protection has particular appeal at a time of high corporate default rates.

Commercial banks are continuing to shed corporate-credit risk using default swaps. But new entrants—insurance companies and fund managers—are coming into the market to assume risk, as sellers of protection. Last year, investors seeking attractive yields were eager to gain exposure to corporate credit through "synthetic" collateralised debt obligations (CDOs), structured-finance vehicles made up using credit-default swaps. Investors may not be quite so gung-ho in future. Enron, for example, was one of the credits contained in many synthetic CDOs, and its collapse will have led to losses for investors. In the world of credit derivatives, *caveat emptor* still applies.

Fisher, Peter

From: Gross, Jared
Sent: Thursday, January 10, 2002 6:11 PM
To: Fisher, Peter
Subject: FW: DJ: CAPITAL VIEWS: An Interesting Day In The Enron Trenches

you're mentioned in this one

-----Original Message-----

From: Carleton, Norman
Sent: Thursday, January 10, 2002 5:57 PM
To: Cetina, Jill; Bair, Sheila; Berardi, Steve; Bitsberger, Timothy; Eichner, Matthew; Gabilondo, Jose; Gross, Jared; Hammer, Viva; Lori Sanatamarena (E-mail); Nickoloff, Peter; Novey, Michael; Pietrangeli, Fred; Roseboro, Brian; Schultheiss, Heidi Lynne; Whaley, Jean; Wiedman, Mark
Subject: DJ: CAPITAL VIEWS: An Interesting Day In The Enron Trenches

January 10, 2002

CAPITAL VIEWS: An Interesting Day In The Enron Trenches

By JOHN CONNOR

A Dow Jones Newswires Column

WASHINGTON -- Today was a big day on the **Enron** front, with key developments coming fresh on the heels of Wednesday's news that the Justice Department has opened a criminal investigation of Enron's bankruptcy.

To briefly review the bidding:

- Arthur Andersen, LLP, already taking heavy fire for its auditing of the now-bankrupt **Enron** Corp. (ENE), told the Justice Department and the Securities and Exchange Commission that individuals at the firm "disposed of a significant but undetermined amount" of documents relating to its **Enron** work.

Andersen said the destruction, encompassing both paper documents and e-mail, was done in recent months by individual employees involved in auditing **Enron**. The number of individuals involved was not specified.

- White House Press Secretary Ari Fleischer disclosed that **Enron** Chairman Kenneth Lay, a big campaign contributor to George W. Bush, contacted two senior Bush Administration officials last fall. The officials in question were Treasury Secretary Paul O'Neill and Commerce Secretary Don Evans. The contacts sound in the telling like a bid for help.

Fleischer related that O'Neill said he had been contacted by Lay last fall and that Lay brought to O'Neill's attention "his concerns about whether or not **Enron** would be able to meet its obligations. And he expressed his concern about the experience that Long-Term Capital (Management) went through....

"Secretary O'Neill then contacted (Treasury) Undersecretary (Peter) Fisher to ask him to evaluate

whether the comparison was apt, and the Department of the Treasury advised that it was not apt as a result of Secretary Fisher's review," Fleischer recounted.

- Peter Fisher to center stage once again. As a senior official of the Federal Reserve Bank of New York, Fisher played a leading role in cobbling together a non-government-funded financial Heimlich Maneuver for the stricken LTCM, animated in that effort by concerns of systemic risks. Sounds like Lay was trying to float the systemic risk possibility - and Fisher blew it away.

Told by a questioning reporter that it sounds like Lay was asking for a bailout, the White House Press Secretary said, "I don't characterize it one way or another, I just report to you what was said. I leave the characterization to others. That was the conversation with Secretary O'Neill."

He later added that O'Neill told him the O'Neill-Lay conversation occurred in October.

- With respect to the O'Neill and Evans conversations with Lay, Fleischer told reporters, "This morning, Secretary O'Neill and Secretary Evans made the information known, and we immediately shared it and provided it to you."

Asked specifically when President Bush learned that the two secretaries had talked to Lay, Fleischer said, "This morning."

- Attorney General John Ashcroft, another recipient of **Enron** campaign contributions during his unsuccessful Senate race in 2000, recused himself from the **Enron** investigation, as did David Ayers, Ashcroft's chief of staff who previously served as his campaign manager.

Earlier in the day, Fleischer at the White House had said that "the president has full faith and confidence in the professional prosecutors of the Department of Justice, and in the attorney general, to get to the bottom of all the allegations of criminal wrongdoing by **Enron**."

- Speaking of the president and **Enron**, Fleischer was asked when Bush learned of Enron's financial difficulties. "He learned last fall," the press secretary said.

"And I couldn't tell you if he learned as a result of media accounts when everybody wrote that **Enron** had gone bankrupt or through other any other mechanism," Fleischer added. "He learned last fall."

Gross, Jared

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Subject: FW: DJ: CAPITAL VIEWS: An Interesting Day In The Enron Trenches

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A Dow Jones Newswires Column

WASHINGTON -- Today was a big day on the **Enron** front, with key developments coming fresh on the heels of Wednesday's news that the Justice Department has opened a criminal investigation of Enron's bankruptcy.

To briefly review the bidding:

- Arthur Andersen, LLP, already taking heavy fire for its auditing of the now-bankrupt **Enron** Corp. (ENE), told the Justice Department and the Securities and Exchange Commission that individuals at the firm "disposed of a significant but undetermined amount" of documents relating to its **Enron** work.

Andersen said the destruction, encompassing both paper documents and e-mail, was done in recent months by individual employees involved in auditing **Enron**. The number of individuals involved was not specified.

- White House Press Secretary Ari Fleischer disclosed that **Enron** Chairman Kenneth Lay, a big campaign contributor to George W. Bush, contacted two senior Bush Administration officials last fall. The officials in question were Treasury Secretary Paul O'Neill and Commerce Secretary Don Evans. The contacts sound in the telling like a bid for help.

Fleischer related that O'Neill said he had been contacted by Lay last fall and that Lay brought to O'Neill's attention "his concerns about whether or not **Enron** would be able to meet its obligations. And he expressed his concern about the experience that Long-Term Capital (Management) went through....

"Secretary O'Neill then contacted (Treasury) Undersecretary (Peter) Fisher to ask him to evaluate whether the comparison was apt, and the Department of the Treasury advised that it was not apt as a result of Secretary Fisher's review," Fleischer recounted.

- Peter Fisher to center stage once again. As a senior official of the Federal Reserve Bank of New York, Fisher played a leading role in cobbling together a non-government-funded financial Heimlich Maneuver for the stricken LTCM, animated in that effort by concerns of systemic risks. Sounds like Lay was trying to float the systemic risk possibility - and Fisher blew it away.

Told by a questioning reporter that it sounds like Lay was asking for a bailout, the White House Press Secretary said, "I don't characterize it one way or another, I just report to you what was said. I leave the characterization to others. That was the conversation with Secretary O'Neill."

He later added that O'Neill told him the O'Neill-Lay conversation occurred in October.

- With respect to the O'Neill and Evans conversations with Lay, Fleischer told reporters, "This morning, Secretary O'Neill and Secretary Evans made the information known, and we immediately shared it and provided it to you."

Asked specifically when President Bush learned that the two secretaries had talked to Lay, Fleischer said, "This morning."

- Attorney General John Ashcroft, another recipient of **Enron** campaign contributions during his unsuccessful Senate race in 2000, recused himself from the **Enron** investigation, as did David Ayers, Ashcroft's chief of staff who previously served as his campaign manager.

Earlier in the day, Fleischer at the White House had said that "the president has full faith and confidence in the professional prosecutors of the Department of Justice, and in the attorney general, to get to the bottom of all the allegations of criminal wrongdoing by **Enron**."

- Speaking of the president and **Enron**, Fleischer was asked when Bush learned of Enron's financial difficulties. "He learned last fall," the press secretary said.

"And I couldn't tell you if he learned as a result of media accounts when everybody wrote that **Enron** had gone bankrupt or through other any other mechanism," Fleischer added. "He learned last fall."

Gross, Jared

From: Gross, Jared
Sent: Thursday, January 10, 2002 1:05 PM
To: Fisher, Peter
Subject: FW: Economist: Rites of passage -- With Enron and Argentina, credit derivatives pass an important test

This is short but good.

-----Original Message-----

From: Carleton, Norman
Sent: Thursday, January 10, 2002 12:33 PM
To: Cetina, Jill; Sharer, James; Corfield, Anna; Bair, Sheila; Berardi, Steve; Bitsberger, Timothy; Eichner, Matthew; Gabilondo, Jose; Gross, Jared; Hammer, Viva; Lori Sanatamarena (E-mail); Nickoloff, Peter; Novey, Michael; Pietrangeli, Fred; Roseboro, Brian; Schultheiss, HeidiLynne; Whaley, Jean; Wiedman, Mark
Subject: Economist: Rites of passage -- With Enron and Argentina, credit derivatives pass an important test

Credit derivatives

Rites of passage

Jan 10th 2002
From The Economist print edition

With Enron and Argentina, credit derivatives pass an important test

ARGENTINA'S debt default and the collapse of Enron, America's biggest bankruptcy, are together offering the greatest test yet faced by dealers in the still young market for credit derivatives. These are instruments that allow lenders to pass on to others the risk that borrowers will default-in return for a fee. Billions of dollars of credit-default swaps, one class of such derivatives, were written on Enron and on Argentina. Here is a chance, people who deal in credit derivatives think, to prove their products' worth.

In the early days, just a few years ago, the joke among traders at investment banks was that the busiest person on a credit-derivatives desk was the lawyer. In all too many cases, buyers of credit-derivative protection found that their interpretation of a contract differed vitally from that of the firm which had sold it. Legal wrangles ensued, harming the young product's reputation. Yet so far, to the relief of the six or so investment banks that dominate the market, there is no sign of trouble over the settlement of credit-default swaps written on Enron.

Argentina might be more of a problem. In November, the government announced a restructuring of its local debt on terms more favourable to itself. Some buyers of default protection on foreign-held debt believe that, although the restructuring was described as voluntary, it met their contracts' definition of a "credit event", meaning that they should receive the debt's full face value. One hedge fund in New York, whose default swap expired soon after the restructuring, plans to sue J.P. Morgan Chase, one of the banks most active in the market for credit derivatives, for rejecting their interpretation. But most owners of credit-default swaps are now clearly entitled to their money, after Adolfo Rodriguez Saa, briefly president of Argentina, announced in December that the country would stop paying interest on its foreign debt.

Even so, dealers and hedge funds are quarrelling over whether two particular government bonds, maturing in 2018 and 2031, are covered by the default protection. The argument springs from the fact that these bonds were issued as part of a debt exchange by the Argentine government last June. Some sellers of protection fear that, because of this, the bonds may be treated less favourably than other government debt in any future workout. Goldman Sachs and other credit-derivative dealers would prefer not to accept these bonds-although they are reluctantly doing so. Ron Tanemura, the firm's head of credit derivatives,

says that there is a grey area, but that Goldman will fall into line with market consensus, once there is one.

Disputes are thus still breaking out in the market. But dealers in credit derivatives have lately been keen to make their products more reliable. When lawyers were called in by buyers and sellers of protection on Railtrack, the owner of Britain's rail network that was forced into administration last year, they quickly brought in the industry trade body, the International Swaps and Derivatives Association, to sort things out.

At issue was whether Railtrack's convertible bonds were covered by default protection. The association opined, in favour of protection buyers, that they were. It did much last year to improve its rules on contracts for credit derivatives. Its new "modified restructuring" rule clarifies the issue, keenly debated over the past two years, of whether debt restructuring, as opposed to actual default or bankruptcy, should count as a credit event. The trade body has also offered guidelines for what should happen to default swaps on companies that demerge or spin off units.

With these improvements, growth in the market for credit derivatives is likely to continue apace. It has almost doubled each year since 1998, to a total of nearly \$700 billion in value, according to the Bank for International Settlements. Credit protection has particular appeal at a time of high corporate default rates.

Commercial banks are continuing to shed corporate-credit risk using default swaps. But new entrants—insurance companies and fund managers—are coming into the market to assume risk, as sellers of protection. Last year, investors seeking attractive yields were eager to gain exposure to corporate credit through "synthetic" collateralised debt obligations (CDOs), structured-finance vehicles made up using credit-default swaps. Investors may not be quite so gung-ho in future. Enron, for example, was one of the credits contained in many synthetic CDOs, and its collapse will have led to losses for investors. In the world of credit derivatives, *caveat emptor* still applies.

oss, Jared

From: Schultheiss, Heidilynne
Sent: Tuesday, January 02, 2001 2:23 PM
To: Squitieri, Ray; Sachs, Lee; Paulus, Michael; Greene, Michelle; Gross, Jared
Cc: Carleton, Norman; Nickoloff, Peter; Soares, Chris; Cetina, Jill
Subject: SF Chronicle Article on Cal Energy Situation

This was sent to me by a former DoE employee who now works for an private-sector energy company in Houston. It's a good, comprehensive background piece. Unfortunately I don't have it in electronic form, and the hardcopy (margin) format is a bit strange.

> December 31, 2000 (SF Chronicle)
> Genesis Of State's Energy Fiasco/String of bad decisions on deregulation
> could end up costing consumers \$40 billion
> Christian Berthelsen
>
>
> Next month, about 10 million Californians may begin paying as much as
> 30 percent more for electricity, in a maddening coda to one of the most
> costly public policy mistakes ever made.
> When the state's leaders started moving the energy system toward
> deregulation six years ago, they envisioned a brand new day in which
> utility companies' long-standing monopoly would be broken and rates would
> decline by as much as 25 percent.
> Instead, when it is over, it may cost customers of the state's
> investor-owned utilities \$40 billion, perhaps more. In the coming year, it could
> harm the world's sixth-largest economy and send a ripple effect throughout
> the globe for those dependent on California's continued prosperity.
> This is the story of what went wrong with deregulation, and how
> planning lapses, serious policy blunders -- and warnings that came too late -- set
> California's two main utilities, Pacific Gas & Electric Co. and Southern
> California Edison, toward a train wreck.
> Power plant construction lagged while demand expanded. Leaders
> misjudged how much competition there would be to supply California with juice. And
> flawed deregulation laws left utilities and their customers at the mercy
> of power companies, extracting the highest price for electricity.
> "There was a blind adherence to free-market ideology that couldn't
> possibly work," said Eugene Coyle, a former utility securities analyst,
> economist and early opponent of deregulation. "There were poorly
> thought-out specifics."
> In the early 1990s, businesses were fleeing the state amid the worst
> economic times since the Great Depression. Energy rates were 50 percent
> higher than they were on average across the nation, because of commitments
> to more expensive, environmentally friendly power and cost overruns for
> nuclear power plant construction.
> Large customers such as steel makers, mining concerns and cement
> makers, for which electricity costs make up 25 percent of their overhead, saw that
> independent power producers were offering power much more cheaply. They
> began to insist on change.
> The United States had deregulated long-distance telephone service,
> airlines and a host of other industries, often with resulting competition
> that was a boon to consumers. Why not do the same for electricity?
> So California embarked on a pioneering experiment. In 1993 and 1994,
> the California Public Utilities Commission began to draft such a policy. It
> allowed large users to buy power directly from independent producers and
> froze customer rates at artificially high levels so utilities could
> recover their investments in costly plants.
> The utilities sought to have the terms codified in law, and in early

> 1996, a number of bills were introduced in the Legislature to do so.
>> Some observers say that what happened next contributed to the overall
> plan's flaws. Months passed while the discussion meandered and faltered,
> and at one point it even appeared that no law would be passed.
> That's when state Sen. Steve Peace took the reins and tried to make
> something happen.
> The San Diego legislator already had won the respect of his colleagues
> for his work on another complex piece of legislation, reform of the workers'
> compensation system.
> During a hurried two-week conference in August -- dubbed the "Steve
> Peace death march" for his propensity to keep negotiators at the table late into
> the night -- the fine points of the energy law were hashed out.
> Legislators entrusted their judgment to Peace and the few colleagues
> who worked on the bill. There was an abiding sense by a number of participants
> that few members of either house knew what was in the bill or even
> understood it. It was passed by both houses of the Legislature unanimously
> and signed into law the following month.
> "People were grateful to Peace and (former Sen. Diane) Martinez for
> taking it on," said Debra Bowen, D-Los Angeles, the current chair of the Senate
> energy committee. "Historically, utilities were a pretty boring topic, and
> I think term limits factored into it."
> The law was to end the monopolistic control that utilities held over
> both power production and supply by requiring them to sell off their
> generators. It set rates artificially high so they could recover money
> from bad investments. And it gave them nearly two years to prepare for
> competition.
> Moreover, residential customers would be granted an immediate 10
> percent rate cut.
> The system took effect April 1, 1998, and, at first, things seemed to
> work well. Soon, though, there were warning signs.
> It turned out the residential rate cut was actually going to be
> financed with \$7.5 billion in bonds that customers had to pay off. So the reduction
> in real terms was closer to only 3 percent, not 10 percent.
> Then in early 1999, the California Energy Commission, which tracks the
> state's supply and demand, was warning of coming supply shortfalls.
> Demand was skyrocketing, the agency pointed out in a Senate energy
> committee hearing, and no new significant generation had been built in a
> decade. Without more power, California was going to run out. But
> construction of new power plants takes at least two years from start to
> finish, and the state was already running behind in accommodating the
> growth.
> Back in the early 1990s, however, the energy commission had painted a
> far different picture. At that time, California had an oversupply of power,
> perhaps as much as 30 percent more than it needed.
> There was so much that when the utilities commission set up an auction
> for the construction of new facilities in the early 1990s, Edison and San
> Diego Gas and Electric Co. appealed to the Federal Energy Regulatory
> Commission to halt the auction, arguing there was already too much
> generation in California. The FERC obliged.
> "If anybody had told us in 1996, or even in 1998, that we would
> experience (such) load increases, we would have said, 'You're crazy,' " said D.J.
> Smith, a lobbyist for the California Large Energy Consumers Association
> and one of the top advocates of deregulation. "Nobody had ever seen load
> go up like that in a mature situation."
> Still, production figures from Edison Electric Institute, which provide
> a crude indicator of demand, show consumption grew by 4 percent in 1996, 3.4
> percent in 1997, nearly 5 percent in 1999, and a whopping 10 percent this
> year.
> And surrounding states, including Arizona, Nevada, Oregon and
> Washington, began to experience the same demand growth. Since California imported as
> much as 25 percent of its power from those states, the amount available
> was suddenly reduced by as much as half.

> But considering the long time it takes to build plants, in part because
> of public opposition, the warnings were too little, too late. In fact, the
> situation remained far off the radar screen of consumers, since most were
> still insulated from price spikes by a rate freeze.
> Then this summer, things started to spiral out of control.
> San Diego was the first region to meet the conditions necessary for
> full deregulation, and as hot summer months added to demand, customers' bills
> suddenly tripled.
> The debt load of PG&E and Edison began to balloon -- to what will be an
> estimated \$11 billion by the end of 2000 -- as they borrowed to pay for
> power while being barred from passing that cost on to consumers.
> Suddenly, the glow of deregulation had lost its luster.
> It immediately became clear that California's failure to build power
> plants as its rapidly growing economy pushed demand upward was a serious
> problem. Increasingly, the state's growing technology economy depended on
> electricity, and new home construction concentrated in hot areas like
> Riverside and San Bernardino counties, where air conditioning is a must.
> And for all the talk of competition, there was a serious flaw that made
> the market singularly uncompetitive.
> In order to encourage generators to create as much power as possible,
> deregulation guaranteed the highest price for wholesale electricity.
> Through a practice known as the "market clearing price," the last bidders
> -- who are invariably the most expensive -- set the price everyone would
> receive. In other words, if the first generator bids \$30 for a certain amount of
> megawatts but the last bids \$100, those two bidders and everyone in
> between receive \$100. As the wholesale price of electricity skyrocketed to
> \$1,500 per megawatt hour this month from \$30 before the storm, the high
> cost has been compounded by the fact that everyone receives that amount.
> Further, the law had encouraged utilities to sell their generators and
> existing electricity supply without guaranteeing access to affordable
> power.
> Rather than arranging to buy power on long-term contracts that could
> have saved money, they were put in the position of having to buy their power on
> a market where profit was the ultimate goal, and they and their consumers
> had to pay the price.
> Perhaps in the biggest misjudgment, policymakers neglected the huge
> amount of money it takes to run power companies and attract customers. Thus, they
> overestimated how much competition would flourish in the market.
> Running power companies is so costly -- \$500 million to build a new
> plant -- that only a handful of companies bought into the market. And once they
> were here, the marketing cost of signing up new customers was
> astronomical.
> Indeed, since choice has become available to California, less than
> 1 percent of residential customers has changed electricity providers.
> The same goes for just 15 percent to 20 percent of industrial customers -- the
> class that advocated deregulation in the first place.
> At the end of the day, this experiment in deregulation has come at a
> staggering cost: \$40 billion. That includes the \$23 billion already paid
> by customers when rates were frozen at artificially high levels, and the
> \$7.5 billion in bonds financing consumers' own rate reduction.
> Now a new tab is running -- whatever share of the \$11 billion in debt
> that state utility regulators decide customers should pay.
> The state's leaders are now casting around desperately for solutions to
> put Humpty Dumpty back together again.
> The PERC is encouraging the utilities to enter long-term contracts with
> suppliers, and market clearing pricing is under review. The state's
> utilities commission will decide Jan. 4 how much of a rate increase to
> grant to PG&E and Edison. And a dozen or so power plants are under
> construction.
> Meanwhile, consumer advocates are backing a state ballot measure that
> would not only re-regulate utilities but essentially make energy supply a
> government function. And they are challenging the utilities' efforts to

> pass on their debts to consumers, noting they have also reaped windfall
> profits from selling electricity.
> For example, in the quarter covering the summer months when power costs
> first went haywire, PG&E's profits amounted to \$225 million, a 22 percent
> increase over the same period in the previous year.
> In the short term, the state is considering ways to encourage energy
> conservation the same way it did with water. And the question now being
> asked is whether a commodity as central to the well-being of the economy
> should ever have been placed almost entirely under the control of free
> enterprise.
> "There's a discussion on how much we want to rely on market forces
> alone when it comes to electricity," Bowen said. "Do we want to subject
> ourselves to times when rates are really low and really high?"

>> -----

> POWER DEREGULATION CHRONOLOGY --

-April 1994: California Public Utilities Commission indicates it favors deregulation.
-October 1995: Framework of deregulation laid out in memorandums between large users,
energy providers and utilities. --
-January 1996: Bills introduced in legislature to codify
deregulation plan. --
-August 1996: The "Steve Peace death march" hashes out fine points of law. It passes both
houses unanimously. --
-Sept. 23, 1996: Gov. Pete Wilson signs the deregulation bill. --
-April 1, 1998: After a four-month delay, deregulation begins. --
-June 2000: San Diego has satisfied conditions for deregulation, and the rate cap there is
lifted. Shortages drive prices up 300 percent in some cases. --
-September 2000: The utilities begin to warn of billions in mounting debt and seek an end
to the rate cap that has prevented them from passing costs on to customers. --
-November, December 2000: More shortages put energy system in state of perpetual crisis,
despite fall being a season of traditional low demand; state regulators consider
utilities' requests for rate increases. A decision is expected Jan. 4.

> ----- PLAYERS IN THE DEREGULATION DRAMA --

-Steve Peace:
> Took control of the legislative process while a state senator and drove
> deregulation into law. --
-D.J. Smith:
> Lobbyist for large, industrial electricity customers and an early
advocate of deregulation. --
-Diane Martinez:
> As state senator, helped with the deregulation legislation. --
-Greg Conlan:
> Sympathetic to industrial consumers with high bills while serving on
the California Public Utilities Commission. --
-Pete Wilson:
> Saw deregulation as an answer to California's then-ailing economy. --
-Kenneth Lay:
> Noted in 1997, as chief executive of Enron Corp. in Houston, that
little competition had emerged. "It's like California announced a party but
nobody's showing up," he said. --
-Gordon Smith:
> As chief executive of PG&E, supported deregulation, at one point noting
there had been a "ceiling on our profits" under the old system.
> E-mail Christian Berthelsen at cberthelsen@sfnchronicle.com.
> -----
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August 7, 2001

MEMORANDUM FOR FILES

From: Norman Carleton

Subject: Retail Swaps Study Group Interviews at FRBNY, 8/01 - 8/02/01

On August 1 and 2, the retail swaps study group conducted interviews of representatives of market participants. The group interviewed representatives of two commercial banks, three investment banks, one energy commodity firm, one electronic trading facility, and one trade association. At each interview, a representative of the lead agency for the interview was the designated note taker. These note takers will distribute summaries of the interviews to the group.

Main Treasury (DO) was not the lead agency for any of the interviews. What follows is a brief summary of what I believe we learned from the interviews, and it is not meant to substitute for the forthcoming summaries.

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November 6, 2001

TO: Norman Carleton
Office Director
Office of Federal Finance Policy Analysis

FROM: Heidilynne Schultheiss
Financial Analyst
Office of Federal Finance Policy Analysis

SUBJECT: Chronology of Enron Events and Recent Financial Turmoil

Background

The stock and debt prices and credit ratings on Enron Corp. fell precipitously following the disclosure of a third quarter loss, possible accounting irregularities, questionable related party arrangements with company officers, and an SEC formal investigation in October 2001. The following chronology of events preceding and through the recent financial turmoil at Enron summarizes publicly available imperfect information for a company renowned for its opacity and reluctance to disclose information. It was compiled from an assortment of public sources whose accuracy and completeness cannot be independently verified, and thus must be evaluated cautiously in that context.

Pre-Turmoil Enron Chronology

Enron was formed in July 1985 as a result of the merger of two troubled gas pipeline firms, Houston Natural Gas and InterNorth of Omaha, Nebraska, creating an interstate natural gas pipeline company. Enron first became involved in derivatives transactions in 1989, when GasBank, the precursor to the North American and European wholesale trading business, was launched and Enron began trading natural gas commodities. Following the deregulation of the U.S. natural gas industry, the market revised its methods of contracting for gas in the wholesale market. GasBank allowed producers and wholesale buyers to purchase firm gas supplies and hedge the price risk of the new spot market simultaneously. Enron subsequently transformed itself from a natural gas pipeline company into a more diversified energy company, specializing in electricity, water, and bandwidth telecommunication markets, as well as risk transference/derivatives markets. In 1999, Enron launched EnronOnline, the first global web-based commodity trading site, and Enron subsequently became the world's largest e-commerce company. In 2001 it was estimated that 25 percent of OTC energy contracts were transacted by or through Enron.

In 1990, Andrew Fastow, who would later become its controversial CFO, joined Enron. At least as early as 1993, Enron was creating arrangements that allowed it to bring in outside equity and borrow large sums for asset purchases without revelation on its balance sheet. It is thought that Enron was attempting to restrain its debt load in order to maintain its credit rating and sustain its tremendous growth. One such arrangement involved CALPERS.

In 1997, Andrew Fastow became Enron's CFO. At least as early as 1997, Enron was establishing "related party arrangements" or "employee-related entities." One such arrangement was the "Chewco" entity run by Michael Kopper, former Managing Director of Enron North America.

In December 1999, Andrew Fastow, with the approval of the Enron board, created and managed two limited partnerships (related party arrangements), LJM Cayman LP and the larger LJM2 Co-Investment LP, possibly with Kopper. Their purpose ostensibly was to "hedge certain merchant assets and transactions and the fluctuating values of its growing portfolio of assets" (of more than \$100 million), and to enter into "share-settled costless collar arrangements" and "derivative instruments, including swaps, puts, and collars, which eliminated the contingent nature of existing restricted forward contracts." LJM raised only \$16 million, but LJM2 raised at least \$200 million. Investors included CSFB, Wachovia, GE Capital, and The Arkansas Teachers Fund.

Enron reportedly had been strapped for cash and sought to entice outside investors to strengthen its balance sheet. The related party arrangements reportedly involved Enron assets, millions of shares of Enron stock contributed to the structured finance vehicle, and notes receivable issued by partnership-related entities to Enron. The LJM2 offering document stated that Mr. Fastow would receive an annual management fee as much as 2 percent, and would be eligible for profit participation over its ten-year life. The general partner was obligated to invest at least 1 percent of the aggregate capital commitments. Subsequent reports speculated that the arrangements may have been created to retain Mr. Fastow after the exodus of executives who cashed out large profits on stock options.

In 1999, Enron filed a statement with the SEC that disclosed the Fastow partnership arrangements, although it was largely overlooked by analysts as they remained exuberantly optimistic about Enron and its phenomenal growth and earnings prospects. Around this time, Enron Treasurer Jeffrey McMahon complained to Enron President Jeffrey Skilling regarding what he perceived to be Mr. Fastow's conflict of interest. Mr. McMahon was reassigned as head of the industrial markets group.

In January 2000, Enron remained a favorite company of market analysts. It was named "The Most Innovative Company in America" for the fifth consecutive year and was ranked number 24 among the "100 Best Companies to Work for in America" in *Fortune* surveys. However, in June 2000, *The Economist* challenged Enron to refute allegations of arrogance, aggressiveness, opacity, and borderline legality. Enron's reply was viewed as nonresponsive.

In September 2000, LJM2 invested \$30 million in the "Raptor III" investment, which involved LJM2 writing put options that committed LJM2 to buy Enron stock at a set price for six months. However, in January 2001, LJM2 requested that Enron settle the Raptor III transaction early. LJM2 received its \$30 million in capital invested plus \$10.5 million in profit. This renegotiation occurred before the large decline in Enron's stock price, which would have forced LJM2 to purchase Enron stock at a loss of \$8 per share.

Enron's 2000 year-end financial statements were released, and cryptically described transactions with the Fastow partnerships, including the transfer from Enron of assets valued at \$1.2 billion, including \$150 million in notes payable, 3.7 million restricted Enron shares, and a call option to buy as many as 18 million Enron common shares in March 2003. Enron also transferred to the partnerships other assets valued at \$309 million, including a \$50 million note and "an investment that indirectly held warrants convertible into common stock of an Enron equity method investee." In return, Enron received economic interests in the entities, \$309 million in notes receivable, and \$1.2 billion in notes receivable as a "special distribution." It also mentioned a series of purchases by Enron of "share-settled options from the entities" on shares of Enron's common stock.

In April 2001, LJM2 reported that Mr. Fastow, and possibly others, had realized more than \$7 million in management fees and \$4 million in capital increases on an investment of nearly \$3 million. Profits had been improved by the early termination or renegotiation of transactions. The partnership had raised \$394 million and invested in power plants and Enron assets and stock, seeking a 29 percent IRR (reduced from its previous 48 percent target) after the decline in the New Power Co. retailer. Large cash distributions had been made to investors. In late July 2001, Mr. Fastow severed his relationship with the LJM2 partnership. Enron dissolved the Fastow financing vehicles, reacquired the Enron shares, and canceled the note receivable from the partnership after the value of Enron's stock and its broadband investments dropped sharply.

In July 2001, Enron officials were reported to have sold 1.8 million Enron shares valued at about \$106 million, as the stock declined from \$83 to \$45 per share. CEO Kenneth Lay sold 429,614 shares worth \$25.7 million as a result of stock options, leaving him with 2.8 million shares. In 2000 he had sold \$30.7 million; in 1999 he sold \$26 million. Kenneth Rice, former chairman and CEO of the broadband unit, sold \$23.7 million, reducing his 1.5 million shares by 456,966. President Skilling sold 160,000 of his 1.9 million shares for \$9.8 million. Aggregate sales by Enron executives totaled 5.8 million shares for \$449 million. In 1999, they had sold 3.4 million shares for \$123.1 million. The only corporate purchaser was Fastow, who bought 10,000 shares at \$36.98 each.

In August 2001, Enron President and CEO Skilling left after only six months in that position, citing personal reasons and the decline in Enron's stock price. Kenneth Lay, chairman and former CEO, again became Enron's CEO. Thomson Financial reported that Mr. Fastow's proceeds from stock options were \$4.6 million for the previous 12 months.

Current Enron Turmoil

On October 16, 2001, Enron reported a third quarter loss of \$618 million (compared with year-ago earnings of \$292 million), but did not release its balance sheet. The loss occurred despite a 59 percent increase in revenue to \$47.61 billion, after accounting for a \$1.01 billion charge to write off impaired assets at its Azurix Corp. water services unit and several investment losses. The charge consisted of \$287 million in asset impairments recorded by Azurix, \$180 million from restructuring broadband services, and \$544 million related to certain investments. About half of the \$544 million charge was attributed to The New Power Co. unit, a provider of

electricity and natural gas to households and small businesses; the other half to bankrupt Northpoint Communications and other technology investments, and the *early termination of a structured finance arrangement*. Excluding the charge, Enron would have met market expectations. Investors questioned Enron's ability to expand from its successful core wholesale energy business and its level of transparency. Moody's reviewed Enron for downgrade. Its debt-to-capital ratio increased to 50 from 46 percent, and it hoped to sell some assets to reduce it. Enron did not disclose its large reduction in equity in its earnings release, but instead waited.

On October 17, conflict-of-interest questions were raised regarding limited partnerships run by Mr. Fastow. The charge related to the early termination of certain structured finance arrangements was quantified as \$35 million. Enron held a conference call with securities analysts and investors in which it disclosed that its shareholder equity contracted by \$1.2 billion to \$9.5 billion as a result of Enron's repurchase of 55 million shares from Fastow (Enron had an average 913 million shares outstanding in the third quarter) at a lower price and the cancellation of the partnership note. Enron characterized the reduction as a "result of Enron's termination of previously recorded contractual obligations to deliver Enron shares in future periods." An analyst explained that Enron had promised that a certain amount of Enron's shares would be worth \$1 billion, and when they plummeted and fell below that value, Enron bought them back. One analyst conjectured that Enron had treated the shares as a buyback, but had never issued them. The SEC sent a letter to Enron notifying it that it was beginning an informal inquiry.

On October 22, Enron confirmed that it had received a request for information from the Texas regional office of the SEC regarding its controversial partnerships with Fastow. Analysts speculated that its Enforcement division was investigating possible violations of securities laws. The SEC reportedly was reviewing whether the transaction terminations should have been treated as a balance sheet item or a loss that affected reported earnings (accounting rules specify that a company's transaction in its own shares cannot produce profits or losses, whatever the effect on cash flow); and whether the related-party transactions were properly disclosed under Rule S-K, where a company must report transactions that exceed \$60,000 with "any director or executive officer."¹ There was speculation that Enron had used the off-balance sheet transactions to shift losses off its books to avoid an effect on its income statement. Enron's stock price fell 20 percent and it was the most actively traded NYSE stock with 36 million shares traded. Concerns about Enron's credit rating emerged. Enron stated that it had properly disclosed transactions, was cooperating with the SEC, and was confident it would not default. A class-action suit was filed in U.S. District Court in Houston alleging misrepresentation and failure to disclose and write down investments. It alleged that Enron insiders sold \$73 million of their holdings during parts of 2000 and 2001.

On October 23, worries arose that Enron might have to issue large amounts of stock in the next 20 months to noteholders to repay about \$3.3 billion in notes ultimately guaranteed by Enron for certain entities like the Marlin Water, Atlantic Water, and Osprey ventures if certain trigger events occurred (such as credit downgrades). Marlin owes almost \$1 billion in debt and

¹ However, FAS Statement 57 issued a broader disclosure directive regarding related party arrangements involving a "material" piece of business between the company and a member of its management.

has no assets other than a one-third stake in Azurix, a subsidiary that owns British water utility Wessex. Enron Treasurer Ben Glisan stated that assets could be sold to pay off the noteholders, raising at least \$2.2 billion, including \$1.55 billion in proceeds from the sale of the Portland General Electric utility. In a worst-case scenario, it could issue as much as \$1 billion in stock (there are currently 850 million shares outstanding), although Enron's share price had declined 75 percent from its high. An analyst estimated that Enron could have close to \$9 billion in off-balance sheet debt, and had been trying unsuccessfully to sell \$6 billion in illiquid foreign assets for years.

On October 24, Enron reported it had \$3.35 billion in bank lines of credit, of which \$1.75 billion would expire in May 2002 if not renewed. However, analysts still seemed to be mesmerized by Enron. Goldman Sachs downgraded Enron from its "U.S. Select List" of a few dozen stocks to its "Recommended List" of 200 stocks. Only Prudential downgraded Enron to a "sell" rating. Of 17 analysts, 10 still maintained a "strong buy" rating. Critics charged that analysts had compromised their objectivity, especially since Enron has retained many Wall Street firms for its offerings and paid a substantial amount of investment banking fees.

On October 25, Mr. Fastow took a "leave of absence" from Enron, and Mr. McMahon was named CFO. Concerns arose regarding a potential destabilizing effect on the energy trading market, since Enron trades approximately 25 percent of U.S. OTC electricity and natural gas contracts, particularly through its popular EnronOnline Internet trading platform. The notional value of its derivatives portfolio was estimated at \$21 billion, and there were fears that utilities and commercial and investments banks could be affected as well. J.P. Morgan Chase was mentioned, as it advises Enron on asset sales, provides credit to Enron, has the largest derivative operation of any bank, is a counterparty to Enron in some transactions, and has a large commodity trading business. Enron's creditworthiness was questioned. Enron's stock price declined again and it was the most actively trade NYSE stock at nearly 76 million shares, included some large blocks of 800,000 shares or more reportedly sold by institutional investors. Share prices for other energy trading companies declined as well. Additional analysts issued sell recommendations for Enron.

On October 26, Enron drew down \$3 billion of its \$3.35 billion bank credit lines to redeem \$1.85 billion of outstanding commercial paper that it was unable to roll over, and to provide it with a cash cushion. Citigroup and J.P. Morgan Chase reportedly each extended at least \$400 million. Enron reportedly was negotiating an additional \$1 to \$2 billion credit line, although the banks were insisting on stricter covenants and terms. Fitch placed Enron on review for a possible downgrade, and S&P changed its credit outlook to negative from stable. Enron's bonds, although still investment grade, traded at a 770 bp spread to Treasuries, in the same range as junk bonds, with yields rising above 10 percent, and liquidity was described as poor. The cost of a default swap rose to 10 from 8 percent of the size of the credit insured. Enron sued Microsoft over its failed broadband services arrangement. Critics noted that Enron would receive \$254 million in tax benefits in the current House stimulus package.

On October 29, European energy firms reportedly were reluctant to trade with Enron, one of Europe's biggest power and gas traders. Some counterparties avoided Enron, and liquidity was reduced. Its stock hit a five-year low. Moody's downgraded Enron's senior unsecured

long-term debt by one notch to Baa2 from Baa1, still two levels above junk bond status, citing the write-downs, equity charges, and partnership investments. It stated that it may downgrade Enron's commercial paper P-2 rating as well, making it more difficult/expensive for Enron to borrow short-term cash. Royal Dutch/Shell reportedly was interested in purchasing Enron, and had approached it earlier in August. The SEC transferred its inquiry to its Washington D.C. headquarters.

On October 30, there were rumors that GE Capital, Berkshire Hathaway or Royal Dutch Petroleum might buy Enron. Its stock increased 25 percent, rebounding from a nine-year low.

On October 31, the SEC began formally investigating the Fastow partnerships. Large energy traders were reported as willing to do business with Enron, but at shorter maturities and using less complex structures. Trading on EnronOnline was reportedly strong. However, few firms would accept Enron as a guarantor of credit derivatives, some counterparties in its core energy markets refused to transact, and two members of the InterContinental Exchange refused Enron's credit.

On November 1, Enron received a \$1 billion loan from J.P. Morgan Chase and Salomon Smith Barney, using natural gas pipelines (Northern Natural Gas and Transwestern Pipeline) as collateral. Proceeds from this secured loan were to be used for debt payments and to supplement cash reserves, and it could borrow an additional \$200 million from other banks. This was perceived as a desperate attempt to preserve its creditworthiness. It reportedly was unable to issue commercial paper (at least at lower rates), and two energy companies (Exelon and Northeast Utilities) restricted business with Enron. Its stock declined 16 percent, and its notes had declined substantially as well.

On November 5, Fitch downgraded Enron's senior unsecured debt rating from BBB+ to BBB-, one notch above junk status, citing its liquidity difficulties, erosion of investor confidence, and substantial diminution of its global investments financed with aggressive off-balance sheet vehicles. Fitch also lowered Enron's subordinated debt from BBB to BB, its preferred stock from BBB- to B, and its commercial paper from F3 to F2. It also lowered the senior unsecured debt ratings of Enron's pipeline subsidiaries, Northern Natural Gas and Transwestern Pipeline, from A- to BBB-, whose assets were pledged the previous week to help Enron secure an additional \$1 billion bank facility. All of the Fitch ratings remained at "Rating Watch Negative" status.

On November 6, Fitch warned that it might downgrade Enron's credit rating to junk status. Also, former Enron president Skilling reportedly testified before the SEC in Washington, D.C. pursuant to a subpoena.

On November 7, Enron stock sank to a new low of \$7 per share before rebounding on reports that it was having discussions with Dynegy Inc. regarding at least a \$1.5 to 2 billion cash infusion, and possibly a full merger. A merger would involve the sale of Enron to Dynegy for about \$8 billion in a stock swap (about \$10 per share), with a cash infusion of \$1.5 billion initially and \$1 billion later provided by ChevronTexaco, which owns 27 percent of Dynegy. Dynegy would assume Enron's \$12.8 billion on-balance sheet debt; the disposition of its

controversial off-balance sheet debt was unknown. Enron reportedly was unable to sell off certain assets that it had hoped would raise cash. Its debt continued to trade at prices comparable to non-investment grade debt, and it became more dependent on secured bank lending as other sources of liquidity dried up.

On November 8, Enron restated its earnings and retroactively consolidated its past financial performance with several previously off-balance sheet subsidiaries for 1997 through 2001, reducing net income by a total of \$591 million. This reduced its 1997 earnings by about \$96 million, 1998 earnings by about \$113 million, 1999 earnings by about \$250 million and 2000 earnings by about \$132 million. For 2001, it increased first-quarter earnings by \$17 million and second-quarter earnings by \$5 million, but reduced third-quarter earnings by \$17 million. It was estimated that the consolidation also would increase its debt by about \$2.59 billion. Enron also made public its responses to SEC questions involving the partnerships. Enron fired its Treasurer, Ben Glisan, and the General Counsel and managing director of one of its divisions, Kristina Mordaunt, who may have been involved in a partnership.

On November 9, Enron cancelled a meeting with its creditors to apprise them of its merger and liquidity situation. A possible merger was delayed because of concerns that a combined Dynegy-Enron entity would receive a lower or junk credit rating. Dynegy and Enron provided pro forma financial statements to the rating agencies and requested an expedited review of the transaction. Enron disclosed that the controversial transactions with Mr. Fastow had earned him \$30 million.

Conclusion

Although the preceding chronology is subject to revision and embellishment as more facts emerge, Enron definitely has suffered a decline in investor and analyst confidence, as well as declines in its stock and debt prices and credit ratings, availability, and terms (see attached graphs). The SEC is investigating possible violations of U.S. securities laws. It reportedly is reviewing whether the transaction terminations should have been treated as a balance sheet item or a loss that affected reported earnings and whether the related-party transactions were properly disclosed. The current speculation is that Enron intentionally used the off-balance sheet transactions to shift losses off its books to avoid an effect on its income statement. The current concern is that Enron might have to issue large amounts of stock to noteholders to repay about \$3.3 billion in notes ultimately guaranteed by Enron for certain of its related entities if certain trigger events, such as credit downgrades, occur, and that the situation could have a destabilizing effect on the energy and derivative markets that Enron dominates.

Attachments (graphs)

Weekly Activity Report, Federal Finance Policy Analysis, June 1 - June 4, 1999

[OUTSIDE SCOPE]

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Enron/Cadwalader Bankruptcy Proposal

Question: Do you support the Enron/Cadwalader proposal to modify the financial contract netting provisions in the Bankruptcy bill?

Answer:

- We do not support the major provisions in the Enron/Cadwalader proposal because they undo a difficult balancing of competing objectives that the Working Group worked hard over two years to achieve.
- Specifically, we do not support the expansion of the definition of forward contract merchant to any entity that at any time has had a forward contract with the debtor. We believe that this is too broad.
- Also, we do not support the expansion of the definition of swap contract to cover virtually any transaction documented as a swap. That is too broad.
- We believe that the close-out netting provisions before Congress are useful improvements in current law. They help ensure that markets can continue to operate efficiently in the event of bankruptcy. However, provisions that go way beyond the goal of protecting financial markets should only be considered in the context of explicit consideration of modifying the automatic stay in the Code.

Carleton, Norman

From: Carleton, Norman
Sent: Thursday, January 10, 2002 1:20 PM
To: Gabilondo, Jose
Cc: Schultheiss, Heidilynne; Nickoloff, Peter
Subject: FW: Enron Chairman Gave Warning to Bush Officials on Company's Collapse.htm

[(b)(5)]

:
Norman

-----Original Message-----

From: Nickoloff, Peter
Sent: Thursday, January 10, 2002 1:16 PM
To: Carleton, Norman; Schultheiss, Heidilynne
Subject: Enron Chairman Gave Warning to Bush Officials on Company's Collapse.htm

Tracking:	Recipient	Delivery	Read
	Gabilondo, Jose	Delivered: 1/10/02 1:20 PM	Read: 1/10/02 2:55 PM
	Schultheiss, Heidilynne	Delivered: 1/10/02 1:20 PM	Read: 1/10/02 2:30 PM
	Nickoloff, Peter	Delivered: 1/10/02 1:20 PM	Read: 1/10/02 1:29 PM

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ON THE WEB

January 10, 2002

Enron Chairman Gave Warning to Bush Officials on Company's Collapse

By THE ASSOCIATED PRESS

Filed at 12:57 p.m. ET

WASHINGTON (AP) -- Enron ([news/quote](#)) Chairman Kenneth L. Lay reached out to two of President Bush's Cabinet officers when the energy company was collapsing, the White House disclosed Thursday as the Justice Department opened a criminal investigation of Enron's bankruptcy.

Bush, who received significant campaign contributions from Lay and other Enron executives, said he himself has never discussed Enron's financial problems with its embattled corporate chairman. The president said he last saw Lay in Texas at spring fund-raiser for former first lady Barbara Bush's literacy foundation.

Lay also was among a group of some 20 business leaders who came to the White House early in the Bush administration to discuss the state of the economy, Bush said.

Many Enron employees lost their life savings when the company filed for bankruptcy Dec. 2.

"What anybody's going to find out is that this administration will fully investigate issues such as the Enron bankruptcy, to make sure we can learn from the past and make sure workers are protected," Bush said.

But Lay did seek the ear of other top-level administration officials last fall.

According to White House press secretary Ari Fleischer, Lay telephoned Treasury Secretary Paul O'Neill amid Enron's collapse "to advise him about his concern about the obligations of Enron and whether they would be able to meet those obligations."

Lay also told O'Neill that Enron "was heading to bankruptcy," Fleischer said.

O'Neill received calls from Lay on Oct. 28 and Nov. 8, said Treasury spokeswoman Michele Davis. It was on Oct. 16 that Enron made its stunning disclosure of a \$638 million third-quarter loss.

In a separate phone call to Commerce Secretary Don Evans, Lay similarly worried that the company might have to default on its obligations. He brought to the secretary's attention "that he was having problems with his bond rating and he was worried about its impact on the energy sector," Fleischer said.

After that conversation, Evans spoke to O'Neill "and they both agreed no action should be taken to intervene with their bond holders," Fleischer said.

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The spokesman had said Wednesday he did not know of anyone in the White House who discussed Enron's financial situation.

Fleischer also brushed aside talk of any conflict in the Justice Department investigation and said there was no reason to turn the probe over to a special counsel.

Lay gave \$25,000 to a leadership committee headed by then-senator and now Attorney General John Ashcroft, according to the Center for Public Integrity.

An attorney for Enron welcomed Ashcroft's inquiry, the latest in a series of governmental probes into the company's demise, saying the investigation would "bring light to the facts."

"We want to get to the bottom of this too," said Robert Bennett, a Washington attorney representing the Houston-based company. "A lot of decent and honorable people work at Enron and we should wait until the facts are out."

Bush ordered a separate review Thursday of pension and corporate disclosure rules that could jeopardize workers' savings. "There has been a wave of bankruptcies that have caused many workers to lose their pensions and that is deeply troubling to me," Bush said.

The Justice Department is forming a national task force to look into the company's dealings. The group will be headed by lawyers at the department's criminal division and include prosecutors in Houston, San Francisco, New York and several other cities, said a Justice Department official, speaking on condition of anonymity.

The official declined to say when the investigation began. Enron faces civil investigations by the Labor Department and the Securities and Exchange Commission and subpoenas from congressional committees.

All are looking into the energy trading company's collapse, the largest bankruptcy filing in U.S. history.

The failure hit employees and investors hard. Workers were prohibited from selling company stock from their Enron-heavy 401(k) retirement accounts as the company's stock plummeted. Many lost their life's savings.

Enron executives cashed out more than \$1 billion in stock when it was near its peak.

Former Enron chief executive Jeffrey Skilling, who left the helm nearly two months before the company's swift descent, welcomes the investigation, said spokeswoman Judy Leon. Skilling has said he had no idea, despite Enron's falling stock values, that the company was on the brink of failure.

Formed in 1985, Enron had 20,000 employees and was once the world's top buyer and seller of natural gas and the largest electricity marketer in the United States. It also marketed coal, pulp, paper, plastics, metals and fiber-optic bandwidth.

One likely focus of the Justice Department investigation is possible fraud based on Enron's heavy reliance on off-balance-sheet partnerships which took on Enron debt. The partnerships masked Enron's financial problems and left its credit ratings healthy so it could obtain the cash and credit crucial to running its trading business.

The Houston-based company went bankrupt after its credit collapsed and its main rival,

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Dynegy Inc. (news/quote), backed out of an \$8.4 billion buyout plan late last year.

Just a year ago, stock of Enron, the nation's largest buyer and seller of natural gas, traded at \$85 per share. Today it is less than \$1.

Lay has close ties to Bush and his father, the former president. Lay was a top contributor to the younger Bush's 2000 presidential campaign.

The company played a key role earlier this year when a White House task force met with business executives and other interests to fashion a national energy policy. The task force was headed by Vice President Dick Cheney.

^_____

On the Net:

<http://www.enron.com>

<http://usdoj.gov>

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Enron

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Enron Talking Points

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Carleton, Norman

From: Carleton, Norman
Sent: Friday, December 21, 2001 9:47 AM
To: Bitsberger, Timothy; Wiedman, Mark
Cc: Schultheiss, Heidilynne; Nickoloff, Peter
Subject: Enron Talking Points



Enron talking
points.doc

Attached are draft Enron talking points for Peter Fisher.

Tracking:	Recipient	Delivery	Read
	Bitsberger, Timothy	Delivered: 12/21/01 9:47 AM	Read: 12/21/01 11:29 AM
	Wiedman, Mark	Delivered: 12/21/01 9:47 AM	Read: 12/21/01 1:28 PM
	Schultheiss, Heidilynne	Delivered: 12/21/01 9:47 AM	Read: 12/21/01 9:47 AM
	Nickoloff, Peter	Delivered: 12/21/01 9:47 AM	Read: 12/21/01 10:00 AM

Enron

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Carleton, Norman

From: Carleton, Norman
Sent: Friday, December 21, 2001 9:47 AM
To: Bitsberger, Timothy; Wiedman, Mark
Cc: Schultheiss, Heidi Lynne; Nickoloff, Peter
Subject: Enron Talking Points



Enron talking
points.doc

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Tracking:

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c k iss idl nn	li rd	ad
ickolo tr	li rd	ad

Enron Talking Points

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Carleton, Norman

From: Carleton, Norman
Sent: Friday, December 21, 2001 3:56 PM
To: Bitsberger, Timothy; Wiedman, Mark
Subject: Revised Enron Talking Points



enron_new.doc

Attached is a revised document based on Mark's comments.

Tracking:

Recipient

Bitsberger, Timothy

Wiedman, Mark

Delivery

Delivered: 12/21/01 3:56 PM

Delivered: 12/21/01 3:56 PM

Read

Read: 12/31/01 9:09 AM

Read: 12/21/01 4:08 PM

Enron

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01300000000620

Weekly Activity Report, Federal Finance Policy Analysis, June 22,
1998

[OUTSIDE SCOPE]

- On June 18, DAS Anderson and staff, along with the General Counsel and staff, met with Enron representatives to hear their concerns about the CFTC concept release.

[OUTSIDE SCOPE]

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Carleton, Norman

From: Carleton, Norman
Sent: Friday, September 07, 2001 5:11 PM
To: Lori Sanatamarena (E-mail)
Subject: FW: Retail Swaps Study-Blackbird & Enron Interviews


Blackbird interview
-FINAL.DOC..


Enron interview -
FINAL.doc

-----Original Message-----

From: Carleton, Norman
Sent: Friday, September 07, 2001 11:55 AM
To: Alexander M. Brill (E-mail)
Subject: FW: Retail Swaps Study-Blackbird & Enron Interviews

-----Original Message-----

From: Remy, Christine [mailto:cremy@CFTC.gov]
Sent: Wednesday, August 15, 2001 9:39 AM
To: 'blaine@sec.gov'; 'kurt.wilhelm@occ.treas.gov';
'matthew.eichner@do.treas.gov'; 'mbrowne@fdic.gov';
'norman.carleton@do.treas.gov'; 'polisej@sec.gov'; 'pwhite@frb.gov';
'patrick.parkinson@frb.gov'; 'dombalagiano@sec.gov';
'Joyce.Hansen@ny.frb.org'; 'Diane.Virzera@ny.frb.org';
'Adelina.Bonanno@ny.frb.org'; 'Bob.Gasperini@ny.frb.org';
'Heidilynne.Schultheiss@do.treas.gov'; 'Peter.Nickoloff@do.treas.gov'
Cc: Fox, Elizabeth L. R.
Subject: Retail Swaps Study-Blackbird & Enron Interviews

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<<Blackbird interview -FINAL.DOC>> <<Enron interview - FINAL.doc>>

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CONFIDENTIAL

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DRAFT

January 10, 2002

TO: Norman Carleton
Director
Office of Federal Finance Policy Analysis

FROM: Heidilynne Schultheiss
Financial Economist
Office of Federal Finance Policy Analysis

SUBJECT: Dow Jones Newswires and Washington Post Articles on Enron and the
Commodity Futures Modernization Act of 2000

BACKGROUND

[(b)(5)]

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[(b)(5)]

02151

01300000000760

[(b)(5)]

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MEMO
January 10, 2002

TO: Norman Carleton
Director
Office of Federal Finance Policy Analysis

FROM: Heidilynne Schultheiss
Financial Economist
Office of Federal Finance Policy Analysis

SUBJECT: Dow Jones Newswires and Washington Post Articles on Enron and the
Commodity Futures Modernization Act of 2000

BACKGROUND

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[(b)(5)]

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ISSUE AND DISCUSSION

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Attachments

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CHRONOLOGY OF ENRON EVENTS

Note of Caution: The following chronology was compiled from an assortment of public documents whose complete accuracy cannot be substantiated.

1990 Controversial CFO Andrew Fastow joined Enron.

1997 Fastow became Enron's CFO.

1997 Enron established its Chewco employee-related entity, run by former-Managing Director Michael Kopper, with \$400 million in capital commitments. Enron and Chewco did hundreds of millions of dollars in business.

December 1999 Fastow, with the approval of the Enron board, created and managed two limited partnerships ("related party arrangements"), LJM Cayman LP and the larger LJM2 Co-Investment LP. Their purpose ostensibly was to "hedge certain merchant assets and transactions and the fluctuating values of its growing portfolio of assets" (of more than \$100 million), and to enter into "share-settled costless collar arrangements" and "derivative instruments, including swaps, puts, and collars, which eliminated the contingent nature of existing restricted forward contracts." LJM raised only \$16 million, but LJM2 raised at least \$200 million. Investors included CSFB, Wachovia, GE Capital, and The Arkansas Teachers Fund. Enron reportedly had been strapped for cash and sought to entice outside investors to strengthen its balance sheet. The arrangements involved Enron assets, millions of shares of Enron stock contributed to the structured finance vehicle, and notes receivable issued by partnership-related entities to Enron. The offering document stated that Fastow would receive an annual management fee as much as 2 percent, and would be eligible for profit participation over its ten-year life. The general partner was obligated to invest at least 1 percent of the aggregate capital commitments. Private partnership documents apparently revealed the potential for huge financial rewards for Fastow. Subsequent reports speculated that the arrangements may have been created to retain Fastow after the exodus of executives who cashed out large profits on stock options.

1999 Enron filed a statement with the SEC that disclosed the Fastow partnership arrangements, although it was largely overlooked by analysts as they remained exuberantly optimistic about Enron and its phenomenal growth and earnings prospects.

1999? Enron Treasurer Jeffrey McMahon complained to Enron President Jeffrey Skilling regarding Fastow's conflict of interest. McMahon was reassigned.

September 2000 LJM2 invested \$30 million in Raptor III, writing put options that committed LJM2 to buy Enron stock at a set price for six months.

12/22/00 Enron successfully lobbied Congress for exemption from regulation for its Internet trading platform by the CFTC under the CFMA.

January 2001 LJM2 requested that Enron settle the Raptor III transaction early. LJM2 received its \$30 million in capital invested plus \$10.5 million in profit. This renegotiation occurred

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before the large decline in Enron's stock price, which would have forced LJM2 to purchase Enron stock at a loss of \$8 per share.

2001 Kopper left Enron to help run the Fastow-related partnerships.

4/30/01 LJM2 reported that Fastow, and possibly others, realized more than \$7 million in management fees and \$4 million in capital increases on an investment of nearly \$3 million. Profits were improved by terminating a transaction early or renegotiating the terms of existing deals. The partnership had raised \$394 million and invested in power plants and Enron assets and stock, seeking a 29 percent IRR (reduced from 48 percent) after the decline in the New Power Co. retailer. Large cash distributions had been made to investors

6/30/01 Enron reported \$33.6 billion in current liabilities and long-term debt, and attempted to sell off assets to pay down debt.

July 2001 Enron created Marlin Water Trust II, selling \$915 million in notes due July 15, 2003. Provisions would require Enron to issue stock to noteholders if it was considered in default if its stock price fell below \$34.13 for three days and its senior debt was downgraded to below investment grade.

Late July 2001 Fastow severed his relationship with the LJM2 partnership.

2001? Enron dissolved the financing vehicle, reacquired the shares, and canceled the note receivable from the partnership after the value of Enron's stock and its broadband investments hedged by the entity dropped sharply.

7/31/01 Enron officials were reported to have sold 1.8 million Enron shares valued at about \$106 million, as the stock declined from \$83 to \$45 per share. CEO Kenneth Lay sold 429,614 shares worth \$25.7 million as a result of stock options, leaving him with 2.8 million shares. In 2000 he had sold \$30.7 million; in 1999 he sold \$26 million. Kenneth Rice, former chairman and CEO of the broadband unit, sold \$23.7 million, reducing his 1.5 million shares by 456,966. President Skilling sold 160,000 of his 1.9 million shares for \$9.8 million. Aggregate sales by Enron executives totaled 5.8 million shares for \$449 million. In 1999, they had sold 3.4 million shares for \$123.1 million. The only corporate purchaser was Fastow, who bought 10,000 shares at \$36.98 each.

August 2001 Enron President and CEO Skilling left after only six months in that position, citing personal reasons and the decline in Enron's stock price. Kenneth Lay, chairman and former CEO again became Enron's CEO.

8/31/01 Thomson Financial reported that Fastow's proceeds from stock options were \$4.6 million for the previous 12 months.

10/16/01 Enron reported a third-quarter loss of \$618 million (compared with year-ago earnings of \$292 million), but did not release its Q3 balance sheet. The loss occurred despite a 59 percent increase in revenue to \$47.61 billion, after accounting for a \$1.01 billion charge to

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write off impaired assets at its Azurix Corp. water services unit and several investment losses. The charge consisted of \$287 million in asset impairments recorded by Azurix, \$180 million from restructuring broadband services, and \$544 million related to certain investments. About half of the \$544 million charge was attributed to The New Power Co. unit, a provider of electricity and natural gas to households and small businesses; the other half to bankrupt Northpoint Communications and other technology investments, and the *early termination of a structured finance arrangement*. Excluding the charge, Enron would have met market expectations. Investors questioned Enron's ability to expand from its successful core wholesale energy business and its level of transparency. Moody's reviewed Enron for downgrade. Its debt-to-capital ratio increased to 50 from 46 percent, and it hoped to sell some assets to reduce it. Enron did not disclose its large reduction in equity in its earnings release, but instead waited.

10/17/01 Conflict-of-interest questions were raised regarding limited partnerships run by CFO Fastow. The charge related to the early termination of certain structured finance arrangements was quantified as \$35 million. Enron held a conference call with securities analysts and investors in which it disclosed that its shareholder equity contracted by \$1.2 billion to \$9.5 billion as a result of Enron's repurchase of 55 million shares from Fastow (Enron had an average 913 million shares outstanding in Q3) at a lower price and the cancellation of the partnership note. Enron characterized the reduction as a "result of Enron's termination of previously recorded contractual obligations to deliver Enron shares in future periods." An analyst explained that Enron had promised that a certain amount of Enron's shares would be worth \$1 billion, and when they plummeted and fell below that value, Enron bought them back. One analyst conjectured that Enron had treated the shares as a buyback, but had never issued them. The SEC sent a letter to Enron beginning an "informal inquiry."

10/22/01 Enron confirmed that it had received a request for information from the Texas regional office of the SEC regarding its controversial partnerships with Fastow. Analysts speculated that its Enforcement division was investigating possible violations of securities laws. The SEC reportedly was reviewing whether the transaction terminations should have been treated as a balance sheet item or a loss that affected reported earnings (accounting rules specify that a company's transaction in its own shares cannot produce profits or losses, whatever the effect on cash flow); and whether the related-party transactions were properly disclosed under Rule S-K, where a company must report transactions that exceed \$60,000 with "any director or executive officer" (although FAS Statement 57 issued a broader definition involving a "material" piece of business between the company and a member of its management). Enron's stock price fell 20 percent and it was the most actively traded NYSE stock with 36 million shares traded. Concerns about Enron's credit rating emerged. Enron stated that it had properly disclosed transactions, was cooperating with the SEC, and was confident it would not default. A class-action suit was filed in U.S. District Court in Houston alleging misrepresentation and failure to disclose and write down investments. It alleged that Enron insiders sold \$73 million of their holdings during parts of 2000 and 2001.

10/23/01 Worries arose that Enron might have to issue large amounts of stock in the next 20 months to noteholders to repay about \$3.3 billion in notes ultimately guaranteed by Enron for certain entities like the Marlin Water and Osprey ventures if certain trigger events occurred. Marlin owes almost \$1 billion in debt and has no assets other than a one-third stake in Azurix, a

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subsidiary that owns British water utility Wessex. Enron Treasurer Ben Glisan stated that assets could be sold to pay off the noteholders, raising at least \$2.2 billion, including \$1.55 billion in proceeds from the sale of the Portland General Electric utility. In a worst-case scenario, it could issue as much as \$1 billion in stock (there are currently 850 million shares outstanding), although Enron's share price had declined 75 percent from its high. An analyst estimated that Enron could have close to \$9 billion in off-balance sheet debt, and had been trying unsuccessfully to sell \$6 billion in illiquid foreign assets for years.

10/24/01 Enron reported it had \$3.35 billion in bank lines of credit, of which \$1.75 billion would expire in May 2002 if not renewed. However, analysts still seemed to be mesmerized by Enron. Goldman Sachs downgraded Enron from its "U.S. Select List" of a few dozen stocks to its "Recommended List" of 200 stocks. Only Prudential downgraded Enron to a "sell" rating. Of 17 analysts, 10 still maintained a "strong buy" rating. Critics charged that analysts had compromised their objectivity, especially since Enron has retained many Wall Street firms for its offerings and paid a substantial amount of investment banking fees.

10/25/01 Fastow took a "leave of absence" from Enron, and McMahon was named CFO. Concerns arose regarding a destabilizing effect on the energy trading market, since Enron trades approximately 25 percent of U.S. OTC electricity and natural gas contracts, particularly through its popular EnronOnline Internet trading platform. Enron's creditworthiness was questioned. Enron's stock price declined again and it was the most actively traded NYSE stock at nearly 76 million shares, included some large blocks of 800,000 shares or more reportedly sold by institutional investors. Share prices for other energy trading companies declined as well. Some analysts issued sell recommendations for Enron.

10/26/01 Enron drew down \$3 billion of its \$3.35 billion bank credit lines to redeem \$1.85 billion of outstanding commercial paper that it had problems rolling over, and to provide it with a cash cushion. Citigroup and J.P. Morgan Chase reportedly each extended at least \$400 million. Enron reportedly was negotiating an additional \$1 to \$2 billion credit line, although the banks were insisting on stricter covenants and terms. Fitch placed Enron on review for a possible downgrade, and S&P changed its credit outlook to negative from stable. Enron's bonds, although still investment grade, traded at a 770 bp spread to Treasuries, in the same range as junk bonds, with yields rising above 10 percent, and liquidity was described as poor. The cost of a default swap rose to 10 from 8 percent of the size of the credit insured. Enron sued Microsoft over its failed broadband services arrangement. Critics noted that Enron would receive \$254 million in the current House stimulus package.

10/28/01 Enron held a special Sunday board meeting to consider investor confidence and liquidity.

10/29/01 European energy firms were reportedly reluctant to trade with Enron, one of Europe's biggest power and gas traders. Some counterparties avoided Enron, and liquidity was reduced. Its stock hit a five-year low. Moody's downgraded Enron's senior unsecured long-term debt by one notch to Baa2 from Baa1, still two levels above junk bond status, citing the write-downs, equity charges, and partnership investments. It stated that it may downgrade Enron's commercial paper P-2 rating as well, making it more difficult/expensive for Enron to

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borrow short-term cash. Royal Dutch/Shell reportedly was interested in purchasing Enron, and had approached it earlier in August. The SEC transferred its inquiry to its Washington D.C. headquarters.

10/30/01 There were rumors that GE Capital, Berkshire Hathaway or Royal Dutch Petroleum might buy Enron. Its stock increased 25 percent, rebounding from a nine-year low.

02178

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Carleton, Norman

From: Hammer, Viva
Sent: Monday, October 01, 2001 3:09 PM
To: Carleton, Norman
Subject: RE: Discussion with Ken Raisler about Enron Product



Retail Swaps.doc

one versin of retail swaps

-----Original Message-----

From: Carleton, Norman
Sent: Saturday, September 08, 2001 1:10 PM
To: Bair, Sheila; DeMarco, Edward; Eichner, Matthew; Ellett, Martha; Fisher, Peter; Gabilondo, Jose; Gross, Jared; Hammer, Viva; Hughes, Gerry; Nickoloff, Peter; Novey, Michael; Roseborn, Brian; Schultheiss, HeidiLynne; Smith, Amy; Sutton, Gary
Subject: Discussion with Ken Raisler about Enron Product

On Friday, September 7, I discussed the retail energy swap issue with Ken Raisler. He is a partner at Sullivan & Cromwell who represents Enron. In the mid 1980s, he was the general counsel of the CFTC.

I asked Ken if Enron opposed state regulation of retail energy derivatives if the CFTC were to grant an exemption for this product. The first answer to this question was yes, but that answer was modified as we further discussed the issue.

I asked Ken if he thought that there was a preemption argument that could be made because of CFTC exclusive jurisdiction. He said he thought there was. He said Enron would not make such a legal argument because it is regulated in some states as a utility company, but that others might make such an argument.

I told Ken that the Treasury had not come to a conclusion about the retail energy swap issue but that we were unlikely to support a result that would mean no federal regulation and would not allow state governments to regulate this product if they chose to do so. He asked me what regulatory issues might be of concern. I answered that such issues as advertising, pricing, and assurances that the company offering the product had the financial ability to meet its obligations might be subjects that governments would be concerned about. Ken said he thought that this was a reasonable position.

I asked Ken whether he thought that the CFTC could exempt retail energy swaps from the exclusive jurisdiction provision of the CEA, thus precluding any arguments about state jurisdiction. He said he thought that might be possible.

At the end of the conversation, Ken indicated he would talk to his client about the issues I had raised.

[(b)(5)]

[(b)(5)]

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[(b)(5)]

02228

01300000000837

Carleton, Norman

From: Carleton, Norman
Sent: Thursday, August 30, 2001 9:33 AM
To: Bair, Sheila
Subject: RE: More on the Enron Issue

[(b)(5)]

-----Original Message-----

From: Bair, Sheila
Sent: Thursday, August 30, 2001 9:26 AM
To: Carleton, Norman
Subject: RE: More on the Enron Issue

[(b)(5)]

-----Original Message-----

From: Carleton, Norman
Sent: Wednesday, August 29, 2001 2:41 PM
To: Fisher, Peter; Roseboro, Brian; Bair, Sheila; Nickoloff, Peter; Schultheiss, Heidlynn; DeMarco, Edward; Hughes, Gerry; Gross, Jared; Smith, Amy; Sutton, Gary; Elliott, Martha; Gabilondo, Jose; McInerney, Roberta; Lori Sanatamorena (E-mail); Nowey, Michael; Eichner, Matthew; Hammer, Viva
Subject: More on the Enron Issue

[(b)(5); (b)(4)]

[(b)(5)]

Thoughts?

Tracking:

Recipient

Bair, Sheila

Nickoloff, Peter

Schultheiss, Heidlynn

Delivery

Delivered: 8/30/01 9:33 AM

Delivered: 8/30/01 9:33 AM

Delivered: 8/30/01 9:33 AM

Read

Read: 8/30/01 1:01 PM

Read: 8/30/01 9:38 AM

Read: 8/30/01 9:33 AM

02231

Carleton, Norman

From: Carleton, Norman
Sent: Tuesday, August 07, 2001 8:39 PM
To: 'Raislerk@sullcrom.com'
Subject: RE: CFTC Presentation -- Final Version

Ken,

Thanks. I received it this evening.

Norman

-----Original Message-----
From: Raislerk@sullcrom.com [mailto:Raislerk@sullcrom.com]
Sent: Tuesday August 07, 2001 7:10 PM
To: norman.carleton@do.treas.gov
Subject: FW: CFTC Presentation -- Final Version

This is the right version. Please acknowledge receipt.

-----Original Message-----
From: chendrix@enron.com [mailto:chendrix@enron.com]
Sent: Tuesday, August 07, 2001 6:42 PM
To: Raislerk@sullcrom.com
Subject: RE: CFTC Presentation -- Final Version

Here you go. (See attached file: cftc_final.ppt)

Raislerk@sullcrom.com on 08/07/2001 05:06:50 PM

To: chendrix@enron.com
cc:
Subject: RE: CFTC Presentation -- Final Version

Chris,

As I am sure Scott told you, this presentation went very well. Treasury has asked for copies in electronic form. Can you resend this to me without the notes imbedded so I can forward it on to them. Thanks.

Ken

-----Original Message-----
From: chendrix@enron.com [mailto:chendrix@enron.com]
Sent: Wednesday, August 01, 2001 3:57 PM
To: Raislerk@sullcrom.com
Subject: CFTC Presentation -- Final Version

Attached is the final version of the presentation. (See attached file: cftc_final_presentation.ppt)

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

Carleton, Norman

From: Carleton, Norman
Sent: Saturday, September 08, 2001 1:07 PM
To: Bair, Sheila; DeMarco, Edward; Eichner, Matthew; Ellett, Martha; Fisher, Peter; Gabillondo, Jose; Gross, Jared; Hammer, Viva; Hughes, Gerry; Nickoloff, Peter; Novey, Michael; Roseboro, Brian; Schultheiss, Heidilynne; Smith, Amy; Sutton, Gary
Subject: Retail Swaps Study Group Meeting -- September 6

[(b)(5)]

[(b)(5)]

Carleton, Norman

From: Carleton, Norman
Sent: Thursday, August 30, 2001 9:34 AM
To: Schultheiss, Heidilynne; Nickoloff, Peter
Subject: FW: Status of Retail Swap Study and the Enron Issue

-----Original Message-----

From: McInerney, Roberta
Sent: Wednesday, August 29, 2001 7:14 PM
To: Carleton, Norman
Subject: RE: Status of Retail Swap Study and the Enron Issue

[(b)(5)]

Any thoughts or recommendations? I will send around a separate note discussing the Enron issue in more detail.

Tracking:

Recipient

Schultheiss, Heidilynne
Nickaloff, Peter

Delivery

Delivered: 8/30/01 9:34 AM
Delivered: 8/30/01 9:34 AM

Read

Read: 8/30/01 9:34 AM
Read: 8/30/01 9:38 AM

Carleton, Norman

From: Carleton, Norman
Sent: Thursday, August 30, 2001 9:33 AM
To: Bair, Sheila
Subject: RE: More on the Enron Issue

[(b)(5)]

-----Original Message-----

From: Bair, Sheila
Sent: Thursday, August 30, 2001 9:26 AM
To: Carleton, Norman
Subject: RE: More on the Enron Issue

[(b)(5)]

-----Original Message-----

From: Carleton, Norman
Sent: Wednesday, August 29, 2001 2:41 PM
To: Fisher, Peter; Roseboro, Brian; Bair, Sheila; Nickoloff, Peter; Schultheiss, Heidlynn; DeMarco, Edward; Hughes, Gerry; Gross, Jared; Smith, Amy; Sutton, Gary; Ellett, Martha; Gabilondo, Jose; McInerney, Roberta; Lori Sanatamarena (E-mail); Novey, Michael; Eichner, Matthew; Hammer, Viva
Subject: More on the Enron Issue

[(b)(4);(b)(5)]

Thoughts?

Tracking:

Recipient
Bair, Sheila

Delivery

Delivered: 8/30/01 9:33 AM

Read

Read: 8/30/01 1:01 PM

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Recipient

Nickoloff, Peter
Schultheiss, Heidlynn

Delivery

Delivered: 8/30/01 9:33 AM
Delivered: 8/30/01 9:33 AM

Read

Read: 8/30/01 9:38 AM
Read: 8/30/01 9:33 AM

Carleton, Norman

From: Bair, Sheila
Sent: Thursday, August 30, 2001 9:26 AM
To: Carleton, Norman
Subject: RE: More on the Enron Issue

[(b)(5)]

-----Original Message-----

From: Carleton, Norman
Sent: Wednesday, August 29, 2001 2:41 PM
To: Fisher, Peter; Roseboro, Brian; Bair, Sheila; Nickoloff, Peter; Schultheiss, Heidilynne; DeMarco, Edward; Hughes, Gerry; Gross, Jared; Smith, Amy; Sutton, Gary; Elett, Martha; Gabilondo, Jose; McInerney, Roberta; Lori Sanalamorena (E-mail); Novey, Michael; Eichner, Matthew; Hammer, Viva
Subject: More on the Enron Issue

[(b)(5)]

Thoughts?

Carleton, Norman

From: McInerney, Roberta
Sent: Wednesday, August 29, 2001 7:14 PM
To: Carleton, Norman
Subject: RE: Status of Retail Swap Study and the Enron Issue

[(b)(5)]

-----Original Message-----

From: Carleton, Norman
Sent: Wednesday, August 29, 2001 11:15 AM
To: Fisher, Peter; Roseboro, Brian; Bair, Sheila; Nickoloff, Peter; Schultheiss, Heidi; DeMarco, Edward; Hughes, Gerry; Gross, Jared; Smith, Amy; Sutton, Gary; Elett, Martha; Gabilondo, Jose; McInerney, Roberta; Lori Sanatamarena (E-mail)
Subject: Status of Retail Swap Study and the Enron Issue

[(b)(5)]

Any thoughts or recommendations? I will send around a separate note discussing the Enron issue in more detail.

02419

Carleton, Norman

From: McInerney, Roberta
Sent: Wednesday, August 29, 2001 6:48 PM
To: Carleton, Norman
Subject: RE: More on the Enron Issue

[(b)(5)]

-----Original Message-----

From: Carleton, Norman
Sent: Wednesday, August 29, 2001 2:41 PM
To: Fisher, Peter; Roseboro, Brian; Bair, Shella; Nickoloff, Peter; Schultheiss, Heidilynne; DeMarco, Edward; Hughes, Gerry; Gross, Jared; Smith, Amy; Sutton, Gary; Ellett, Martha; Gabilondo, Jose; McInerney, Roberta; Lori Sanatamarena (E-mail); Nowey, Michael; Eichner, Matthew; Hammer, Viva
Subject: More on the Enron Issue

[(b)(5)]

Thoughts?

Carleton, Norman

From: Carleton, Norman
Sent: Wednesday, August 29, 2001 2:41 PM
To: Fisher, Peter; Roseboro, Brian; Bair, Sheila; Nickoloff, Peter; Schultheiss, Heidi Lynne; DeMarco, Edward; Hughes, Gerry; Gross, Jared; Smith, Amy; Sutton, Gary; Ellett, Martha; Gabilondo, Jose; McInerney, Roberta; Lori Sanatamarena (E-mail); Novey, Michael; Eichner, Matthew; Hammer, Viva
Subject: More on the Enron Issue

[(b)(5)]

Thoughts?

Tracking:	Recipient	Delivery	Read
	Fisher, Peter	Delivered: 8/29/01 2:41 PM	Read: 8/30/01 8:44 AM
	Roseboro, Brian	Delivered: 8/29/01 2:41 PM	
	Bair, Sheila	Delivered: 8/29/01 2:41 PM	Read: 8/29/01 6:20 PM
	Nickoloff, Peter	Delivered: 8/29/01 2:41 PM	Read: 8/29/01 2:42 PM
	Schultheiss, Heidi Lynne	Delivered: 8/29/01 2:41 PM	Read: 8/29/01 2:41 PM
	DeMarco, Edward	Delivered: 8/29/01 2:41 PM	Read: 8/29/01 3:43 PM
	Hughes, Gerry	Delivered: 8/29/01 2:41 PM	Read: 9/4/01 11:28 AM
	Gross, Jared	Delivered: 8/29/01 2:41 PM	Read: 8/29/01 3:11 PM
	Smith, Amy	Delivered: 8/29/01 2:41 PM	Read: 8/29/01 2:41 PM
	Sutton, Gary	Delivered: 8/29/01 2:41 PM	Read: 8/29/01 3:31 PM
	Ellett, Martha	Delivered: 8/29/01 2:41 PM	Read: 8/29/01 2:48 PM
	Gabilondo, Jose	Delivered: 8/29/01 2:41 PM	Read: 8/29/01 2:47 PM
	McInerney, Roberta	Delivered: 8/29/01 2:41 PM	Read: 8/29/01 6:44 PM
	Lori Sanatamarena (E-mail)		
	Novey, Michael	Delivered: 8/29/01 2:41 PM	Read: 8/30/01 12:58 AM
	Eichner, Matthew	Delivered: 8/29/01 2:41 PM	Read: 8/29/01 11:07 PM
	Hammer, Viva	Delivered: 8/29/01 2:41 PM	Read: 8/29/01 3:16 PM

Carleton, Norman

From: Carleton, Norman
Sent: Wednesday, August 29, 2001 12:00 PM
To: Schultheiss, Heidlynn; Nickoloff, Peter
Subject: FW: Status of Retail Swap Study and the Enron Issue

-----Original Message-----

From: Elett, Martha
Sent: Wednesday, August 29, 2001 11:59 AM
To: Carleton, Norman
Cc: Gabilondo, Jose; Sutton, Gary
Subject: RE: Status of Retail Swap Study and the Enron Issue

[(b)(5)]

-----Original Message-----

From: Carleton, Norman
Sent: Wednesday, August 29, 2001 11:15 AM
To: Fisher, Peter; Roseboro, Brian; Bair, Sheila; Nickoloff, Peter; Schultheiss, Heidlynn; DeMarco, Edward; Hughes, Gerry; Gross, Jared; Smith, Amy; Sutton, Gary; Elett, Martha; Gabilondo, Jose; McInerney, Roberta; Lori Sanatamarena (E-mail)
Subject: Status of Retail Swap Study and the Enron Issue

[(b)(5)]

[(b)(5)]

Any thoughts or recommendations? I will send around a separate note discussing the Enron issue in more detail.

Tracking:

Recipient

Schultheiss, Heidlyne
Nickoloff, Peter

Delivery

Delivered: 8/29/01 12:00 PM
Delivered: 8/29/01 12:00 PM

Read

Read: 8/29/01 1:01 PM
Read: 8/29/01 2:00 PM

Carleton, Norman

From: Ellett, Martha
Sent: Wednesday, August 29, 2001 11:59 AM
To: Carleton, Norman
Cc: Gabilondo, Jose; Sutton, Gary
Subject: RE: Status of Retail Swap Study and the Enron Issue

[(b)(5)]

-----Original Message-----

From: Carleton, Norman
Sent: Wednesday, August 29, 2001 11:15 AM
To: Fisher, Peter; Roseboro, Brian; Bair, Sheila; Nickoloff, Peter; Schultheiss, Heidi Lynne; DeMarco, Edward; Hughes, Gerry; Gross, Jared; Smith, Amy; Sutton, Gary; Ellett, Martha; Gabilondo, Jose; McInerney, Roberta; Lori Sanatamorenna (E-mail)
Subject: Status of Retail Swap Study and the Enron Issue

[(b)(5)]

[(b)(5)]

Any thoughts or recommendations? I will send around a separate note discussing the Enron issue in more detail.

Carleton, Norman

From: Carleton, Norman
Sent: Wednesday, August 29, 2001 11:58 AM
To: Novey, Michael; Eichner, Matthew; Hammer, Viva
Subject: FW: Status of Retail Swap Study and the Enron Issue

-----Original Message-----

From: Carleton, Norman
Sent: Wednesday, August 29, 2001 11:15 AM
To: Fisher, Peter; Roseboro, Brian; Bair, Sheila; Nickoloff, Peter; Schultheiss, Heidilynne; DeMarco, Edward; Hughes, Gerry; Gross, Jared; Smith, Amy; Sutton, Gary; Elett, Martha; Gabilondo, Jose; McInerney, Roberta; 'Lori Sanatamarena (E-mail)'
Subject: Status of Retail Swap Study and the Enron Issue

[(b)(5)]

Any thoughts or recommendations? I will send around a separate note discussing the Enron issue in more detail.

Tracking:	Recipient	Delivery	Read
	Novey, Michael	Delivered: 8/29/01 11:58 AM	Read: 8/30/01 12:50 AM
	Eichner, Matthew	Delivered: 8/29/01 11:58 AM	Read: 8/29/01 11:12 PM
	Hammer, Viva	Delivered: 8/29/01 11:58 AM	

02426

Carleton, Norman

From: Carleton, Norman
Sent: Wednesday, August 29, 2001 11:15 AM
To: Fisher, Peter; Roseboro, Brian; Bair, Sheila; Nickoloff, Peter; Schultheiss, Heidilynne; DeMarco, Edward; Hughes, Gerry; Gross, Jared; Smith, Amy; Sutton, Gary; Ellett, Martha; Gabilondo, Jose; McInerney, Roberta; 'Lori Sanatamarena (E-mail)'
Subject: Status of Retail Swap Study and the Enron Issue

[(b)(5)]

Any thoughts or recommendations? I will send around a separate note discussing the Enron issue in more detail.

Tracking:	Recipient	Delivery	Read
	Fisher, Peter	Delivered: 8/29/01 11:15 AM	Read: 8/29/01 3:17 PM
	Roseboro, Brian	Delivered: 8/29/01 11:15 AM	
	Bair, Sheila	Delivered: 8/29/01 11:15 AM	Read: 8/29/01 1:02 PM
	Nickoloff, Peter	Delivered: 8/29/01 11:15 AM	Read: 8/29/01 11:37 AM
	Schultheiss, Heidilynne	Delivered: 8/29/01 11:15 AM	Read: 8/29/01 11:15 AM
	DeMarco, Edward	Delivered: 8/29/01 11:15 AM	Read: 8/29/01 11:27 AM
	Hughes, Gerry	Delivered: 8/29/01 11:15 AM	Read: 9/4/01 11:29 AM
	Gross, Jared	Delivered: 8/29/01 11:15 AM	Read: 8/29/01 11:41 AM
	Smith, Amy	Delivered: 8/29/01 11:15 AM	Read: 8/29/01 11:25 AM
	Sutton, Gary	Delivered: 8/29/01 11:15 AM	Read: 8/29/01 11:15 AM

02427

Recipient	Delivery	Read
Ellett, Martha	Delivered: 8/29/01 11:15 AM	Read: 8/29/01 11:23 AM
Gablondo, Jose	Delivered: 8/29/01 11:15 AM	Read: 8/29/01 12:09 PM
McInerney, Roberta	Delivered: 8/29/01 11:15 AM	Read: 8/29/01 5:05 PM
Lori Sanatamarena (E-mail)		

Carleton, Norman

From: Carleton, Norman
Sent: Tuesday, February 13, 2001 5:07 PM
To: Stewart, Lawranne
Subject: FW: Proposed Changes to Netting Bill -- Comments

-----Original Message-----

From: Krimminger, Michael H. [mailto:MKrimminger@FDIC.gov]
Sent: Tuesday, February 13, 2001 4:47 PM
To: 'norman.carleton@do.treas.gov'; 'stephanie.martin@frb.gov';
'Tom.McGivern@do.treas.gov'; 'MooneyJ@sec.gov'
Cc: DeLoose, Michael; Ivie, Stanley R.; Tishuk, Barbara Starke
Subject: Proposed Changes to Netting Bill -- Comments

[(b)(5)]

[(b)(5)]

please review and let me know your thoughts.
Thanks,
Mike

Tracking:

Recipient
Stewart, Lorraine

Delivery
Delivered: 2/13/01 5:07 PM

Read
Read: 2/13/01 5:13 PM

02455

Carleton, Norman

From: Carleton, Norman
Sent: Tuesday, February 13, 2001 5:05 PM
To: Sutton, Gary; Ellis, Dina; Nickoloff, Peter; Schultheiss, Heidilynne; McInerney, Roberta
Cc: Paulus, Michael
Subject: FW: Proposed Changes to Netting Bill -- Comments

-----Original Message-----

From: Krimminger, Michael H. [mailto:MKrimminger@FDIC.gov]
Sent: Tuesday, February 13, 2001 4:47 PM
To: 'norman.carleton@do.treas.gov'; 'stephanie.martin@frb.gov';
'Tom.McGivern@do.treas.gov'; 'MooneyJ@sec.gov'
Cc: DeLoose, Michael; Ivie, Stanley R.; Tishuk, Barbara Starke
Subject: Proposed Changes to Netting Bill -- Comments

[(b)(5)]

[(b)(5)]

Please review and let me know your thoughts.
Thanks,
Mike

Tracking:

Recipient	Delivery	Read
Sutton, Gary	Delivered: 2/13/01 5:05 PM	Read: 2/13/01 5:06 PM
Ellis, Dina	Delivered: 2/13/01 5:05 PM	Read: 2/13/01 6:39 PM
Nickoloff, Peter	Delivered: 2/13/01 5:05 PM	Read: 2/13/01 5:21 PM
Schultheiss, Heidilynne	Delivered: 2/13/01 5:05 PM	Read: 2/13/01 5:06 PM
McInerney, Roberta	Delivered: 2/13/01 5:05 PM	Read: 2/13/01 9:16 PM
Paulus, Michael	Delivered: 2/13/01 5:05 PM	Read: 2/14/01 8:11 AM

02457

Carleton, Norman

From: Bitsberger, Timothy
Sent: Thursday, November 01, 2001 2:44 PM
To: Carleton, Norman
Cc: Roseboro, Brian
Subject: RE: Thoughts about Retail Swaps paper (FDIC comments)

Remember Peter's comments from Monday

-----Original Message-----

From: Carleton, Norman
Sent: Thursday, November 01, 2001 2:34 PM
To: Alexander M. Brill (E-mail); Don Lamson (E-mail); 'dombalagian@sec.gov'; 'mike.brosnan@occ.treas.gov'; 'ddow@cftec.gov'; Amy Mitchell (E-mail); Annette Nazareth (E-mail); Belinda Blaine (E-mail); Bob Colby (E-mail); Bob Zwirb (E-mail); David Wall; Diane Virzera; Eichner, Matthew; Elizabeth Fox (E-mail); Eric Hirschhorn (E-mail); Hammer, Viva; John Polise (E-mail); Joyce Hansen; Kathryn Dick (E-mail); Kevin Erickson (E-mail); Kurt Wilhelm (E-mail); Lori Sanatamarena (E-mail); Miguel Browne; Nickoloff, Peter; Novey, Michael; Pat Parkinson (E-mail); Pat White; Schultheiss, Heidilynne
Cc: Bair, Sheila; Ellett, Martha; Gabilondo, Jose; Gross, Jared; Roseboro, Brian; Bitsberger, Timothy; Sutton, Gary
Subject: FW: Thoughts about Retail Swaps paper (FDIC comments)

-----Original Message-----

From: Browne, Miguel D. [mailto:MBrowne@FDIC.gov]
Sent: Thursday, November 01, 2001 2:25 PM
To: 'Norman.Carleton@do.treas.gov'
Cc: Wall, David; Mitchell, Amy Aulthouse
Subject: Thoughts about Retail Swaps paper

[(b)(5)]

Carleton, Norman

From: Browne, Miguel D. [MBrowne@FDIC.gov]
Sent: Thursday, November 01, 2001 2:25 PM
To: 'Norman.Carleton@do.treas.gov'
Cc: Wali, David; Mitchell, Amy Aulthouse
Subject: Thoughts about Retail Swaps paper

[(b)(5)]

Carleton, Norman

From: Hammer, Viva
Sent: Monday, October 01, 2001 3:09 PM
To: Carleton, Norman
Subject: RE: Discussion with Ken Raisler about Enron Product



Retail Swaps.doc

one versin of retail swaps

-----Original Message-----

From: Carleton, Norman
Sent: Saturday, September 08, 2001 1:10 PM
To: Bair, Shella; DeMarco, Edward; Eichner, Matthew; Elett, Martha; Fisher, Peter; Gabilondo, Jose; Gross, Jared; Hammer, Viva; Hughes, Gerry; Nickloff, Peter; Novey, Michael; Roseboro, Brian; Schultheiss, Heidi Lynne; Smith, Amy; Sutton, Gary
Subject: Discussion with Ken Raisler about Enron Product

On Friday, September 7, I discussed the retail energy swap issue with Ken Raisler. He is a partner at Sullivan & Cromwell who represents Enron. In the mid 1980s, he was the general counsel of the CFTC.

I asked Ken if Enron opposed state regulation of retail energy derivatives if the CFTC were to grant an exemption for this product. The first answer to this question was yes, but that answer was modified as we further discussed the issue.

I asked Ken if he thought that there was a preemption argument that could be made because of CFTC exclusive jurisdiction. He said he thought there was. He said Enron would not make such a legal argument because it is regulated in some states as a utility company, but that others might make such an argument.

I told Ken that the Treasury had not come to a conclusion about the retail energy swap issue but that we were unlikely to support a result that would mean no federal regulation and would not allow state governments to regulate this product if they chose to do so. He asked me what regulatory issues might be of concern. I answered that such issues as advertising, pricing, and assurances that the company offering the product had the financial ability to meet its obligations might be subjects that governments would be concerned about. Ken said he thought that this was a reasonable position.

I asked Ken whether he thought that the CFTC could exempt retail energy swaps from the exclusive jurisdiction provision of the CEA, thus precluding any arguments about state jurisdiction. He said he thought that might be possible.

At the end of the conversation, Ken indicated he would talk to his client about the issues I had raised.

[(b)(5)]

Retail Swaps

[(b)(5)]

02461

[(b)(5)]

02462

01300000001071

Retail Swaps

[(b)(5)]

0246?

[(b)(5)]

02/

01300000001073

Carleton, Norman

From: Carleton, Norman
Sent: Wednesday, September 05, 2001 2:19 PM
To: Hammer, Viva
Subject: RE: More on the Enron Issue

Yes.

-----Original Message-----

From: Hammer, Viva
Sent: Wednesday, September 05, 2001 2:19 PM
To: Carleton, Norman
Subject: RE: More on the Enron Issue

is the swaps study group still on tomorrow?

-----Original Message-----

From: Carleton, Norman
Sent: Wednesday, August 29, 2001 2:41 PM
To: Fisher, Peter; Roseboro, Brian; Bair, Sheila; Nickoloff, Peter; Schultheiss, HeidiLynne; DeMarco, Edward; Hughes, Gerry; Gross, Jared; Smith, Amy; Sutton, Gary; Ellett, Martha; Gabilondo, Jose; McInemey, Roberta; Lori Sanatamarena (E-mail); Novey, Michael; Eichner, Matthew; Hammer, Viva
Subject: More on the Enron Issue

[(b)(5); (b)(4)]

Thoughts?

Tracking:	Recipient	Delivery	Read
	Hammer, Viva	Delivered: 9/5/01 2:19 PM	Read: 9/5/01 2:25 PM

Carleton, Norman

From: Hammer, Viva
Sent: Wednesday, September 05, 2001 2:19 PM
To: Carleton, Norman
Subject: RE: More on the Enron Issue

is the swaps study group still on tomorrow?

-----Original Message-----

From: Carleton, Norman
Sent: Wednesday, August 29, 2001 2:41 PM
To: Fisher, Peter; Roseboro, Brian; Bair, Sheila; Nikoloff, Peter; Schultheiss, Heidilynne; DeMarco, Edward; Hughes, Gerry; Gross, Jared; Smith, Amy; Sutton, Gary; Elett, Martha; Gabilondo, Jose; McInerney, Roberta; Lori Sanatamarena (E-mail); Novey, Michael; Eichner, Matthew; Hammer, Viva
Subject: More on the Enron Issue

[(b)(5)]

Thoughts?

02471

Carleton, Norman

From: Carleton, Norman
Sent: Wednesday, February 14, 2001 2:34 PM
To: Sutton, Gary
Subject: RE: Proposed Changes to Netting Bill -- Comments

No. I don't think they will.

-----Original Message-----

From: Sutton, Gary
Sent: Wednesday, February 14, 2001 2:21 PM
To: Carleton, Norman
Subject: RE: Proposed Changes to Netting Bill -- Comments

Has the CFTC put out a draft yet?

-----Original Message-----

From: Carleton, Norman
Sent: Tuesday, February 13, 2001 5:05 PM
To: Sutton, Gary; Ellis, Dina; Nickoloff, Peter; Schultheiss, Heidilynne; McInerney, Roberta
Cc: Paulus, Michael
Subject: FW: Proposed Changes to Netting Bill -- Comments

-----Original Message-----

From: Krimminger, Michael H. [mailto:MKrimminger@FDIC.gov]
Sent: Tuesday, February 13, 2001 4:47 PM
To: 'norman.carleton@do.treas.gov'; 'stephanie.martin@frb.gov'; 'Tom.McGivern@do.treas.gov'; 'MooneyJ@sec.gov'
Cc: DeLoose, Michael; Ivie, Stanley R.; Tishuk, Barbara Starke
Subject: Proposed Changes to Netting Bill -- Comments

[(b)(5)]

[(b)(5)]

Please review and let me know your thoughts.
Thanks,
Mike

Tracking:

Recipient
Sutton, Gary

Delivery
Delivered: 2/14/01 2:34 PM

Read
Read: 2/14/01 2:34 PM

02473

Carleton, Norman

From: Krimminger, Michael H. [MKrimminger@FDIC.gov]
Sent: Tuesday, February 13, 2001 4:47 PM
To: 'norman.carleton@do.treas.gov'; 'stephanie.martin@frb.gov'; 'Tom.McGivern@do.treas.gov'; 'MooneyJ@sec.gov'
Cc: DeLoose, Michael; Ivie, Stanley R.; Tishuk, Barbara Starke
Subject: Proposed Changes to Netting Bill -- Comments

[(b)(5)]

[(b)(5)]

Please review and let me know your thoughts.
Thanks,
Mike

Carleton, Norman

From: Hammond, Donald
Sent: Thursday, February 15, 2001 10:25 AM
To: Carleton, Norman; DeMarco, Edward; Ellis, Dina; Huffman, Lucy; McInerney, Roberta; Constantine, Eleni; Hughes, Gerry; Stewart, Lawranne
Cc: Tishuk, Brian; Robbins, Eric; Paulus, Michael; Sutton, Gary; Huffman, Lucy; McGivern, Tom; Nickoloff, Peter; Schultheiss, Heidilynne; Gross, Jared
Subject: RE: Bankruptcy Reform Mark-up Hearing

Norman,

[(b)(5)]

Don

-----Original Message-----

From: Carleton, Norman
Sent: Thursday, February 15, 2001 10:07 AM
To: Hammond, Donald; DeMarco, Edward; Ellis, Dina; Huffman, Lucy; McInerney, Roberta; Constantine, Eleni; Hughes, Gerry; Stewart, Lawranne
Cc: Tishuk, Brian; Robbins, Eric; Paulus, Michael; Sutton, Gary; Huffman, Lucy; McGivern, Tom; Nickoloff, Peter; Schultheiss, Heidilynne; Gross, Jared
Subject: RE: Bankruptcy Reform Mark-up Hearing

Don,

[(b)(5)]

Norman

-----Original Message-----

From: Hammond, Donald
Sent: Thursday, February 15, 2001 8:26 AM
To: DeMarco, Edward; Ellis, Dina; Huffman, Lucy; Carleton, Norman; McInerney, Roberta; Constantine, Eleni; Hughes, Gerry; Stewart, Lawranne
Cc: Tishuk, Brian; Robbins, Eric
Subject: RE: Bankruptcy Reform Mark-up Hearing

Ed,

[(b)(5)]

Norman,

[(b)(5)]

Don

-----Original Message-----

From: DeMarco, Edward
Sent: Thursday, February 15, 2001 8:22 AM
To: Hammond, Donald; Ellis, Dina; Huffman, Lucy; Carleton, Norman; McInerney, Roberta; Constantine, Eleni; Hughes, Gerry; Stewart, Lawranne
Cc: Tishuk, Brian; Robbins, Eric
Subject: FW: Bankruptcy Reform Mark-up Hearing

FYI

-----Original Message-----

From: Robbins, Eric
Sent: Wednesday, February 14, 2001 5:45 PM
To: DeMarco, Edward
Cc: Tishuk, Brian
Subject: Bankruptcy Reform Mark-up Hearing

[(b)(5)]

02484

Carleton, Norman

From: Carleton, Norman
Sent: Thursday, February 15, 2001 10:07 AM
To: Hammond, Donald; DeMarco, Edward; Ellis, Dina; Huffman, Lucy; McInerney, Roberta; Constantine, Eleni; Hughes, Gerry; Stewart, Lawranne
Cc: Tishuk, Brian; Robbins, Eric; Paulus, Michael; Sulton, Gary; Huffman, Lucy; McGivern, Tom; Nickoloff, Peter; Schultheiss, Heidi; Gross, Jared
Subject: RE: Bankruptcy Reform Mark-up Hearing

Don,

[(b)(5)]

Norman

-----Original Message-----

From: Hammond, Donald
Sent: Thursday, February 15, 2001 8:26 AM
To: DeMarco, Edward; Ellis, Dina; Huffman, Lucy; Carleton, Norman; McInerney, Roberta; Constantine, Eleni; Hughes, Gerry; Stewart, Lawranne
Cc: Tishuk, Brian; Robbins, Eric
Subject: RE: Bankruptcy Reform Mark-up Hearing

Ed,

[(b)(5)]

Norman,

[(b)(5)]

Don

-----Original Message-----

From: DeMarco, Edward
Sent: Thursday, February 15, 2001 8:22 AM
To: Hammond, Donald; Ellis, Dina; Huffman, Lucy; Carleton, Norman; McInerney, Roberta; Constantine, Eleni; Hughes, Gerry; Stewart, Lawranne
Cc: Tishuk, Brian; Robbins, Eric
Subject: FW: Bankruptcy Reform Mark-up Hearing

FYI

-----Original Message-----

From: Robbins, Eric
Sent: Wednesday, February 14, 2001 5:45 PM
To: DeMarco, Edward
Cc: Tishuk, Brian
Subject: Bankruptcy Reform Mark-up Hearing

H.R. 333, the "Bankruptcy Abuse Prevention and Consumer Protection Act 2001" was reported out of the House Judiciary Committee on Wednesday, February 14, 2001. During the mark-up hearing, eighteen amendments were offered with all but one amendment failing to pass. Voting occurred largely along party lines. The only amendment that passed was a technical amendment offered by Chairman Sensenbrenner. Only one Republican crossed party lines to vote for one of the seventeen other amendments that failed.

Representative Bachus (R-AL) assured the committee that he was committed to working with Representative Oxley from the Financial Services Committee on commercial bankruptcy provisions and netting requirements.

Tracking:

Recipient	Delivery	Read
Hammond, Donald	Delivered: 2/15/01 10:07 AM	Read: 2/15/01 10:21 AM
DeMarco, Edward	Delivered: 2/15/01 10:07 AM	Read: 2/15/01 12:35 PM
Ellis, Dina	Delivered: 2/15/01 10:07 AM	Read: 2/15/01 10:41 AM
Huffman, Lucy	Delivered: 2/15/01 10:07 AM	Read: 2/15/01 10:07 AM
McInerney, Roberta	Delivered: 2/15/01 10:07 AM	Read: 2/15/01 12:06 PM
Constantine, Eleni	Delivered: 2/15/01 10:07 AM	Read: 2/15/01 10:51 AM
Hughes, Gerry	Delivered: 2/15/01 10:07 AM	Read: 2/16/01 4:54 PM
Stewart, Lawranne	Delivered: 2/15/01 10:07 AM	Read: 2/15/01 10:09 AM
Tishuk, Brian	Delivered: 2/15/01 10:07 AM	Read: 2/15/01 12:45 PM
Robbins, Eric	Delivered: 2/15/01 10:07 AM	Read: 2/15/01 10:34 AM
Paulus, Michael	Delivered: 2/15/01 10:07 AM	Read: 2/15/01 10:36 AM
Sutton, Gary	Delivered: 2/15/01 10:07 AM	Read: 2/15/01 10:07 AM
Huffman, Lucy		
McGivern, Tom	Delivered: 2/15/01 10:07 AM	Read: 2/15/01 11:17 AM
Nickloff, Peter	Delivered: 2/15/01 10:07 AM	Read: 2/15/01 10:07 AM
Schultheiss, Heidlynn	Delivered: 2/15/01 10:07 AM	Read: 2/15/01 10:07 AM
Gross, Jared	Delivered: 2/15/01 10:07 AM	Read: 2/15/01 10:07 AM

Carleton, Norman

From: Huffman, Lucy
Sent: Wednesday, February 14, 2001 5:24 PM
To: Carleton, Norman
Subject: RE: Proposed Changes to Netting Bill -- Comments

Thanks for forwarding. I've read the proposals and Krimminger's comments, and, as you know, unencumbered by more than a little experience in this area, would like to ask you the following questions. (see between dotted lines under Krimminger's comments)

-----Original Message-----
From: Carleton, Norman
Sent: Tuesday, February 13, 2001 5:10 PM
To: Huffman, Lucy
Subject: FW: Proposed Changes to Netting Bill -- Comments

-----Original Message-----
From: Krimminger, Michael H. [mailto:MKrimminger@FDIC.gov]
Sent: Tuesday, February 13, 2001 4:47 PM
To: 'norman.carleton@do.treas.gov'; 'stephanie.martin@frb.gov';
'Tom.McGivern@do.treas.gov'; 'MooneyJ@sec.gov'
Cc: DeLoose, Michael; Ivie, Stanley R.; Tishuk, Barbara Starke
Subject: Proposed Changes to Netting Bill -- Comments

[(b)(5)]

[(b)(5)]

Please review and let me know your thoughts.

2

02488

01300000001097

Thanks,
Mike

Carleton, Norman

From: Huffman, Lucy
Sent: Wednesday, February 14, 2001 5:24 PM
To: Carleton, Norman
Subject: RE: Proposed Changes to Netting Bill -- Comments

Thanks for forwarding. I've read the proposals and Krimminger's comments, and, as you know, unencumbered by more than a little experience in this area, would like to ask you the following questions. (see between dotted lines under Krimminger's comments)

-----Original Message-----
From: Carleton, Norman
Sent: Tuesday, February 13, 2001 5:10 PM
To: Huffman, Lucy
Subject: FW: Proposed Changes to Netting Bill -- Comments

-----Original Message-----
From: Krimminger, Michael H. [mailto:MKrimminger@FDIC.gov]
Sent: Tuesday, February 13, 2001 4:47 PM
To: 'norman.carleton@do.treas.gov'; 'stephanie.martin@frb.gov';
'Tom.McGivern@do.treas.gov'; 'MooneyJ@sec.gov'
Cc: DeLoose, Michael; Ivie, Stanley R.; Tishuk, Barbara Starke
Subject: Proposed Changes to Netting Bill -- Comments

[(b)(5)]

[(b)(5)]

Please review and let me know your thoughts.

2

02491

01300000001100

Thanks,
Mike

Carleton, Norman

From: Sutton, Gary
Sent: Wednesday, February 14, 2001 2:21 PM
To: Carleton, Norman
Subject: RE: Proposed Changes to Netting Bill -- Comments

Has the CFTC put out a draft yet?

-----Original Message-----

From: Carleton, Norman
Sent: Tuesday, February 13, 2001 5:05 PM
To: Sutton, Gary; Ellis, Dina; Nickoloff, Peter; Schultheiss, Heidilynne; McInerney, Roberta
Cc: Paulus, Michael
Subject: FW: Proposed Changes to Netting Bill -- Comments

-----Original Message-----

From: Krimminger, Michael H. [mailto:MKrimminger@FDIC.gov]
Sent: Tuesday, February 13, 2001 4:47 PM
To: 'norman.carleton@do.treas.gov'; 'stephanie.martin@frb.gov'; 'Tom.McGivern@do.treas.gov'; 'MooneyJ@sec.gov'
Cc: DeLoose, Michael; Ivie, Stanley R.; Tishuk, Barbara Starke
Subject: Proposed Changes to Netting Bill -- Comments

[(b)(5)]

[(b)(5)]

Please review and let me know your thoughts.
Thanks,
Mike

Carleton, Norman

From: Carleton, Norman
Sent: Tuesday, February 13, 2001 5:10 PM
To: Huffman, Lucy
Subject: FW: Proposed Changes to Netting Bill -- Comments

-----Original Message-----

From: Krimminger, Michael H. [mailto:MKrimminger@FDIC.gov]
Sent: Tuesday, February 13, 2001 4:47 PM
To: 'norman.carleton@do.treas.gov'; 'stephanie.martin@frb.gov';
'Tom.McGivern@do.treas.gov'; 'MooneyJ@sec.gov'
Cc: DeLoose, Michael; Ivie, Stanley R.; Tishuk, Barbara Starke
Subject: Proposed Changes to Netting Bill -- Comments

[(b)(5)]

[(b)(5)]

Please review and let me know your thoughts.
Thanks,
Mike

Tracking:

Recipient
Huffman, Lucy

Delivery
Delivered: 2/13/01 5:10 PM

Read
Read: 2/13/01 5:47 PM

Carleton, Norman

From: Carleton, Norman
Sent: Tuesday, February 13, 2001 5:08 PM
To: Hughes, Gerry
Subject: FW: Proposed Changes to Netting Bill -- Comments

-----Original Message-----

From: Krimminger, Michael H. [mailto:MKrimminger@FDIC.gov]
Sent: Tuesday, February 13, 2001 4:47 PM
To: 'norman.carleton@do.treas.gov'; 'stephanie.martin@frb.gov';
'Tom.McGivern@do.treas.gov'; 'MooneyJ@sec.gov'
Cc: DeLoose, Michael; Ivie, Stanley R.; Tishuk, Barbara Starke
Subject: Proposed Changes to Netting Bill -- Comments

[(b)(5)]

[(b)(5)]

Please review and let me know your thoughts.
Thanks,
Mike

Tracking:

Recipient
Hughes, Gerry

Delivery
Delivered: 2/13/01 5:08 PM

Read
Read: 2/13/01 5:11 PM

Carleton, Norman

From: Carleton, Norman
Sent: Tuesday, February 20, 2001 4:00 PM
To: McGivern, Tom
Subject: RE: Briefing on Technical Changes

I think anyone who wants to attend should just go to the meeting. I don't expect hordes. Incidentally, you missed the meeting today with Wall Street folks. When you have a minute, I'd like to discuss with you some of what they said, including the latest offer, modified at the meeting, on the Enron proposal on swaps.

Thanks.
Norman

-----Original Message-----
From: McGivern, Tom
Sent: Tuesday, February 20, 2001 2:20 PM
To: Carleton, Norman
Subject: RE: Briefing on Technical Changes

Should we discuss who should attend, or should everyone who wants to go over?

-----Original Message-----
From: Krimminger, Michael H. [mailto:MKrimminger@FDIC.gov]
Sent: Tuesday, February 20, 2001 1:09 PM
To: 'Stephanie.Martin@frb.gov'; 'norman.carleton@do.treas.gov';
'jcarley@cftc.gov'; 'nancy.michaleski@occ.treas.gov'; 'MooneyJ@sec.gov';
'Joyce.Hansen@ny.frb.org'; 'Michael.Nelson@ny.frb.org';
'Tom.McGivern@do.treas.gov'
Subject: Briefing on Technical Changes

Please inform other attendees in your agencies that the meeting will be at 1730 Pennsylvania Avenue in the 6th floor conference room. We will have someone there to meet you when you arrive around 10 a.m.
Thanks,
Mike Krimminger

Tracking:	Recipient	Delivery	Read
	McGivern, Tom	Delivered: 2/20/01 4:00 PM	Read: 2/20/01 7:58 PM

Carleton, Norman

From: Huffman, Lucy
Sent: Thursday, February 15, 2001 12:18 PM
To: Carleton, Norman
Subject: RE: Bankruptcy Reform Mark-up Hearing

[(b)(5)]

-----Original Message-----

From: Carleton, Norman
Sent: Thursday, February 15, 2001 11:19 AM
To: Huffman, Lucy
Subject: FW: Bankruptcy Reform Mark-up Hearing

-----Original Message-----

From: Carleton, Norman
Sent: Thursday, February 15, 2001 10:07 AM
To: Hammond, Donald; DeMarco, Edward; Ellis, Dina; Huffman, Lucy; McInerney, Roberta; Constantine, Eleni; Hughes, Gerry; Stewart, Lawrance
Cc: Tishuk, Brian; Robbins, Eric; Paulus, Michael; Sutton, Gary; Huffman, Lucy; McGivern, Tom; Nickoloff, Peter; Schultheiss, Heidilynne; Gross, Jared
Subject: RE: Bankruptcy Reform Mark-up Hearing

Don,

[(b)(5)]

[(b)(5)]

Norman

-----Original Message-----

From: Hammond, Donald
Sent: Thursday, February 15, 2001 8:26 AM
To: DeMarco, Edward; Ellis, Dina; Huffman, Lucy; Carleton, Norman; McInerney, Roberta; Constantine, Eleni; Hughes, Gerry; Stewart, Lawranne
Cc: Tishuk, Brian; Robbins, Eric
Subject: RE: Bankruptcy Reform Mark-up Hearing

Ed,

[(b)(5)]

Don

-----Original Message-----

From: DeMarco, Edward
Sent: Thursday, February 15, 2001 8:22 AM
To: Hammond, Donald; Ellis, Dina; Huffman, Lucy; Carleton, Norman; McInerney, Roberta; Constantine, Eleni; Hughes, Gerry; Stewart, Lawranne
Cc: Tishuk, Brian; Robbins, Eric
Subject: FW: Bankruptcy Reform Mark-up Hearing

FYI

-----Original Message-----

From: Robbins, Eric
Sent: Wednesday, February 14, 2001 5:45 PM
To: DeMarco, Edward
Cc: Tishuk, Brian
Subject: Bankruptcy Reform Mark-up Hearing

[(b)(5)]

02501

Carleton, Norman

From: Carleton, Norman
Sent: Thursday, February 15, 2001 11:19 AM
To: Huffman, Lucy
Subject: FW: Bankruptcy Reform Mark-up Hearing

-----Original Message-----

From: Carleton, Norman
Sent: Thursday, February 15, 2001 10:07 AM
To: Hammond, Donald; DeMarco, Edward; Ellis, Dina; Huffman, Lucy; McInerney, Roberta; Constantine, Eleni; Hughes, Gerry; Stewart, Lawranne
Cc: Tishuk, Brian; Robbins, Eric; Paulus, Michael; Sutton, Gary; Huffman, Lucy; McGivern, Tom; Nickoloff, Peter; Schultheiss, HeidiLynne; Gross, Jared
Subject: RE: Bankruptcy Reform Mark-up Hearing

Don,

[(b)(5)]

Norman

-----Original Message-----

From: Hammond, Donald
Sent: Thursday, February 15, 2001 8:26 AM
To: DeMarco, Edward; Ellis, Dina; Huffman, Lucy; Carleton, Norman; McInerney, Roberta; Constantine, Eleni; Hughes, Gerry; Stewart, Lawranne
Cc: Tishuk, Brian; Robbins, Eric
Subject: RE: Bankruptcy Reform Mark-up Hearing

Ed,

[(b)(5)]

Don

-----Original Message-----

From: DeMarco, Edward
Sent: Thursday, February 15, 2001 8:22 AM
To: Hammond, Donald; Ellis, Dina; Huffman, Lucy; Carleton, Norman; McNemey, Roberta; Constantine, Eleni; Hughes, Gerry; Stewart, Lawranne
Cc: Tishuk, Brian; Robbins, Eric
Subject: FW: Bankruptcy Reform Mark-up Hearing

FYI

-----Original Message-----

From: Robbins, Eric
Sent: Wednesday, February 14, 2001 5:45 PM
To: DeMarco, Edward
Cc: Tishuk, Brian
Subject: Bankruptcy Reform Mark-up Hearing

[(b)(5)]

Tracking:

Recipient
Huffman, Lucy

Delivery
Delivered: 2/15/01 11:19 AM

Read
Read: 2/15/01 11:20 AM

Carleton, Norman

From: Hammond, Donald
Sent: Thursday, February 15, 2001 10:25 AM
To: Carleton, Norman
Subject: RE: Bankruptcy Reform Mark-up Hearing

Norman,

Please keep Michael Paulus up to date on this. He can be a big help.

Don

-----Original Message-----

From: Carleton, Norman
Sent: Thursday, February 15, 2001 10:07 AM
To: Hammond, Donald; DeMarco, Edward; Ellis, Dina; Huffman, Lucy; McInerney, Roberta; Constantine, Eleni; Hughes, Gerry; Stewart, Lawranne
Cc: Tishuk, Brian; Robbins, Eric; Paulus, Michael; Sutton, Gary; Huffman, Lucy; McGivern, Tom; Nickoloff, Peter; Schultheiss, Heidilynne; Gross, Jared
Subject: RE: Bankruptcy Reform Mark-up Hearing

Don,

[(b)(5)]

Norman

-----Original Message-----

From: Hammond, Donald
Sent: Thursday, February 15, 2001 8:26 AM
To: DeMarco, Edward; Ellis, Dina; Huffman, Lucy; Carleton, Norman; McInerney, Roberta; Constantine, Eleni; Hughes, Gerry; Stewart, Lawranne

Cc: Tishuk, Brian; Robbins, Eric
Subject: RE: Bankruptcy Reform Mark-up Hearing

Ed,

[(b)(5)]

Don

-----Original Message-----

From: DeMarco, Edward
Sent: Thursday, February 15, 2001 8:22 AM
To: Hammond, Donald; Ellis, Dina; Huffman, Lucy; Carleton, Norman; McInerney, Roberta; Constantine, Eleni; Hughes, Gerry; Stewart, Lawrance
Cc: Tishuk, Brian; Robbins, Eric
Subject: FW: Bankruptcy Reform Mark-up Hearing

FYI

-----Original Message-----

From: Robbins, Eric
Sent: Wednesday, February 14, 2001 5:45 PM
To: DeMarco, Edward
Cc: Tishuk, Brian
Subject: Bankruptcy Reform Mark-up Hearing

[(b)(5)]

From: Jana Carter
To: DOM3.DOPO6(SHELTONA), MCGIVERNT
Date: 6/16/99 10:35am
Subject: bankruptcy legislation -Forwarded -Reply -Reply

[(b)(5)]

thanks--Jana
>>> Tom McGivern 06/15/99 05:32pm >>>
[(b)(5)]

Enron and its outside counsel, Cadwalader, have proposed some changes to the Working Group's proposed financial netting legislation. The proposed changes were mentioned briefly at the last Working Group meeting. Since that time Enron/Cadwalader have asked to meet with some part of the Working Group staff to discuss their proposals which, as Norman mentioned in another e-mail, generally are not supported by Working Group staff who have reviewed them.

[(b)(5)]

>>> Norman Carleton 06/15/99 04:48pm >>>
Alison,

[(b)(5)]

CC: Dom13.DOPO7(HUFFMANL), DOM3.DOPO5(TooheyF), DOM3.D...

02506

0130000001115

Carleton, Norman

From: McGivern, Tom
Sent: Tuesday, February 20, 2001 9:16 PM
To: Carleton, Norman
Subject: RE: Briefing on Technical Changes

Sorry about missing today's meeting; when was it scheduled, because I don't think I knew about it. I give you a call tomorrow morning about the latest offer.

-----Original Message-----

From: Carleton, Norman
Sent: Tuesday, February 20, 2001 4:00 PM
To: McGivern, Tom
Subject: RE: Briefing on Technical Changes

I think anyone who wants to attend should just go to the meeting. I don't expect hordes.

Incidentally, you missed the meeting today with Wall Street folks. When you have a minute, I'd like to discuss with you some of what they said, including the latest offer, modified at the meeting, on the Enron proposal on swaps.

Thanks.

Norman

-----Original Message-----

From: McGivern, Tom
Sent: Tuesday, February 20, 2001 2:20 PM
To: Carleton, Norman
Subject: RE: Briefing on Technical Changes

Should we discuss who should attend, or should everyone who wants to go over?

-----Original Message-----

From: Krimminger, Michael H. [mailto:MKrimminger@FDIC.gov]
Sent: Tuesday, February 20, 2001 1:09 PM
To: 'Stephanie.Martin@frb.gov'; 'norman.carleton@do.treas.gov';
'jcarley@cftc.gov'; 'nancy.michaleski@occ.treas.gov'; 'MooneyJ@sec.gov';
'Joyce.Hansen@ny.frb.org'; 'Michael.Nelson@ny.frb.org';
'Tom.McGivern@do.treas.gov'
Subject: Briefing on Technical Changes

Please inform other attendees in your agencies that the meeting will be at 1730 Pennsylvania Avenue in the 6th floor conference room. We will have someone there to meet you when you arrive around 10 a.m.

Thanks,
Mike Krimminger

From: Tom McGivern
To: GENSLERG, SachsL, CARLETONN
Date: 5/27/99 12:05pm
Subject: Working Group Comments on Enron/Cadwalader Proposals

I plan to send these along as I receive them.

5/27/99 phone conversation with Mike Kremminger, FDIC

[(b)(5)]

1. Definition of forward contract merchant

[(b)(5)]

2. Exceptions to operation of the automatic stay

[(b)(5)]

3. Amendments to the definition of swap agreement

[(b)(5)]

CC: SHELTONA, CARTERJ, WOLINN, MCINERNEYR, Dom13.DOPO7...

02508

01300000001117

From: Tom McGivern
To: GENSLERG, SachsL, CARLETONN
Date: 8/3/99 3:48pm
Subject: Working Group Comments on Enron/Cadwalader Proposals -Reply -Reply

[(b)(5)]

CC: DOPOS.ToohyF, CARTERJ, SHELTONA

02509

01300000001118

From: Peter Nickoloff
To: Carletonn
Date: 6/11/99 4:49pm
Subject: The week's (non-)events

[(b)(5)]

Hope you had a nice vacation/reunion. Talk to you on Monday.

02510

01300000001119

DRAFT: Nickoloff/June 9, 1999

INFORMATION

**MEMORANDUM FOR SECRETARY RUBIN
DEPUTY SECRETARY SUMMERS**

FROM: Lee Sachs
Deputy Assistant Secretary
(Government Financial Policy)

SUBJECT: Draft Recommendations of the Counterparty Risk Management Policy
Group

SUMMARY:

[(b)(5)]

DISCUSSION:

[(b)(5)]

02511

01300000001120

[(b)(5)]

02512

01300000001121

[(b)(5)]

From: Tom McGivern
To: SHELTONA, CARTERJ
Date: 6/15/99 5:32pm
Subject: bankruptcy legislation -Forwarded -Reply

[(b)(5)]

>>> Norman Carleton 06/15/99 04:48pm >>>
Alison,

[(b)(5)]

CC: NICKOLOFFP, Dom13.DOPO7.HUFFMANL, CARLETONN, DOPO5...

02514

01300000001123

From: Tom McGivern
To: DOM3.DOPO5(TooheyF), DOM3.DOPO6(CARTERJ, NICKOLOFF...
Date: 6/17/99 10:28am
Subject: Conference Call with Cadwalader/Enron -Reply -Reply -Reply -Reply -Reply

Enron has asked to change the time to 10:00 a.m., and the Fed and FDIC are okay with that.

>>> Norman Carleton 06/16/99 03:56pm >>>

We can do it in my office.

02515

01300000001124

From: Tom McGivern
To: CARLETONN, SHELTONA, CARTERJ, NICKOLOFFP, DOPO5.To...
Date: 6/16/99 3:54pm
Subject: Conference Call with Cadwalader/Enron -Reply -Reply -Reply

The conference call with Enron/Cadwalader will be Friday morning at 10:30. They will initiate the call, so if we could be in one room here at Treasury that would make it slightly easier for them. The GC and Leg. Affairs conference rooms are booked, so maybe we should aim for someone's office. Norman?

I'll contact the other agencies to give them the time of the call and get the phone numbers to Cadwalader.

They plan to send us some additional explanatory material (probably what they're using to market this on the Hill, etc.). I will send that around as soon as it arrives. They would like to have a discussion and to find out if the agencies are opposed or supportive of their proposals. I committed only to listening, but said there likely would be some questions.

>>> Norman Carleton 06/16/99 03:12pm >>>

There's a steering group meeting tomorrow morning, so maybe Friday is better.

02516

01300000001125

From: Peter Nickoloff
To: carletonn
Date: 6/21/99 1:51pm
Subject: Weekly

Attached is the draft weekly for June 14-18. I didn't include bullets on the CFTC surveillance meeting or on the Enron conference call.

02517

01300000001126

Weekly Activity Report, Federal Finance Policy Analysis, June 14 - June 18, 1999

[(b)(5)]

02518

¹
01300000001127

From: Lee Sachs
To: DOPO5.TooheyF, GREENEMI, MCGIVERNT, NICKOLOFFP, ST...
Date: 9/15/99 11:27am
Subject: Enron's Bankruptcy Proposals -Reply

let's discuss at put 12:30 derivatives meeting.

>>> Norman Carleton 09/15/99 11:18am >>>

Representatives of Enron have given their proposed amendments to the bankruptcy netting provisions to staff of the Senate Agriculture Committee. They hope that it will be included in a managers' amendment.

[(b)(5)]

Comments, suggestions?

CC: DOPO5.LEVINEM

02519

0130000001128

From: ex.mail."MKrimminger@FDIC.gov"
To: ex.mail("Norman.Carleton"),DOM3.DOPO6(CARLETONN)
Date: 9/15/99 11:30am
Subject: RE: Enron's Bankruptcy Proposals

Norman,

[(b)(5)]

Mike

> -----Original Message-----
> From: Norman.Carleton@do.treas.gov [SMTP:Norman.Carleton@do.treas.gov]
> Sent: Wednesday, September 15, 1999 11:23 AM
> To: Frank.Toohy@do.treas.gov; Michelle.Greene@do.treas.gov;
> Tom.McGivern@do.treas.gov; Peter.Nickoloff@do.treas.gov;
> Lee.Sachs@do.treas.gov; Lawranne.Stewart@do.treas.gov;
> John.Yetter@do.treas.gov; irelando@frb.gov; Krimminger, Michael H.
> Subject: Enron's Bankruptcy Proposals
>
> Date: 09/15/1999 11:18 am (Wednesday)
> From: Norman Carleton
> To: SachsL, MCGIVERNT, GREENEMI, STEWARTLAW, NICKOLOFFP, YETTERJ,
> EX.MAIL."irelando@frb.gov", EX.MAIL."mkrimminger@fdic.gov",
> DOPO5.ToohyF
> Subject: Enron's Bankruptcy Proposals
>

[(b)(5)]

02520

01300000001129

[(b)(5)]

> Comments, suggestions?

02521

01300000001130

From: Frank Toohey
To: DOPO6.CARLETONN, DOPO6.MCGIVERNT
Date: 9/17/99 9:30am
Subject: Bankruptcy

[(b)(5)]

02522

01300000001131

From: ex.mail."ELEVINSO@cwt.com"
To: ex.mail("tom.mcgivern"),DOM3.DOPO6(CARLETONN,MOGIV...
Date: 9/17/99 12:37pm
Subject: Enron Bankruptcy Amendments

Dear Tom:

[(b)(5)]

Sincerely,
Ellen

[NOTE: The information in this email is confidential and may be |
legally privileged. If you are not the intended recipient, you |
must not read, use or disseminate the information. Although this |
email and any attachments are believed to be free of any virus or |
other defect that might affect any computer system into which it |
is received and opened, it is the responsibility of the recipient |
to ensure that it is virus free and no responsibility is accepted |
by Cadwalader, Wickersham & Taft for any loss or damage arising in|
any way from its use.

CC: ex.mail("norman.carleton","jkeeler@enron.org,treas...

02523

01300000001132

From: Tom McGivern
To: CARLETONN
Date: 3/17/00 2:46pm
Subject: Financial Netting provisions of H.R. 833 - bankruptcy bill -Reply -Reply

Norman, do you have comments/edits?

>>> John Yetter 03/10/00 10:18am >>>

[(b)(5)]

>>> Tom McGivern 03/09/00 06:36pm >>>

[(b)(5)]

Thanks.

CC: DOPOS.ToohyF, YETTERJ

02524

¹
01300000001133

From: John Yetter
To: DOM3.DOPO5(TooheyF), DOM3.DOPO6(CARLETONN), MCGIVE...
Date: 3/10/00 10:18am
Subject: Financial Netting provisions of H.R. 833 - bankruptcy bill -Reply

[(b)(5)]

>>> Tom McGivern 03/09/00 06:36pm >>>

[(b)(5)]

On the Enron proposals Norman received:

[(b)(5)]

Thanks.

CC: DOM3.DOPO6(CARROR, DORSEYK).

02525

|
01300000001134

From: Tom McGivern
To: CARLETONN, YETTERJ, DOPO5,TooheyF
Date: 3/9/00 6:36pm
Subject: Financial Netting provisions of H.R. 833 - bankruptcy bill

[(b)(5)]

On the Enron proposals Norman received:

[(b)(5)]

Thanks.

CC: DORSEYK, CARROR

02526

1
01300000001135

3/9/2000 draft letter to bankruptcy conferees

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Hatch and Senator Leahy:

[(b)(5)]

02527

¹
01300000001136

Sincerely,

Lawrence H. Summers

cc: The Honorable Charles E. Grassley
The Honorable Robert Torricelli

02528

¹
01300000001137

From: Tom McGivern
To: CARLETONN, YETTERJ, DOP05.ToohyF
Date: 3/9/00 6:36pm
Subject: Financial Netting provisions of H.R. 833 - bankruptcy bill

[(b)(5)]

On the Enron proposals Norman received:

[(b)(5)]

Thanks.

CC: DORSEYK, CARROR

02529

01300000001138

3/9/2000 draft letter to bankruptcy conferees

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Hatch and Senator Leahy:

[(b)(5)]

02530

01300000001139

Sincerely,

Lawrence H. Summers

cc: The Honorable Charles E. Grassley
The Honorable Robert Torricelli

02531

01300000001140

3/9/2000 draft letter to bankruptcy conferees

The Honorable Henry Hyde
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C.

The Honorable John Conyers, Jr.
Committee on the Judiciary
United States House of Representatives
Washington, D.C.

Dear Chairman Hyde and Representative Conyers:

[(b)(5)]

02532

01300000001141

Sincerely,

Lawrence H. Summers

cc: The Honorable George W. Gekas
The Honorable Jerrold Nadler

02533

01300000001142

From: Norman Carleton
To: GENSLERG, SachsL, MCGIVERNT
Date: 6/2/99 9:52am
Subject: Working Group Comments on Enron/Cadwalader Proposals -Reply

Attached are Eric Foster's comments on the Enron proposals. I sent a message about this yesterday.

CC: Dom13.DOPO7.MCCLELLANM, DOPO5.ToohyF, CARTERJ, MC...

02536

01300000001145

From: ex.mail."Eric.Foster@ny.frb.org"
To: ex.mail("Norman.Carleton"),DOM3.DOPO6(CARLETONN)
Date: 6/2/99 8:38am
Subject: Fwd: comments

see attached comments

02537

01300000001146

[(b)(5)]

Norm, feel free to call me to discuss further any of these comments.

02538

01300000001147

From: Norman Carleton
To: GENSLERG, SachsL, MCGIVERNT
Date: 6/1/99 5:36pm
Subject: Working Group Comments on Enron/Cadwalader Proposals -Reply

[(b)(5)]

CC: Dom13.DOPO7.MCCLELLANM, DOPO5.ToohyF, CARTERJ, MC...

02539

0130000001148

From: Norman Carleton
To: GENSLERG, SachsL, MCGIVERNT
Date: 5/27/99 4:32pm
Subject: Working Group Comments on Enron/Cadwalader Proposals -Reply

[(b)(5)]

CC: Dom13.DOPO7.MCCLELLANM, DOPO5.ToohayF, CARTERJ, MC...

02540

01300000001149

From: Norman Carleton
To: GENSLERG, SachsL, MCGIVERNT
Date: 5/27/99 4:32pm
Subject: Working Group Comments on Enron/Cadwalader Proposals -Reply

[(b)(5)]

CC: Dom13.DOPO7.MCCLELLANM, DOPO5.ToohyF, CARTERJ, MC...

02541

0130000001150

From: Tom McGivern
To: GENSLERG, SachsL, CARLETONN
Date: 5/27/99 12:05pm
Subject: Working Group Comments on Enron/Cadwalader Proposals

I plan to send these along as I receive them.

[(b)(5)]

CC: SHELTONA, CARTERJ, WOLINN, MCINERNEYR, Dom13.DOPO7...

02543

01300000001152

From: Norman Carleton
To: SHELTONA, Dom13.DOPO7.HUFFMANL, MCGIVERNT
Date: 6/15/99 4:52pm
Subject: More on Bankruptcy -- Enron

[(b)(5)]

CC: NICKOLOFFP

02546

01300000001155

From: Norman Carleton
To: EX.MAIL."irelando@frb.gov", EX.MAIL."dwall@fdic.go...
Date: 6/3/99 11:57am
Subject: Fwd: comments -Forwarded

Attached are the FRBNY's Eric Foster's comments on the Enron/Cadwallader bankruptcy proposal.

02547

01300000001156

From: Norman Carleton
To: GENSLERG, SachsL
Date: 6/18/99 4:52pm
Subject: Conference Call with Enron and Cadwalader -- Netting Legislation

This morning, Tom McGivern, John Yetter, and I participated in a conference call with Enron and the Cadwalader law firm concerning their financial contract netting proposals. Also participating in the call were staff from the Federal Reserve Board, FRBNY, FDIC, and CFTC.

[(b)(5)]

If you want a more detailed explanation, please let us know.

CC: MCGIVERNT, YETTERJ, NICKOLOFFP, DOPO5.TooheyF, SHE...

02548

0130000001157

From: Norman Carleton
To: SachsL, MCGIVERNT, GREENEMI, STEWARTLAW, NICKOLOFF...
Date: 9/15/99 11:18am
Subject: Enron's Bankruptcy Proposals

Representatives of Enron have given their proposed amendments to the bankruptcy netting provisions to staff of the Senate Agriculture Committee. They hope that it will be included in a managers' amendment.

[(b)(5)]

Comments, suggestions?

02549

01300000001158

From: Norman Carleton
To: GREENEMI
Date: 9/13/99 10:50am
Subject: Items for today's staff meeting

1. Dingell Y2K letter
2. OTC derivatives report
3. GAO Report on LTCM (?)
4. Bankruptcy netting legislation (Enron maneuvers)

CC: NICKOLOFFP

02550

01300000001159

From: Norman Carleton
To: MCGIVERNT, DOPO5.ToohyF
Date: 11/8/99 10:08am
Subject: Bankruptcy Bill

[(b)(5)]

02551

01300000001160

From: Norman Carleton
To: SachsL, PaulusM, DOPO5.LEVINEM, DOPO5.ToohyF, MCG...
Date: 7/24/00 10:40am
Subject: Financial Contract Netting and the CEA

The Bond Market Association tells me that the House Banking Committee is planning to mark up on Thursday a financial contract netting bill as well as the Commodity Futures Modernization Act. [(b)(5)]

CC: GREENEM, GrossJa, YETTERJ, SchultheissH, NICKOLOF...

02552

0130000001161

Carleton, Norman

From: Gabilondo, Jose
Sent: Wednesday, December 05, 2001 5:57 PM
To: Carleton, Norman
Subject: RE: Enron collage

Norman:

[(b)(5)]

José

-----Original Message-----

From: Carleton, Norman
Sent: Wednesday, December 05, 2001 2:58 PM
To: Gabilondo, Jose
Subject: RE: Enron collage

Thanks.

-----Original Message-----

From: Gabilondo, Jose
Sent: Wednesday, December 05, 2001 2:56 PM
To: Carleton, Norman
Subject: Enron collage

Norman:

Here -- for what they're worth -- are the best of my Enron resources. Here's the link to a daily price chart of Enron's common stock, which is easier to drag on to your screen and to open (rather than saving): << File: energysquib.doc >>

This is a tiny note that I wrote about Enron market structure << File: article2.htm >> . These are two (now dated) market intelligence pieces about Enron: << File: article.htm >> << File: ar2000.pdf >> Here's the 2000 annual report - << File: Pwr_mkters_110201.ppt >> and here's a list of the top 20

power marketers prepared by an energy consulting group - . Hope that you like the Paul Klee format.

José

02554

Carleton, Norman

From: Gabilondo, Jose
Sent: Wednesday, December 05, 2001 5:47 PM
To: Carleton, Norman
Subject: Enron Corp. Stock Chart

Norman:

This should work. I dragged this icon on to my shortcut screen, so that I just need to hit without separately accessing the Internet. Also, below is the agenda for the repo conference. Let me know if you're interested in any topic in particular that I should focus on.

José



repo.htm

02555



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Stock Chart

Security: ENE (Common Stock)

Click for historical price lookup

Price: 1.01 (5-Dec-2001 Market Close)

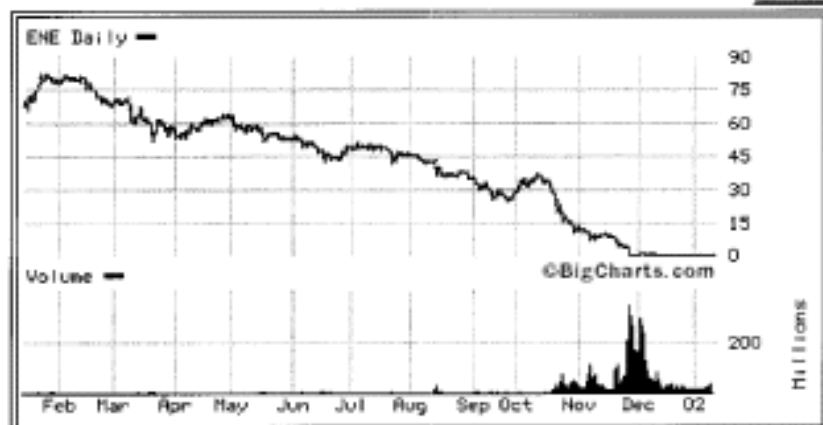
See also:

- Annual Reports
- Earnings Releases
- Press Releases
- SEC Filings
- Stock Prices & Charts
- Investor Relations main

Time Frame **Frequency** **Compare To**

1 year Daily None

Re-draw



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02556

The Bond
Market
Association

 RESEARCH POLICY/ADVOCACY MEDIA EVENTS PUBLICATIONS LINKS ABOUT
 Conferences

The 7th Annual Repo & Securities Lending Conference

Register
For This
Event

December 6, 2001
The Roosevelt Hotel, New York, NY

Complete
Schedule
of Events

Exhibit and Sponsorship Opportunities Are Available

Conference
Videotapes

Pre-Conference Workshop

December 5, 2001
The Association Conference Center, New York, NY

Regional
Events

1:00 - 5:30 p.m.

Overview of Standard Funding Documentation

This pre-conference workshop is intended to provide funding market professionals with a straightforward and substantive review of the most significant aspects of the Master Repurchase Agreement, the Master Securities Loan Agreement, the Global Master Repurchase Agreement and the Cross-Product Master Agreement. In addition to discussing significant aspects of these agreements, panelists will also update workshop participants on the impact of the most recent revisions of certain of the standard agreements. The workshop, consisting of four one-hour sessions, will also allow for extensive interaction with experienced professionals in the repo and securities lending markets.

Sponsorship
Opportunities

Master Repurchase Agreement

1:00 - 2:00 p.m.

Carolyn Monroe-Koatz, Vice President, Assistant General Counsel, J.P. Morgan Chase & Co.

Master Securities Loan Agreement

2:10 - 3:10 p.m.

Steven Kessler, Vice President, Associate Counsel, Goldman, Sachs & Co.

Global Master Repurchase Agreement

3:20 - 4:20 p.m.

Habib Motani, Partner, Clifford Chance Rogers & Wells

Netting Documentation

4:30 - 5:30 p.m.

Scott Kimmel, Vice President, Lehman Brothers Inc.

Confirmed Exhibitors

Dealogic
Decision Software
Garban

ICI/ADP
Quant Trading Inc.

Program

02557

	Breakfast
8:00 - 8:30 a.m.	
	Featured Speaker
8:30 - 9:00 a.m.	
	Dino Kos Executive Vice President Federal Reserve Bank of New York
Welcome	Joseph Blauvelt , Managing Director, J.P. Morgan Chase & Co.
	Head of Funding Desk Roundtable
9:00 - 10:15 a.m.	
	The far-reaching impact of September 11 affected the financial markets, and in particular created special challenges for the funding desks of financial institution global heads of funding desks from major institutions will address the impact of September 11 on the funding markets. In addition to discussing how the funding markets dealt with such challenges, panelists will also discuss what lessons were learned. In addition, the panelists will reflect upon any potential longer-term effects the funding markets may experience.
Moderator	Paul Saltzman Executive Vice President General Counsel, The Bond Market Association
Panelists	Joseph Blauvelt Managing Director J.P. Morgan Chase & Co. John Kruger Director Salomon Smith Barney Paul Scheufele Managing Director Credit Suisse First Boston Gerald Tamburro Managing Director UBS Warburg
	Break
10:15-10:30 a.m.	
	Legal & Regulatory Update
10:30-11:30 a.m.	
	A thorough review of the latest legal and regulatory developments in the funding markets. Subjects to be addressed include (i) changes in banking regulation, including a review of the proposed Basel Accord (ii) emergency regulatory responses to the events of September 11, (iii) changes to the Investment Company Act, (iv) bank reform, and (v) pending regulatory reform.
Moderator	Ranada Ferguson Managing Director Bear, Stearns & Co. Inc.
Panelists	Sibyl Peyer Vice President Assistant General Counsel Goldman, Sachs & Co. Robert Cook Partner Cleary, Gottlieb, Steen & Hamilton

02558

Kim Olson
Assistant Vice President
Federal Reserve Bank of New York

CONCURRENT SESSIONS: Global Funding Markets

11:30-12:30
p.m.

Two break-out panels will address funding market issues in Europe and Asia, respectively.

**Current Issues in European
Funding Markets**

This panel of repo market experts, active in the European funding markets, will discuss major developments affecting continental Europe and United Kingdom. The key matters that will be addressed include: (i) the new Basel Capital Accord implications for the European repo markets; (ii) the on-going integration process of European clearing and security settlement systems; (iii) the possible impact of proposals to change the European regulatory environment for Alternatives Trading Systems (ATS); (iv) the proposed European Directive on Financial Collateral Arrangements; and (v) the possible consequences of the application of the proposed Investment Services Directive (ISD) on the European fixed income markets.

Asian Funding Matters

Funding markets in Asia continue to play a significant role in the global financial markets. This panel of repo and securities lending professionals active in the Asian funding markets will provide a review of the most significant aspects of these markets, and also provide an update on latest developments.

Panclists **Tom Brady**
Managing Director
Merrill Lynch, Inc.
Mark Steffensen
Vice President
Counsel
Morgan Stanley &
Co.

Lunch

12:30-1:45 p.m.

Introduction

Micah Green
President
The Bond Market Association

Speaker

The Honorable William S. Cohen
Former Secretary of Defense and U.S. Senator

Collateral Management Issues in the Funding Markets

1:45 - 3:00 p.m.

The tragic events of September 11 have further highlighted the need for effective management of collateral to ensure liquidity during times of market stress. This p will focus on what collateral management issues the events of September 11 rais well as provide an update on the latest developments in collateral management. Subjects to be discussed include: (i) regulatory issues with regards to effective collateral management in times of market stress, (ii) changes to the Federal Rese Payment Systems Risk Policy, (iii) the expansion of GSCC's GCF product (and

	obstacles to its growth), (iv) the effect of the dwindling supply of Treasury debt SOMA portfolio and margining efforts, (v) Repo Tracking/Ginnie Mae Conversi and (vi) Continuous Linked Settlement (CLS).
Moderator	Omer Oztan The Bond Market Association
Panelists	Kevin Caffrey Principal Morgan Stanley & Co. Jeff Ingber Managing Director General Counsel Government Securities Clearing Corporation Brian Reilly Managing Director BNP Paribas
	Break
3:00-3:15 p.m.	
3:15-5:00 p.m.	Ask the Trader! This game show-style panel promises to be an entertaining and highly substantiv examination of market practices in the repo and securities lending markets. Experienced front-office funding professionals will be the contests, answering questions a repo and securities lending trader commonly must answer in order to complete a transaction. The professionals will also call upon legal, tax and accou professionals active in the funding markets to help them answer these questions. Contestants will also participate in a "bonus round", consisting of questions from audience!
Host	Larry Brandman Vice President Goldman, Sachs & Co.
Contestants	Jeff Kidwell Principal Morgan Stanley & Co. Others to be Announced
Lifelines	Patricia Brigantic Director and Counsel Salomon Smith Barney/Citigroup James Johnson Partner Deloitte & Touche, LLP Lucy Farr Associate Davis, Polk & Wardwell
5:00 p.m.	Cocktails

Registration Information
Registration Fees:**02560**

Member: \$895 (additional registrants from the same firm are \$695 each)
Non-member: \$1,095 (additional registrants from the same firm are \$895 each)
Pre-Conference Workshop: \$195

Refund Policy:The Association will issue refunds, each subject to a \$75 service charge, on cancellations received **in writing** on or before Friday, November 30, 2001. No refunds will be issued on cancellations after this date. Substitutes are welcome at any time.

Hotel Reservations: For your convenience, a limited number of guest rooms have been reserved at the Roosevelt Hotel, 45 East 45th Street, New York City. For hotel reservations, please call the Roosevelt Hotel at 888.833.3969. Be certain to mention you are attending The Bond Market Association's conference.

For further information, please call Mary Garcia at **(212) 440-9429**.

Registration Form

- Member (first registrant): **\$895**
- Additional registrants from same firm: **\$695**
- Nonmember (first registrant): **\$1,095**
- Additional registrants from same firm: **\$895**
- Regulators and Non-profit Associations: **\$395**
- Pre-Conference Workshop: **\$195**

Individual Registration:

Your Name

Name for Badge

Title

Company

Address

City State Zip

Phone Fax

02561

e-mail

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02562

Carleton, Norman

From: Fox, Elizabeth L. R. [efox@CFTC.gov]
Sent: Wednesday, December 05, 2001 1:45 PM
To: 'Norman.Carleton@do.treas.gov'; Alexander_M_Brill@cea.eop.gov; nazaretha@sec.gov; blaine@sec.gov; colbyr@sec.gov; Zwirb, Robert S.; dwall@fdic.gov; Dow, De'ana H.; diane.virzera@ny.frb.org; donald.lamson@occ.treas.gov; Matthew.Eichner@do.treas.gov; Fox, Elizabeth L. R.; eric.hirschhorn@ots.treas.gov; Viva.Hammer@do.treas.gov; polisej@sec.gov; joyce.hansen@ny.frb.org; kathryn.dick@occ.treas.gov; kurt.wilhelm@occ.treas.gov; lsantamoren@bpd.treas.gov; mbrowne@fdic.gov; Peter.Nickoloff@do.treas.gov; Michael.Novey@do.treas.gov; dombalagiano@sec.gov; m1pmp00@frb.gov; m1apw00@frb.gov; Heidilynne.Schultheiss@do.treas.gov
Cc: Sheila.Bair@do.treas.gov; Timothy.Bitsberger@do.treas.gov; Martha.Ellett@do.treas.gov; Jose.Gabilondo@do.treas.gov; Jared.Gross@do.treas.gov; Brian.Roseboro@do.treas.gov; Gary.Sutton@do.treas.gov; Mark.Wiedman@do.treas.gov
Subject: RE: New Draft of the Retail Swaps Report

I have contacted both Enron and Blackbird--Enron is fine with being named as an interviewee, have not yet heard from Blackbird.

-----Original Message-----

From: Norman.Carleton@do.treas.gov [mailto:Norman.Carleton@do.treas.gov]
Sent: Wednesday, December 05, 2001 1:38 PM
To: Alexander_M_Brill@cea.eop.gov; nazaretha@sec.gov; blaine@sec.gov; colbyr@sec.gov; bswirb@cftc.gov; dwall@fdic.gov; ddow@cftc.gov; diane.virzera@ny.frb.org; donald.lamson@occ.treas.gov; Matthew.Eichner@do.treas.gov; efox@cftc.gov; eric.hirschhorn@ots.treas.gov; Viva.Hammer@do.treas.gov; polisej@sec.gov; joyce.hansen@ny.frb.org; kathryn.dick@occ.treas.gov; kurt.wilhelm@occ.treas.gov; lsantamoren@bpd.treas.gov; mbrowne@fdic.gov; Peter.Nickoloff@do.treas.gov; Michael.Novey@do.treas.gov; dombalagiano@sec.gov; m1pmp00@frb.gov; m1apw00@frb.gov; Heidilynne.Schultheiss@do.treas.gov
Cc: Sheila.Bair@do.treas.gov; Timothy.Bitsberger@do.treas.gov; Martha.Ellett@do.treas.gov; Jose.Gabilondo@do.treas.gov; Jared.Gross@do.treas.gov; Brian.Roseboro@do.treas.gov; Gary.Sutton@do.treas.gov; Mark.Wiedman@do.treas.gov
Subject: New Draft of the Retail Swaps Report

<<Retail Swap St -- (12-05 draft)1.doc>> <<12-05 draft redline1.doc>>

To the Retail Swaps Study Group:

Attached is a new draft of the retail swaps report. One of the attachments is a clean document; the other shows changes made to the December 3 draft.

[(b)(5)]

Norman Carleton

Carleton, Norman

From: Lori.Santamorena@bpd.treas.gov
Sent: Tuesday, December 04, 2001 2:06 PM
To: Norman.Carleton@do.treas.gov
Subject: Re: NYT: Collapse of Enron May Reshape the Battlefield of Deregulation

[(b)(5)]

02564

1/15/02

01300000001173

Carleton, Norman

From: Schultheiss, Heidilynne
Sent: Wednesday, November 28, 2001 5:28 PM
To: Carleton, Norman
Subject: FYI - Status/Summary of Projects

Welcome back. It was fairly quiet while you were gone.

[(b)(5)]

02579

Carleton, Norman

From: Robert.Elsasser@ny.frb.org
Sent: Monday, November 26, 2001 10:46 AM
To: Norman.Carleton@do.treas.gov
Subject: Re: Enron Update

No problem. I can have you added to our general distribution list. This would mean that you would receive our morning and afternoon recaps and special reports on a variety of global markets. Alternatively, I can just remember to add you to any future Enron reports that we produce. They may be few and far between.

Bob Elsasser
Government Securities, FRBNY
robert.elsasser@ny.frb.org
212.720.1234

Norman.Carleton@do
.treas.gov
11/20/2001 02:53
PM

To: Robert.Elsasser@ny.frb.org
cc:
Subject: Enron Update

I have also been following Enron developments, which bear heavily on the retail swaps report. I would appreciate being put on the distribution list for any further work you send here on that subject. Thanks.

Norman Carleton

02580

Carleton, Norman

From: Raislerk@sullcrom.com
Sent: Tuesday, August 07, 2001 7:10 PM
To: norman.carleton@do.treas.gov
Subject: FW: CFTC Presentation -- Final Version



cftc_final.ppt

This is the right version. Please acknowledge receipt.

-----Original Message-----

From: chendrix@enron.com [mailto:chendrix@enron.com]
Sent: Tuesday, August 07, 2001 6:42 PM
To: Raislerk@sullcrom.com
Subject: RE: CFTC Presentation -- Final Version

Here you go. (See attached file: cftc_final.ppt)

Raislerk@sullcrom.com on 08/07/2001 05:06:50 PM

To: chendrix@enron.com
cc:
Subject: RE: CFTC Presentation -- Final Version

Chris,

As I am sure Scott told you, this presentation went very well. Treasury has asked for copies in electronic form. Can you resend this to me without the notes imbedded so I can forward it on to them. Thanks.

Ken

-----Original Message-----

From: chendrix@enron.com [mailto:chendrix@enron.com]
Sent: Wednesday, August 01, 2001 3:57 PM
To: Raislerk@sullcrom.com
Subject: CFTC Presentation -- Final Version

Attached is the final version of the presentation. (See attached file: cftc_final_presentation.ppt)

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

This e-mail is sent by a law firm and contains information

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that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

Carleton, Norman

From: Ellis, Dina
Sent: Thursday, March 15, 2001 5:59 PM
To: Fisher, Peter; Paulus, Michael; Carleton, Norman
Cc: Gross, Jared
Subject: RE: Enron Meeting Request

seems ok to me...should be run through GC.

-----Original Message-----

From: Fisher, Peter
Sent: Thursday, March 15, 2001 5:31 PM
To: Paulus, Michael; Ellis, Dina; Carleton, Norman
Cc: Gross, Jared
Subject: RE: Enron Meeting Request

I also see no reason to object.

-----Original Message-----

From: Paulus, Michael
Sent: Thursday, March 15, 2001 5:27 PM
To: Ellis, Dina; Fisher, Peter; Carleton, Norman
Cc: Gross, Jared
Subject: Enron Meeting Request

Jeff Skilling, President and CEO of Enron has requested a meeting with the Secretary for April 5 to discuss the West Coast energy crisis. I see no reason to object. Thoughts?

02697

Carleton, Norman

From: Gabilondo, Jose
Sent: Wednesday, May 16, 2001 2:32 PM
To: Carleton, Norman
Subject: RE: New Version of Retail Swap Study Federal Register Release

[(b)(5)]

José

-----Original Message-----

From: Carleton, Norman
Sent: Wednesday, May 16, 2001 11:48 AM
To: Paulus, Michael; Nickoloff, Peter; Schultheiss, HeidiLynne; Novey, Michael; Hammer, Viva; Eichner, Matthew; Sutton, Gary; Elett, Martha; Gabilondo, Jose; DeMarco, Edward
Subject: New Version of Retail Swap Study Federal Register Release

[(b)(5)]

If we are to keep to our plan to hand this out to the Steering Group tomorrow morning, I will need comments in a few hours. Thanks.

<< File: retail swaps redline.wpd >>

<< File: retail swap study release (10).wpd >>