

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA and NATHANIEL PULSIFER,  
TRUSTEE OF THE SHOOTERS HILL  
REVOCABLE TRUST, On Behalf of Themselves  
and All Others Similarly Situated,

Plaintiffs,

vs.

MILBANK, TWEED, HADLEY & McCLOY  
LLP, ANDREWS & KURTH L.L.P., THE  
GOLDMAN SACHS GROUP, INC., and  
GOLDMAN SACHS & CO.,

Defendants.

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§ Civil Action No. \_\_\_\_\_

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§ CLASS ACTION

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**COMPLAINT FOR VIOLATIONS OF THE SECURITIES LAWS**

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## OVERVIEW

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

- (a) Milbank, Tweed, Hadley & McCloy LLP;
- (b) Andrews & Kurth L.L.P.;
- (c) The Goldman Sachs Group, Inc. and Goldman Sachs & Co.

2. Each of the defendants sued for fraud engaged or participated in the implementation of manipulative devices to inflate Enron's reported profits and financial condition, made or participated in the making of false and misleading statements and participated in a scheme to defraud or a course of business that operated as a fraud or a deceit on purchasers of Enron's publicly traded securities between 10/19/98 and 11/27/01.<sup>2</sup> Both prior to and during the Class Period, Enron reported very strong profits and profit growth and a strong balance sheet which enabled it to maintain an investment grade credit rating. As a result of defendants' wrongful conduct and scheme, Enron's common stock was artificially inflated to as high as \$90-3/4 (giving Enron a market capitalization of over \$70 billion in 8/00), while Enron's preferred and debt securities also traded at artificially inflated prices. Defendants' scheme and fraudulent course of business was also designed to and did enable Enron to issue billions of dollars of new equity and debt securities to investors during the Class Period.

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<sup>1</sup> Enron's publicly traded securities include the publicly traded securities of entities related to Enron, the repayment of which was dependent upon Enron's credit, financial condition and ability to pay.

<sup>2</sup> The Goldman Sachs Group, Inc. and Goldman Sachs & Co., collectively "Goldman Sachs," is not sued for fraud, but rather, only under non-fraud provisions of the 1933 Act. No allegations of fraud are made against or directed at Goldman Sachs.

3. This fraudulent scheme and course of business enabled defendants to pocket billions of dollars of legal, accounting, auditing and consulting fees, underwriting commissions, interest and credit facility payments, cash bonuses based on Enron's reported earnings and its stock performance and illegal insider trading proceeds, such that each defendant was significantly enriched. In 10/01, Enron suddenly reported \$1 billion (after-tax) in write-offs and a billion dollar shareholder equity writedown. It then restated its previously reported financial results to eliminate hundreds of millions of dollars of previously reported profits and billions more in shareholders' equity. Enron's stock collapsed, its credit rating was downgraded to "junk" and it went bankrupt, as investors realized that the huge profits Enron had reported over the past several years had been grossly inflated and falsified, that Enron had hidden billions of dollars of debt that should have been reported on Enron's balance sheet. The fraudulent scheme to misrepresent Enron's financial condition and results is detailed in The Regents' First Amended Consolidated Complaint filed May 14, 2003, in H-01-3624, which is incorporated herein.

4. This fraud was accomplished, in part, through clandestinely controlled partnerships and so-called special purpose entities ("SPEs") that the defendants created, structured, financed and used to do transactions with Enron to inflate its profits and operating cash flows, and hide its debt and thus perpetuate the fraud by violating Generally Accepted Accounting Principles ("GAAP") and the principles of "fair presentation" of financial results. Virtually all of Enron's top insiders have been kicked out of the Company. The Securities and Exchange Commission ("SEC") and the Department of Justice ("DOJ") are conducting wide-ranging investigations of the Enron fiasco. While the defendants all personally profited from this scheme, public investors – from Enron employees who purchased Enron stock for their 401(k) retirement accounts and lost their life savings, to public and Taft-Hartley pension plans which invested in Enron securities and lost

hundreds of millions of dollars – collectively suffered billions of dollars of damages. The chart below shows the rise and collapse of Enron’s stock.



### JURISDICTION AND VENUE

5. The claims asserted herein arise under and pursuant to §10(b) of the Securities Exchange Act of 1934 (“1934 Act”) [15 U.S.C. §78j(b)] and Rule 10b-5 promulgated thereunder by the SEC [17 C.F.R. §240.10b-5] and §§11 and 15 of the Securities Act of 1933 (“1933 Act”) [15 U.S.C. §§77k and 77o].

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

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

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

## **PARTIES**

### **Plaintiffs**

9. The Regents of the University of California, Court appointed Lead Plaintiff in *Newby v. Enron Corp.*, No. H-01-3624 (S.D. Tex.), purchased more than 2 million shares of Enron stock at artificially inflated prices during the Class Period as detailed in its Certification, and suffered damages of more than \$144 million as a result thereof.

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

11. Plaintiff Nathaniel Pulsifer, Trustee of the Shooters Hill Revocable Trust ("Pulsifer") purchased the Enron 7% Exchangeable Notes at artificially inflated prices pursuant to a false and misleading Registration Statement and Prospectus, as detailed in its Certification, and has suffered damage as a result thereof.

## Defendants

12. Defendant *Milbank, Tweed, Hadley & McCloy LLP* (“Milbank Tweed”) is a huge Wall Street law firm with over 450 lawyers and annual revenues in the hundreds of millions of dollars. In matters legal and financial, Milbank Tweed is extremely sophisticated, specializing in representing publicly traded corporations and large financial institutions in structuring complex financial transactions and in completing securities offerings in the United States and overseas. Milbank Tweed actively participated in, furthered and played an integral role in the fraudulent scheme and course of business that operated as a fraud and deceit on purchasers of Enron’s securities by committing the acts and participating in the actions, including making false and misleading statements and employing manipulative devices and contrivances, to deceive purchasers of Enron and Enron-related publicly traded securities, as detailed herein.

13. The primary Milbank Tweed lawyers participating in the fraudulent scheme and course of business were members of the firm’s Global Corporate Finance Department (“GCFD”), led by Tray Davis (“Davis”), Frank Puleo (“Puleo”), Dave Stagliano (“Stagliano”), and Mel Immergut (“Immergut”). These were senior partners at Milbank Tweed with vast experience in putting together extraordinarily complex financial transactions, and who understood the accounting and disclosure implications of these transactions that involved public companies:

(a) Davis joined Milbank Tweed as a partner in 8/93, was co-head of the GCFD, and a member of the firm’s executive committee. Davis practiced in the structured-finance area since 85, advising clients in securitizing financial and hard assets and in other domestic and international transactions. He represented investment banking firms and financial institutions in many complex transactions, including the first international securitizations of forward-oil sales, the first interest-only securitization of leveraged-lease debt, and the first offerings of stripped mortgage-backed securities.

(b) Puleo has been a Milbank Tweed partner since 78 and has been a member of the firm's executive committee. He has extensive experience in bank regulatory and securities law matters, including bank-capital adequacy, derivative products, securitization of assets, international securities activities of banks, and bank funding. His experience in derivative products included representation of the swaps unit of J.P. Morgan Chase, a major money-center swaps dealer.

(c) Stagliano joined Milbank Tweed in 80 and has been a partner since 89. He has practiced in the GCFD since 81.

(d) Immergut, Milbank Tweed's Chairman since 95, has been a partner in the GCFD since 80, with extensive experience in complex corporate transactional work, including structured financial transactions.

14. Defendant ***Andrews & Kurth L.L.P.*** ("A&K") is a law firm headquartered in Houston, Texas, with offices in Austin, Dallas, London, Los Angeles, New York, The Woodlands and Washington, D.C. A&K provides legal services to its clients worldwide, particularly in the areas of, among others, energy, corporate, finance, technology, real estate, tax, litigation, labor and health care. A&K served as outside corporate counsel to Enron throughout the Class Period. Enron was one of A&K's largest clients. A&K represented Enron-related entities throughout the Class Period. A&K structured, prepared the transaction documents for, and improperly issued to Enron and its auditor opinions for certain structured transactions causing the false accounting treatment of these transactions that manipulated Enron's reported net income, cash flow, and debt by billions of dollars and is liable pursuant to §10(b) of the 1934 Act and Rule 10b-5.

15. Defendant ***Goldman, Sachs & Co.*** is owned by Defendant ***The Goldman Sachs Group, Inc.*** (collectively "Goldman Sachs"), an integrated global investment banking, securities and investment management firm that provides a range of services to a substantial and diversified client base that includes corporations, financial institutions, governments and high-net-worth individuals.

Through its controlled subsidiaries and divisions, including its investment banking arm, Goldman, Sachs & Co., The Goldman Sachs Group, Inc. (among other things) provides financial advisory and underwriting services, issues research through analyst reports on global markets and growth sectors to corporations and institutional investors, and provides market-making, merchant banking and clearing services. Goldman, Sachs & Co. served as the lead underwriter for the \$222.5 million offering of Enron's 7% Exchangeable Notes due July 31, 2002, initially offered to the public on August 10, 1999, and is liable pursuant to §11 of the 1934 Act. The Goldman Sachs Group, Inc. is liable pursuant to §15 of the 1934 Act as a control person of its subsidiary Goldman, Sachs & Co.

### **INVOLVEMENT OF MILBANK TWEED**

16. From 97 through 12/01, Milbank Tweed represented Enron or Enron's commercial banks/securities underwriters in an extraordinarily large number of matters, including (i) almost *all* of Enron's significant off-balance-sheet-financing transactions, which were structured by Milbank Tweed, and hid billions of dollars of Enron's true debt levels, distorted its balance sheet, created artificial income, and inflated its results from operations; and (ii) the offering and sale of billions of dollars of Enron and Enron-related securities to investors via false and misleading offering memoranda/circulars specified at ¶23 which were *all* written by Milbank Tweed. The law firm's involvement with Enron and the other participants in the fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Enron and Enron-related securities was staggering: Milbank Tweed represented the defendant banks, including Citigroup, J.P. Morgan Chase, CSFB, CIBC, Deutsche Bank, Toronto Dominion Bank, Royal Bank of Scotland, and Barclays in \$18 billion of off-balance-sheet financings orchestrated in over 50 transactions with Enron. When other institutional investors and corporations engaged in similar transactions are included, Milbank Tweed represented nearly 70 entities on 120 matters where Enron was the counterparty. *At the same time the law firm was representing these banks, institutions and*

*corporations in structuring and documenting bogus transactions with the Company, Milbank Tweed was also representing Enron (and 30 Enron-related and controlled entities) in over 125 matters.* For its Enron-related work – direct representation of the Company and its affiliates, banks, and other clients included in Enron-related matters – Milbank Tweed pocketed in excess of \$150 million during the period 97-01.

17. During 97-01, Milbank Tweed *continually acted as Enron’s counsel* in connection with over 125 matters spread across all of the Company’s operations, as set forth below:

ENRON ENTITY	RELATIONSHIP	DATES OF REPRESENTATION
Enron Corp.	• debt financing of wind energy projects	6/97 - 2/99
Enron North America Corp.	• restructuring matter connected with investment in Heartland Steel	9/00 - 4/01
	• bid to acquire certain interests of Ahlstrom Power	7/00 - 4/01
	• acquisition of certain interests held by Dynegy	5/00 - 5/01
	• evaluating rights under turbine warranty agreements	09/00 – 10/00
	• acquisition of Alabama synthetic fuels facility and related coal supply agreement and swap for synthetic fuels	8/00 – 10/00
	• acquisition and continuing development of Pleasanton, California energy project	8/00 – 10/00
	• construction of pilot project at the Weadock Unit #7 generation facility	1/00 – 11/00
	• acquisition of assets of Quaker Coal Co. and Branham & Baker Coal Co.	6/00 – 6/00
	• acquisition of shares in TUCO and partnership interests in NexGen Coal Services	4/00 – 6/00
	• acquisition of a facility in Corona, CA	2/00 – 6/00
	• bid to purchase companies who were partners in MCN Energy Group, Michigan Power and Ada Power projects	10/99 – 6/01
	• bid to purchase companies who were partners in Carson Cogeneration	1/00 – 2/00

Enron Wholesale Services	<ul style="list-style-type: none"> <li>investment in and agreements with telecommunications companies</li> </ul>	8/01 - 11/01
Enron Broadband	<ul style="list-style-type: none"> <li>representation in bankruptcy case of 360 networks</li> </ul>	8/01 - 11/01
Enron Energy Services	<ul style="list-style-type: none"> <li>energy outsourcing program with Prudential</li> </ul>	1/01 - 2/01
	<ul style="list-style-type: none"> <li>energy outsourcing program with IBM</li> </ul>	9/00 - 2/01
	<ul style="list-style-type: none"> <li>agreements to provide energy efficiency services and electricity sales to CB Richards Ellis Realty</li> </ul>	10/99 - 12/99
	<ul style="list-style-type: none"> <li>legal issues in connection with acquisition of FieldCentrix</li> </ul>	8/01 – 9/01
	<ul style="list-style-type: none"> <li>legal opinion in connection with a cogeneration financing</li> </ul>	3/01 – 5/01
	<ul style="list-style-type: none"> <li>energy outsourcing transaction and negotiation of facilities management agreement for Park Place Entertainment</li> </ul>	9/00 – 7/01
	<ul style="list-style-type: none"> <li>drafting and negotiating energy-related service and construction agreements and subordinated debt financing documents in connection with snowboarding facility in Anaheim, California</li> </ul>	4/99 – 6/00
	<ul style="list-style-type: none"> <li>negotiation of agreements to provide energy efficiency services and electricity sales to Landmark Hotels</li> </ul>	10/98 – 4/99
	<ul style="list-style-type: none"> <li>negotiation of agreements to provide energy efficiency services and electricity sales to Orange County Register</li> </ul>	11/98 – 5/99
	<ul style="list-style-type: none"> <li>negotiation of facilities services and power sales agreements with San Francisco Giants baseball and stadium entities</li> </ul>	8/98 – 11/98
	<ul style="list-style-type: none"> <li>negotiation of energy supply agreement with Pacific Telesis</li> </ul>	10/97 – 11/97
	<ul style="list-style-type: none"> <li>negotiation of energy procurement and construction contract for energy facilities of Applied Materials</li> </ul>	11/97 – 12/97
	<ul style="list-style-type: none"> <li>general project finance advice</li> </ul>	12/97 – 8/98
EMW Energy Services	<ul style="list-style-type: none"> <li>structuring and negotiating web-based service agreement with IBM</li> </ul>	3/00 - 11/00
Enron Capital & Trade Resources Corp.	<ul style="list-style-type: none"> <li>restructuring matter connected with investment in Heartland Steel</li> </ul>	9/00 - 4/01

• restructuring matter connected with investment in Nakornthai Strip Mill	11/98 - 1/01
• restructuring matter connected with purchase of debt instrument from Repap Enterprises	4/99 - 7/99
• bid to acquire generation assets from San Diego Gas & Electric	10/98 – 11/98
• distribution system joint venture with City Power & Light	8/98 – 12/98
• bid for generation assets of PG&E	8/98 – 12/98
• development of merchant plan in Long Beach, California	7/98 – 11/98
• assist in selection process to work with San Francisco in acquiring two power plants from PG&E and associated development relating to same	5/98 – 6/98
• defend preference avoidance action	4/98 – 6/98
• acquisition of Chula Vista cogeneration facility from University Congregation	10/97 – 11/97
• acquisition of interests in certain California gas-fired cogeneration plants and renegotiation of power purchase agreements with Southern California Energy	8/97 – 6/99
• development of contracts and procedures in preparation for deregulated electric power business	7/97 – 9/97
• acquisition of The Bentley Company	6/97 – 7/97
• general advice re energy management contracts entered into with California customers	5/97 – 11/97
• acquisition of water rights and properties in Mono County, California	4/97 – 7/97
• advice re proposed coal pulverization facility at a Weirton Steel facility	4/97 – 9/97
• negotiation of power sale agreement to supply Suffolk County, New York	3/97 – 3/97
• unsuccessful bid to acquire Big Rivers Electrical	10/96 – 10/99
• representation as lender to CanFibre of Lackawanna in connection with construction of a solid waste disposal plant	5/00 – 8/01

	<ul style="list-style-type: none"> <li>advice regarding agreement to supply coal services to Edison Misson</li> </ul>	6/99 – 12/99
ECT Merchants Investments, Enron North America	<ul style="list-style-type: none"> <li>representation in Chapter 11 case of CanFibre of Riverside</li> </ul>	5/00 - 8/01
Enron Engineering and Construction	<ul style="list-style-type: none"> <li>intellectual property matters relating to activities as EPC contractor on steelmaking projects</li> </ul>	3/00 - 5/01
Enron Capital Management	<ul style="list-style-type: none"> <li>restructuring matters connected with investment in Nakornthai Strip Mill</li> </ul>	11/98 - 1/01
Enron Online	<ul style="list-style-type: none"> <li>advice on corporate and regulatory issues</li> </ul>	8/00 - 11/00
The New Power Company	<ul style="list-style-type: none"> <li>structuring and drafting online privacy policy and contracts for sale of goods and services</li> </ul>	6/00 - 6/01
GSF Energy Ecogas Corp.	<ul style="list-style-type: none"> <li>defense of a breach of contract suit brought by Waste Management</li> </ul>	12/99 - 9/00
Enron Development	<ul style="list-style-type: none"> <li>developing strategy for development and financing of Central American power projects and related electrical transmission and gas transportation projects</li> </ul>	6/96 - 8/97
ECT Securities	<ul style="list-style-type: none"> <li>defense of securities action brought by Legg Mason in connection with notes issued by Nakornthai Strip Mill</li> </ul>	10/99 – 7/00
	<ul style="list-style-type: none"> <li>defense of securities action brought by Farrallon Capital Partners in connection with notes issued by Nakornthai Strip Mill</li> </ul>	9/99 – 6/01
	<ul style="list-style-type: none"> <li>restructuring investments in Nakornthai Strip Mill</li> </ul>	11/98 – 1/01
	<ul style="list-style-type: none"> <li>restructuring of debt instrument from Repap Enterprises</li> </ul>	4/99 – 7/99
ECT Thailand	<ul style="list-style-type: none"> <li>restructuring investment in Nakornthai Strip Mill</li> </ul>	11/98 – 1/01
Enron International	<ul style="list-style-type: none"> <li>establishing captive debt fund to provide financing to Enron affiliates for development of international energy and infrastructure projects</li> </ul>	2/97 – 4/01
	<ul style="list-style-type: none"> <li>role as potential white knight in connection with bid by AES to acquire shares in a Venezuelan utility</li> </ul>	5/00-6/00

	<ul style="list-style-type: none"> <li>role as lender and placement agent in construction financing of slab caster at Bethlehem Steel</li> </ul>	2/99 – 3/00
	<ul style="list-style-type: none"> <li>acquisition of minority stake in a Thailand company</li> </ul>	4/97 – 8/97
Enron Europe	<ul style="list-style-type: none"> <li>turbine sales agreement with Eirtricity</li> </ul>	1/01 – 8/01
	<ul style="list-style-type: none"> <li>sale of Owenreagh wind farm in Northern Ireland</li> </ul>	9/01 – 10/01
Enron Global Markets	<ul style="list-style-type: none"> <li>financing of pilot project and facility installation for TVA</li> </ul>	3/01 – 10/01
EnCom. Corp. (Japan)	<ul style="list-style-type: none"> <li>proposed purchase of power barges and turbines from Sabah Electricity Sdn. Bhd. of East Malaysia</li> </ul>	5/00 – 6/00
Enron Wind Corp.	<ul style="list-style-type: none"> <li>advice in connection with project finance wind energy matters</li> </ul>	3/97 – 12/01
	<ul style="list-style-type: none"> <li>development and financing of the Indian Mesa I and Indian Mesa II wind energy projects and the sale of interests in same to American Electric Power Company</li> </ul>	1/00 – 12/01
	<ul style="list-style-type: none"> <li>development of wind energy project in Honduras</li> </ul>	10/96 – 11/01
	<ul style="list-style-type: none"> <li>financing of wind energy project in Minnesota; power to be sold to Northern States Power</li> </ul>	3/97 – 8/01 3/97 – 8/01
	<ul style="list-style-type: none"> <li>development and financing of Katheawa Pastures Windfarm</li> </ul>	11/99 – 5/00
	<ul style="list-style-type: none"> <li>proposed sale of interests in five wind energy projects –Aurora</li> </ul>	6/01 – 6/01
	<ul style="list-style-type: none"> <li>bid for renewable energy credits and energy to be sold to Southwestern Public Service Company</li> </ul>	5/00 – 6/00
	<ul style="list-style-type: none"> <li>development and financing of multiple wind energy projects in Hawaii</li> </ul>	1/98 – 5/01
	<ul style="list-style-type: none"> <li>acquisition of assets of Kenetech Windpower</li> </ul>	10/96 – 1/97
	<ul style="list-style-type: none"> <li>development and financing of mine energy project near Cabazon, CA</li> </ul>	2/97 – 5/00
	<ul style="list-style-type: none"> <li>development and financing of Mynydd Gorddu wind project in Wales</li> </ul>	11/96 – 8/97
	<ul style="list-style-type: none"> <li>acquisition of California wind energy generation projects from Flowind Corp.</li> </ul>	3/97 – 6/98
	<ul style="list-style-type: none"> <li>joint venture with Renewable Development Company for development of wind farm projects in UK and Eire</li> </ul>	7/97 – 5/00

• joint venture with Nigen for development of wind farm projects in Ireland	7/97 – 2/98
• financing of two wind farm projects in Crete for affiliates of Enron Wind and ESI Energy	7/97 – 7/00
• review of manufacturing agreement with Cincinnati Gear Co.	10/97 – 10/97
• acquisition of Columbia Hills and Pacific Northwest wind power project assets from Kenetech Windpower	8/97 – 10/98
• the Megali Vrissi and Chandras wind farm projects in Crete	10/97 – 7/00
• development, construction and financing of Storm Lake II wind generation facility	1/98 – 12/98
• financing of Lake Benton II wind energy project	9/97 – 4/98
• development and financing of a merchant power plant in California	12/97 – 1/98
• development, construction and financing of wind generation facility in Brazil	3/98 – 3/98
• development agreement with Independent Power Company	4/98 – 10/98
• standardization of documents	4/98 – 8/00
• development of off-shore wind power plant in Sweden	4/98 – 4/99
• sale and development of wind project development rights – Pyrgari Project	2/98 – 10/98
• preparation of bid package for request for proposals for energy from Public Service Company of Oklahoma	6/98 – 6/98
• preparation of bid package for request for proposals for energy from Public Service Company of Colorado	6/98 – 4/00
• proposed development of off-shore wind farm near Blyth Harbor	7/98 – 1/99
• preparation of bid package for request for proposals for energy from West Texas Utilities	2/99 – 2/99
• preparation of bid package for request for proposals for energy from Southwestern Electric Power	9/98 – 9/98
• development of wind energy project in Nicaragua	9/98 – 3/99

• preparation of bid package in response to Green Power request for proposal issued by Los Angeles Department of Water and Power	9/98-9/98
• refinancing of Lake Benton II wind energy project	11/99 – 7/00
• refinancing of Storm Lake II wind energy project	12/98 – 7/99
• sale of equity in Storm Lake I wind energy project	12/98 – 8/99
• development and financing of merchant wind energy facility – Green Power Partners I	1/99 – 7/00
• negotiations with Southern California Edison in connection with purchase agreements and interconnection facilities agreements	4/99 – 6/99
• termination of various 1980’s investor programs	4/99 – 12/99
• development of New York wind power projects	5/99 – 7/99
• joint venture development of wind farm projects in Belgium	5/99 – 3/00
• bid for wind power project with Institution Costarricense de Electricidad ICE in Costa Rica	6/99 – 9/99
• preparation of bid package for request for proposals for energy from El Paso Electric	8/99 – 8/99
• acquisition of remaining unutilized capacity of transmission line owned by Sagebrush Partnership	8/99 – 9/99
• power purchase agreement with Austin, TX	8/99 – 9/99
• dispute with Northern States power over two wind energy projects located in MN	8/99 – 9/99
• sale of interest in Lake Benton II wind energy project	9/99 – 4/00
• development of wind energy project in Wisconsin	12/99 – 12/99
• preparation of various agreements relating to development and financing, and sale of turbines to, wind energy projects in Europe	1/00 – 6/00
• proposed asset transfer by WindMaster Developments	1/00 – 2/00
• joint development agreement with Galetch Limited and put option with Eirtricity in relation to wind farm in Ireland	4/00 – 12/00
• restructuring of several qualifying facilities	1/97 – 3/97

	<ul style="list-style-type: none"> <li>development and financing of wind project in Wales</li> </ul>	2/97 – 8/98
	<ul style="list-style-type: none"> <li>advising in connection with development of a windfarm in Ireland, including negotiating joint venture agreement EWIND Limited and a back-to-back agreement with Nedpower N.V.</li> </ul>	7/01 – 12/01
Zond Power Partners	<ul style="list-style-type: none"> <li>acquisition of interest in Owenreagh Power Partners</li> </ul>	8/99 – 7/00

18. At the same time it was representing Enron in the matters specified in ¶17, Milbank Tweed was acting as counsel for bank, underwriter or institutional investors on at least 70 major Enron financial transactions during the Class Period – totaling nearly \$18 billion – ***all of which involved contrivances, manipulations and financial misrepresentations***, as detailed elsewhere herein:

- \$300,000,000 Mahonia VI prepay, December 1997.
- \$250,000,000 Mahonia VII prepay, June 1998.
- £154,000,000 Riverside 3 financing, June 1998.
- £60,000,000 Riverside 4 financing, September 1998.
- \$380,000,000 Pilgrim financing, December 1998.
- \$1,150,000,000 Marlin I transaction, December 1998.
- \$250,000,000 Mahonia VIII prepay, December 1998.
- \$475,000,000 Firefly minority interest, December 1998.
- \$250,000,000 Toronto Dominion Prepay, December 1998.
- \$500,000,000 Roosevelt Prepay, December 1998.
- £2,000,000 Riverside 5 financing, January 1999.
- \$98,000,000 Leftover financing, May 1999.
- \$500,000,000 Choctaw minority-interest, May 1999.
- \$348,000,000 Nimitz financing, June 1999.
- \$500,000,000 Mahonia IX prepay, June 1999.
- \$500,000,000 Truman prepay, June 1999.
- \$1,500,000,000 Osprey I transaction, September 1999.
- \$675,000,000 Jethro prepay, September 1999.
- \$825,000,000 Yosemite Securities Trust I, November 1999.
- \$255,000,000 Ghost financing, December 1999.
- \$11,400,000 Alchemy financing, December 1999.
- \$126,400,000 Discovery financing, December 1999.
- \$324,000,000 Nixon prepay, December 1999.
- £211,250,000 Yosemite Securities Co. Ltd., February 2000.
- \$125,000,000 Specter financing, March 2000.
- \$20,000,000 McGarret I (Hawaii) financing, March 2000.

- \$25,000,000 McGarret II (Hawaii) financing, June 2000.
- \$\*\*,000,000 Danno II (Hawaii) financing, June 2000.
- \$650,000,000 Mahonia X prepay, June 2000.
- \$70,000,000 Osprey Certificates transaction, July 2000.
- \$125,000,000 Pelican Bidder/Enron Swap financing, July 2000.
- \$550,000,000 Enron Credit Linked Note Trust financing, August 2000.
- \$30,000,000 McGarret III (Hawaii) financing, August 2000.
- \$90,900,000 McGarret II–2nd (Hawaii) financing, September 2000.
- \$105,000,000 Alberta Prepay, September 2000.
- \$1,080,000,000 Osprey II transaction, October 2000.
- \$500,000,000 Zephyrus minority-interest financing, November 2000.
- \$207,800,000 ETOL I financing, November 2000.
- \$51,800,000 McGarret VI (Hawaii) financing, December 2000.
- \$46,500,000 McGarret I-2nd (Hawaii) financing, December 2000.
- \$57,000,000 McGarret VIII (Hawaii) financing, December 2000.
- \$330,400,000 Mahonia XI prepay, December 2000.
- \$150,000,000 CSFB Prepay I, December 2000.
- \$165,000,000 London Prepay, December 2000.
- \$30,000,000 McGarret XII ( Hawaii) financing, March 2001.
- \$115,000,000 McGarret VIII-2nd (Hawaii) financing, March 2001.
- \$31,200,000 McGarret XI (Hawaii) financing, March 2001.
- \$32,800,000 ETOL II financing, March 2001.
- \$43,400,000 ETOL III financing, March 2001.
- \$550,000,000 Enron Credit Linked Note Trust II, May, 2001
- €222,500,000 Enron Euro Credit Linked Note Trust, May 2001.
- £139,000,000 Enron Sterling Credit Linked Note Trust, May 2001.
- \$28,500,000 Sundance Industrial financing, June 2001.
- \$375,000,000 Slapshot financing, June 2001.
- \$38,000,000 McGarret X (Hawaii) financing, June 2001.
- \$20,000,000 McGarret XIII (Hawaii) financing, June 2001.
- \$70,000,000 McGarret XIV (Hawaii) financing, June 2001.
- \$915,000,000 Marlin II transaction, July 2001.
- \$350,000,000 Mahonia XII prepay, September 2001.
- \$46,600,000 McGarret I-3rd (Hawaii) financing, September 2001.
- \$51,900,000 McGarret VI-2nd (Hawaii) financing, September 2001.
- \$150,000,000 CSFB Prepay II financing, September 2001.
- \$80,000,000 Nikita financing, September 2001.
- \$25,000,000 Nile financing, September 2001.
- \$167,600,000 SO2 financing, September/October 2001.
- \$46,700,000 McGarret I-4th (Hawaii) financing, October 2001.
- \$91,000,000 McGarret II-3rd (Hawaii) financing, October 2001.
- \$30,100,000 McGarret III-2nd (Hawaii) financing, October 201.
- \$60,000,000 McGarret V-3rd (Hawaii) financing, October 2001.
- \$31,300,000 McGarret XI-2 (Hawaii) financing, October 2001.
- \$20,100,000 McGarret XIII-2nd (Hawaii) financing, October 2001.

19. Enron had evolved into a huge Ponzi scheme by 98— robbing Peter to pay Paul. The Company had inflated its operating cash flows – and thus its share price – through its fraudulent financing transactions. As these deals came due, Enron had to replace them with subsequent, often larger, fraudulent financings. As its fabricated growth accelerated, the Company was increasingly starved for cash because its business operations were not nearly as successful as represented. Enron was actually incurring large losses and wasting hundreds of millions of dollars on executive bonuses and other extravagant payments. To cover this up, Enron falsified its reported financial results in myriad ways detailed elsewhere in this Complaint. For the fraudulent scheme to continue during 99-01 it was indispensable that Enron raise billions of dollars of new capital to fund its operations and the transactions it needed to continue to falsify its financial condition by hiding debt and inflating its reported operating cash flows and earnings.

20. Between 10/99 and 8/01 Enron orchestrated a series of nine securities offerings of Company-related entities that raised cash for Enron or these entities that it controlled. In the case of the so-called credit-linked notes, six of these securities offerings shifted to unsuspecting purchasers the credit risk of Citigroup's billions of dollars of disguised loans to Enron via the Delta pre-pay transactions. Because the completion of each of these securities offerings would require the preparation and dissemination of detailed offering circulars or memoranda distributed to investors and other market participants, Enron's top executives knew it was indispensable that the lawyers involved be willing to help write misleading offering memoranda, which did not disclose the massive falsification of Enron's financial statements and the ongoing disguised-loan schemes, including the inherently fraudulent Mahonia, Firefly, Marlin, Osprey, Delta, and Riverside and Hawaii FAS 140 transactions.

21. When Milbank Tweed structured the Mahonia deals with J.P. Morgan Chase; the Delta deals with Citigroup; the Riverside and Hawaii FAS 140 trades with CIBC; the Firefly, CSFB

Prepay, Marlin and Osprey transactions with CSFB; and the prepay and FAS 140 transactions with Royal Bank of Scotland, Barclays and Toronto Dominion, it was already acting as counsel for Enron in a substantial number of matters. By 99 the Company had a long-term attorney-client relationship with Milbank Tweed and Enron's top executives – especially CFO Fastow - had a high degree of confidence that the law firm would do Enron's bidding in the Mahonia, Delta, Marlin, Osprey, and Firefly transactions, through which the Company falsified its financial condition by hiding billions of dollars of debt and inflating operating cash flows. ***Secrecy was essential.*** If the markets discovered that Enron was falsifying its balance sheet by hiding billions of dollars of debt – and re-labeling it as operating cash flows – then the credibility of its executives would be destroyed, government investigations would ensue, Enron's stock price would plummet, and the disguised-loan gambit would unravel. Simply stated, the fraudulent scheme and course of business would collapse.

22. In addition to utilizing its counsels of choice, Vinson & Elkins or A&K, to formally represent the Company or its controlled entities in these transactions, ***Enron also insisted that the underwriters or initial purchasers of each of these securities offerings (certain of the defendant banks) agree to utilize Milbank Tweed as their counsel and arranged for the law firm to be paid, not by the underwriters or initial purchasers, but directly by Enron or out of the offering proceeds.*** Milbank Tweed, which already had extensive ongoing relationships with each of these underwriters' original purchasers from representing them in other Enron transactions and non-Enron-related matters, worked closely with Enron to facilitate the Company's insistence that the law firm be retained as counsel in these deals. Consequently, all the key actors in these securities offerings - which were indispensable to the continuation of the fraudulent scheme and course of business - were law firms and banks already participating in the fraudulent scheme and course of business, thus assuring the cooperation and secrecy that was necessary for the fraud to continue. These important securities offerings raised the cash necessary to help maintain Enron's liquidity and false picture of

solvency and financial health and permitted the fraudulent scheme to continue during 99-01. And Milbank Tweed – one of Enron’s law firms, with an established attorney-client relationship with the Company – in each instance acted as counsel for the underwriters or initial purchasers of these securities, which were *publicly identified as such by name in each offering circular*. Milbank Tweed helped to craft and write each of these offering circulars, which the law firm knew were false and misleading in many respects because it had helped devise, structure and document so many of the underlying transactions that falsified Enron’s reported financial condition.

23. Listed below are the nine major securities offerings between 9/16/99 and 7/12/01 referred to above:

<u>ISSUER</u>	<u>OFFERING</u>	<u>DATE</u>	<u>UNDERWRITERS/ INITIAL PURCHASER (including)</u>	<u>UNDERWRITERS &amp; INITIAL PURCHASERS’ COUNSEL</u>
Osprey Trust; Osprey I, Inc.	\$1.4 billion 8.31% Senior Secured Notes due 2003	9/16/99	CSFB, Deutsche Bank, Citigroup	Milbank Tweed
Yosemite Securities Trust I	\$750 million 8.25% Series 1999-A Linked Enron Obligations due 2004	11/4/99	Citigroup, Deutsche Bank, CSFB	Milbank Tweed
Yosemite Securities Co. Ltd.	£200 million 8.75% Series 2000-A Linked Enron Obligations due 2007	2/15/00	Citigroup, Barclays	Milbank Tweed
Enron Credit Linked Notes Trust	\$500 million, 8% Enron Credit Linked Notes due 2005	8/17/00	Citigroup, Lehman, Deutsche Bank	Milbank Tweed

<u>ISSUER</u>	<u>OFFERING</u>	<u>DATE</u>	<u>UNDERWRITERS/ INITIAL PURCHASER (including)</u>	<u>UNDERWRITERS &amp; INITIAL PURCHASERS' COUNSEL</u>
Osprey Trust; Osprey I, Inc.	\$750 million, 7.797% Senior Secured Notes due 2003; €315 million 6.375% Senior Secured Notes due 2003	9/28/00	CSFB, Lehman, Deutsche Bank	Milbank Tweed
Enron Euro Credit Linked Notes Trust	€200 million 6.50% Enron Euro Credit Linked Notes due 2006	5/17/01	Citigroup	Milbank Tweed
Enron Sterling Credit Linked Notes Trust	£125 million 7.25% Enron Sterling Credit Linked Notes due 2006	5/17/01	Citigroup	Milbank Tweed
Enron Credit Linked Notes Trust II	\$500 million 7.375% Enron Credit Linked Notes due 2006	5/17/01	Citigroup	Milbank Tweed
Marlin Water Trust II; Marlin Water Capital Corp. II	\$475 million 6.31% Senior Secured Notes due 2003; €515 million 6.19% Senior Secured Notes due 2003	7/12/01	CSFB, Deutsche Bank, J.P. Morgan Chase, Bank of America, CIBC	Milbank Tweed

24. Milbank Tweed, because of its financial sophistication and repeated involvement in Enron's financial transactions and securities issuances, was acutely aware of the importance of Enron's credit rating, operating cash flow and its financial ratios, which depended on the Company's apparent financial condition. Likewise, because it helped structure, document and implement them, the law firm knew that Enron's prepay transactions enabled the Company to hide billions of dollars in debt while overstating its cash flow from operations by billions and inflating its reported earnings as well. The Company's false financial statements made its finances look much stronger than they

were. This, in turn, enabled Enron to maintain its investment-grade credit rating and impressive financial ratios and retain its critically necessary access to the capital markets. Any credit-rating downgrade would have had devastating consequences for Enron, including sharply increasing its borrowing costs, sharply limiting the investors who could buy its bonds, weakening its trading status, and triggering certain demand-debt repayments at off-balance-sheet entities affiliated with Enron. The combination of these consequences would have collapsed its stock price and exposed the ongoing fraudulent scheme and course of business.

25. Even though it was a conflict of interest to do so, Milbank Tweed acted as legal counsel for Enron in connection with the numerous transactions detailed in this section. *At the same time*, the law firm acted as legal counsel in a number of large transactions for J.P. Morgan Chase, Citigroup, CSFB, CIBC, Deutsche Bank, Toronto Dominion, Royal Bank of Scotland, and Barclays – all supposedly independent parties with interests adverse to Enron. These transactions included the manipulative and deceptive Mahonia (with J.P. Morgan Chase) and Delta (with Citigroup) prepays, which falsified Enron’s financial condition by billions of dollars – hiding huge bank loans to Enron by disguising them as commodity trades and thus distorting and falsifying the Company’s operating cash flows, balance sheets and financial results. Identical in effect to these deceptive prepay transactions were CIBC’s FAS 140 trades – Riverside and Hawaii – where Milbank Tweed structured and documented these bogus transactions that disguised bank loans or other debt as asset sales, and further distorted and falsified Enron’s operating cash flows, balance sheets and financial results. Milbank Tweed structured and documented both deceptive prepays and FAS 140 trades for Toronto Dominion, Royal Bank of Scotland and Barclays, furthering Enron’s deceptive practice of hiding debt and inflating operating cash flows and earnings. In another series of other Enron transactions – Firefly, Marlin and Osprey – Milbank Tweed not only structured these manipulations, but also wrote the offering circulars for the sale of securities to help fund the transactions, by which

billions of dollars were raised from investors to provide Enron and entities it controlled the cash it needed to stay afloat and keep the scheme going, so that participants, including Milbank Tweed, could continue to profit from the fraudulent scheme and course of business.

26. The Mahonia, Delta, Firefly, Osprey, Marlin, Riverside, and Hawaii transactions served no legitimate business purpose and were each inherently fraudulent. The details of the Mahonia and Delta transactions are pleaded elsewhere herein, and about which the Court has stated:

Lead Plaintiff does provide sufficient details to meet the pleading and scienter standards for §10b claims relating to J.P. Morgan regarding J.P. Morgan's repeated "loans" of about \$5 billion to Enron, ***disguised as commodities trades*** between 1997 and 2000. These loans were frequently made for years at critical junctures, just before quarter-end or year-end, by J.P. Morgan, utilizing its controlled entity, ***Mahonia***, as alleged manipulative or deceptive acts or contrivances, overseen by a senior credit officer at J.P. Morgan, Mark Shapiro, to falsify Enron's financial condition. ***These allegations do raise a strong inference of scienter....*** Lead Plaintiff's additional claims regarding the efforts of J.P. Morgan to insure against Enron's default on the disguised loans by purchasing performance bonds from insurance companies, also at issue in litigation elsewhere, and the alleged excessive rate of interest J.P. Morgan charged for the disguised loans (more than 3% higher than normal rates, yielding an extra \$120 million per year to be collected by J.P. Morgan) ***imply that it was aware of Enron's precarious financial condition and that it sought personal gain out of the ordinary from its fraudulent conduct, while simultaneously contributing to a strong inference of scienter.*** Moreover, these alleged disguised loans, which, the complaint notes, investigating Congressional officials have criticized as having no legitimate economic purpose but instead as appearing to be devices to "allow Enron to covertly borrow hundreds of millions of dollars in undisclosed loans," ***are part of a pattern of subterfuge loans painted by the complaint that include the Delta transactions with Citigroup and the fake swap in which Credit Suisse First Boston lent Enron \$150 million to be repaid over two years.***

*In re Enron Sec. Litig.*, 235 F. Supp. 2d 549, 696-97 (S.D. Tex. 2002).

In addition, Citigroup, through its Cayman Island subsidiary, also allegedly participated in a repeated pattern of pre-paid swaps, *i.e.*, disguised large loans to Enron totaling \$2.4 billion that were never disclosed on its balance sheet, through the ***Delta transactions***, at interest rates nearly double the normal borrowing rate, providing Citigroup with nearly \$70 million annually for its participation in the Ponzi scheme. ***Moreover, Lead Plaintiff additionally alleges that to reduce Citigroup's own risk exposure in the event that Enron defaulted on what Citigroup knew were very dangerous transactions, Citigroup sold Enron-linked securities as notes, including the disguised Delta loans.*** While the Court does not disagree with Citigroup that credit-linked notes are "a well-recognized derivatives instrument,

issued and traded in huge volumes each year by a wide variety of entirely proper purposes” in order to spread risk over a larger number of guarantors, as allegedly used in the context of the allegations in this case, ***they raise an inference that Citigroup knew how precarious the financial condition of Enron was in contrast to its positive public representations.***

*Id.* at 698. After analyzing the disguised-loans scheme, the Court concluded:

Furthermore, ***the intrinsic nature*** of these devices and contrivances was fraudulent so that those intimately involved in structuring the entities and arranging the deals, especially more than one, would have to have been aware that they were an illicit and deceptive means to misrepresent Enron’s actual financial state and mislead investors about Enron securities, or at a minimum, would have had to have been severely reckless as to that danger.

*Id.* at 694. Likewise, the Riverside and Hawaii transactions involving CIBC, and the Firefly, CSFB Prepay, Osprey and Marlin transactions involving CSFB, were the same in intent, substance and effect as the Mahonia and Delta transactions, as were the prepay and FAS 140 transactions involving Toronto Dominion, Barclays, and Royal Bank of Scotland. ***In sum, Milbank Tweed represented the banks in every one of these inherently fraudulent transactions that were, in fact, devices, contrivances and manipulations, while at the same time serving as Enron’s counsel as well in other unrelated transactions.***

27. In its 3/25/03 Order as to Enron’s insiders in *Newby*, H-01-3624, the Court emphasized that their repetitive exposure to and approval of manipulative transactions allows plaintiffs to sufficiently plead scienter:

Lead Plaintiff has described how accounting methods, such as mark-to-market accounting and snowballing, or the use of structured finance and SPEs, which in themselves need not be illegitimate, were repeatedly abused and manipulated throughout the business solely to manufacture positive financial statements, *i.e.*, goals that Enron was driven to claim, but did not and could not realize. Specifically, in light of the remarkable repetitive use of such methods and devices, a distinguishing feature of Enron’s alleged scam, ***the patterns of fraud must have grown more evident and more unmistakable to those involved in and regularly informed of internal operations over the years....*** As pleaded in Lead Plaintiff’s complaint, Insider Defendants’ successive votes of approval, which sooner rather than later had to be made with full knowledge or severely reckless disregard of the fraudulent scheme they were erecting, comprised material deceptive acts or contrivances in furtherance of Enron’s course of business and the alleged Ponzi

scheme, intended to deceive investors, and thus constituted primary violations of §10(b). So, too, did the allegedly false filings, misleading statements under the statute, authorized (*i.e.*, effected, made) by them to be filed with the SEC.

No firm had more direct and repetitive exposure to Enron's fraudulent transactions than Milbank Tweed.

28. To be ***legitimately*** booked as a trading liability – and not debt on Enron's books – the prepay transactions used by Enron and its banks, utilizing a special-purpose entity, required four elements to be present:

- (a) The three parties had to be ***independent***.
- (b) The trades among the three parties could ***not be linked***.
- (c) The trades had to contain ***price risk***.
- (d) There had to be a ***legitimate business reason*** for the trades.

29. The Enron prepays structured by Milbank Tweed involving Citigroup, J.P. Morgan Chase, CSFB, Toronto Dominion, Royal Bank of Scotland, and Barclays failed on all accounts:

(a) Two of the three parties in the Enron trades were ***related*** – namely, the banks and their offshore special-purpose entities, ***which the banks established and controlled***.

(b) The trades among the parties were ***linked*** – that is, contracts associated with the trades were designed so that a default in one trade ***affected the other trades***.

(c) There was no ***price risk*** – except for fees and interest payments, the final effect of the trades ***was a wash***.

(d) The banks and their special-purpose entities had no ***legitimate business reason*** for purchasing the commodities used in the trades.

30. Enron's accounting for these prepay transaction proceeds as cash flow from ***operations*** – rather than cash from ***financing*** activities, *i.e.*, debt that had to be repaid – gave the impression that the cash from the prepays was a result of Enron's successful business operations –

and not borrowed money – which makes a big difference to investors. Milbank Tweed knew that Enron was treating the proceeds of these transactions as cash flow from operations. In fact, they were borrowed monies. Moreover, as Enron was *simultaneously treating the prepay transactions as loans on its tax returns* to claim the interest expense on the disguised loans as a business deduction, Milbank Tweed structured the deals to satisfy both their accounting and tax needs.

31. Enron was able to account for prepay proceeds as cash flow from energy trades, rather than loans, only with the help of Milbank Tweed and the defendant bank involved in each bogus deal. The banks funded the prepays, participated in the bogus commodity trades and used their off-shore entities – sham trading partners – for the explicit purpose of allowing Enron to disguise these multi-million-dollar loans as legitimate trading activity. Milbank Tweed structured and documented these deals to achieve these deceptive purposes, knowing that they were, in fact, manipulative devices and contrivances intended to deceive investors.

32. Milbank Tweed not only structured, documented and implemented the bogus prepay transactions, it also helped Citigroup and J.P. Morgan Chase take action to insulate themselves from the true economic risk of the concealed and disguised loans that their fraudulent transactions with Enron were facilitating, by shifting the economic risk of the Company's impaired and falsified financial condition to unknowing third parties: insurance companies and purchasers of securities sold to investors in offerings in which Milbank Tweed wrote the false and misleading offering circulars. Neither J.P. Morgan Chase nor Citigroup would have engaged in the Mahonia and Delta prepays had the exit strategies implemented by Milbank Tweed not been in place to insulate the banks from the true credit risk of their secret loans to Enron. Given Enron's truly impaired financial risk and its fraudulent business practices, the banks both knew that there was a probability of default on any major credit transaction with Enron.

**A. J.P. Morgan Chase**

33. In the case of the Mahonia transactions, Milbank Tweed worked with J.P. Morgan Chase so that the bank could illegally obtain insurance for the disguised loans by helping J.P. Morgan Chase deceive a group of insurance companies into believing the Mahonia transactions were legitimate commodities trades and thus insurable, whereas bank loans are not. As Milbank Tweed knew, because it had structured the Mahonia transactions for J.P. Morgan Chase, the transactions involved commercial loans and were uninsurable under law. Unbeknownst to the insurance companies, Milbank Tweed structured the Mahonia transactions using a J.P. Morgan Chase controlled Channel Islands SPE to round-trip back to Enron – eliminate – all oil and gas price risk. ***Simply stated***, in the Mahonia transactions there was never any intent to ***physically*** deliver oil or gas, which was the very performance the insurers guaranteed.

**B. Citigroup**

34. In the case of Citigroup's Delta prepay transactions, Milbank Tweed, working with Enron and Citigroup, wrote the false and misleading offering circulars by which entities controlled by Enron sold securities – the Enron credit-linked notes – to investors. Through the Delta prepays Citigroup shifted the true credit risk of these loans to unsuspecting public investors. That is, ***the Enron credit-linked-notes sales shifted 100% of the credit risk in the disguised Delta loans to unsuspecting investors*** via false and misleading offering circulars written by Milbank Tweed. The law firm wrote the offering memoranda or circulars for Enron's Yosemite and credit-linked notes sales, which presented Enron's financial statements and other financial information about the Company that Milbank Tweed knew was false and materially misleading, including the failure to disclose any of the 60 other bogus Enron structured-finance transactions listed in ¶18. Milbank Tweed knew about all of these other bogus transactions because it had structured and documented them, and it knew the offering circular concealed that Citigroup and Enron owned the equity shares

in the Yosemite vehicles. Milbank Tweed knew that Citigroup and Enron were the equity owners since it drafted the equity-certificate documents and oversaw their execution. The Yosemite and Enron credit-linked-notes offering circulars concealed the true nature of the inextricably intertwined Delta transactions to the value and creditworthiness of the securities by not disclosing them or their bogus nature. Milbank Tweed also concealed the prepaid swaps with Enron – via Citigroup and its SPE Delta – even though the swaps were secretly tied contractually to the credit-linked-notes trusts. Milbank Tweed knew about the prepaid swaps because it structured those transactions, wrote the swap documents, and represented both Citigroup and its SPE Delta in the transactions.

35. The false and misleading offering circulars connected to the bogus Delta prepay contrivances and manipulations and additional elements of their falsity are set forth below.

- Yosemite Securities Trust 1. The 11/04/99 offering memorandum for the sale of \$750 million of 8.25% Series 1999-A Linked Enron Obligations due 2004 of Yosemite Securities Trust I, stated:

Enron is subject to the informational requirements of the Exchange Act, and in accordance therewith files reports, proxy statements and other information with the SEC....

The following documents filed by Enron (File No. 1-13159) with the SEC pursuant to the Exchange Act are incorporated herein by reference:

- (a) Annual Report on Form 10-K for the year ended December 31, 1998;
- (b) Quarterly Report on Form 10-Q for the quarter ended March 31, 1999;
- (c) Quarterly Report on Form 10-Q for the quarter ended June 30, 1999;
- (d) Current Reports on Form 8-K dated January 26, 1999 and March 18, 1999; and
- (e) The description of Enron's capital stock set forth in Enron's Registration Statement on Form 8-B filed on July 2, 1997.

It also contained Enron's income statement for the years ended 12/31/96, 12/31/97, and 12/31/98, as well as the six months ended 6/30/99, and stated:

	At June 30, 1999 (Unaudited)	At December 31,		
		1998	1997	1996
		(In \$ millions)		
Balance Sheet Data (at end of period)				
Total assets	\$34,147	\$29,350	\$22,552	\$16,137
Long-term debt	8,979	7,375	6,254	3,349
Minority interests	2,475	2,143	1,147	755
Company-obligated preferred securities of subsidiaries	1,001	1,001	993	592
Shareholders' equity	9,206	7,048	5,618	3,723

It also stated:

Capitalization of Enron  
(\$ in millions)

The following table sets for the consolidated capitalization of Enron as of June 30, 1999.

Short Term Debt	\$
Notes Payable	----
Current maturities of long term debt	----
	----
Long Term Debt	8,979
Minority Interests	2,475
Company-Obligated Preferred Securities of Subsidiaries	1,001
Shareholders' Equity	
* * *	
Total Shareholders' Equity	9,206
Total Capitalization	\$21,661

- Yosemite Securities Co. Ltd. The 2/15/00 offering circular for £200 million 8.75% series 2000-A linked Enron Obligations, stated:

Enron is subject to the informational requirements of the United States Securities Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the SEC....

The following documents filed by Enron (File No. 1-13159) with the SEC pursuant to the Exchange Act are incorporated herein by reference:

- (a) Annual Report on Form 10-K for the year ended December 31, 1998;
- (b) Quarterly Report on Form 10-Q for the quarter ended March 31, 1999;
- (c) Quarterly Report on Form 10-Q for the quarter ended June 30, 1999;
- (d) Quarterly Report on Form 10-Q for the quarter ended September 30, 1999;
- (e) Current Reports on Form 8-K dated January 26, 1999 and March 18, 1999.

It also contained Enron's income statement for the years ended 12/31/96, 12/31/97, and 12/31/98, and the nine months ended 9/30/99, and stated:

	<u>At September 30,</u>	<u>At December 31,</u>		
	<u>1999</u> (Unaudited)	<u>1998</u>	<u>1997</u>	<u>1996</u>
<u>Balance Sheet Data (at end of period):</u>				
Total assets	\$ 33,576	\$29,350	\$22,552	\$16,137
Long-term debt	8,592	7,357	6,254	3,349
Minority interests	1,822	2,143	1,147	755
Company-obligated preferred securities of subsidiaries	1,001	1,001	993	592
Shareholders' equity	9,345	7,048	5,618	3,723

Capitalization of Enron  
(in millions of U.S. Dollars)

The following table sets forth the consolidated capitalization of Enron as of September 30, 1999.

Short-Term Debt	\$-
Notes Payable	-
Current maturities of long-term debt	-
Long-Term Debt	8,592
Minority Interests	1,822
Company-Obligated Preferred Securities of Subsidiaries	1,001
Shareholders' Equity	
* * *	
Total Shareholders' Equity	<u>9,345</u>
Total Capitalization	<u>\$20,760</u>

- Enron Credit-Linked-Notes Trust. The 8/17/00 offering circular for the sale of \$500 million in 8% Enron credit-linked notes due 2005, stated:

Enron files annual, quarterly and special reports, proxy statements and other information with the SEC.... The SEC allows Enron to “incorporate by reference” the information it files with them, which means that Enron can disclose important information by referring to those documents. The information incorporated by reference is an important part of this Memorandum .... The documents listed below ... are hereby incorporated by reference.

- Enron’s Annual Report on Form 10-K for the fiscal year ended December 31, 1999;
- Enron’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2000 and June 30, 2000;
- Enron’s Current Report on Form 8-K filed May 19, 2000.

\* \* \*

Potential investors should rely only on the information incorporated by reference or provided in this Memorandum or any supplement to this Memorandum. Enron has not authorized anyone else to provide different information.

It also contained Enron’s income statements for the years ended 12/31/97, 12/31/98, and 12/31/99, and the six months ended 6/30/00, and included the following financial data:

	<u>At June 30,</u>	<u>At December 31,</u>		
	<u>2000</u>	<u>1999</u>	<u>1998</u>	<u>1997</u>
	(Unaudited)			
<u>Balance Sheet Data (at end of period):</u>		(in millions)		
Total assets	\$ 45,566	\$33,381	\$29,350	\$22,552
Long- and short-term debt	11,697	8,152	7,357	6,254
Minority interests	1,893	2,430	2,143	1,147
Company-obligated preferred securities of subsidiaries	899	1,000	1,001	993
Shareholders’ equity	10,769	9,570	7,048	5,618

Capitalization of Enron  
(in millions)

The following table sets forth the consolidated capitalization of Enron as of June 30, 2000.

Short-Term Debt	\$1,486
Long-Term Debt	10,211

Minority Interests	1,893
Company-Obligated Preferred Securities of Subsidiaries	899
Shareholders' Equity	
* * *	
Total Shareholders' Equity	<u>10,769</u>
Total Capitalization	\$25,258

- Enron Euro Credit Linked Notes Trust, Enron Sterling Credit Linked Notes Trust, Enron Credit Linked Notes Trust II. The 5/17/01 offering circular for the sale of €200 million 6.50% Enron Euro Credit Linked Notes due 2006, £125 million 7.25% Enron Sterling Credit Linked Notes due 2006, and \$500 million 7.375% Enron Credit Linked Notes due 2006, each stated:

Enron files annual, quarterly and special reports, proxy statements and other information with the SEC.... The SEC allows Enron to “incorporate by reference” the information it files with them, which means that Enron can disclose important information by referring to those documents. The information incorporated by reference is an important part of this Memorandum .... The documents listed below ... are hereby incorporated by reference.

- Enron’s Annual Report on Form 10-K for the fiscal year ended December 31, 2000;
- Enron’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2001;
- Enron’s capital stock description set forth in Enron’s Registration Statement on Form 8-B filed July 2, 1997.

\* \* \*

Potential investors should rely only on the information incorporated by reference or provided in this Memorandum or any supplement to this Memorandum.

It also contained Enron’s income statements for the years ended 12/31/98, 12/31/99, and 12/31/00, and the three months ended 3/31/01, and stated:

	<u>At March 31,</u>	<u>At December 31,</u>		
	<u>2001</u>	<u>2000</u>	<u>1999</u>	<u>1998</u>
<u>Balance Sheet Data (at end of period):</u>			(in millions)	
Total assets	\$ 67,260	\$65,503	\$33,381	\$29,350
Long- and short-term debt	11,922	10,229	8,152	7,357
Minority interests	2,418	2,414	2,430	2,143
Company-obligated preferred securities of subsidiaries	904	904	1,000	1,001
Shareholders' equity	11,727	11,470	9,570	7,048

Capitalization of Enron  
(in millions)

The following table sets forth the consolidated capitalization of Enron as of March 31, 2001.

Short-Term Debt	\$2,159
Long-Term Debt	9,763
Minority Interests	2,418
Company-Obligated Preferred Securities of Subsidiaries	904
Shareholders' Equity	
* * *	
Total Shareholders' Equity	<u>11,727</u>
Total Capitalization	<u>\$26,971</u>

36. Each of the Yosemite and credit-linked-notes offering memoranda or circulars were false and misleading, beginning with the fraudulent presentation for the transactions specified in this section. Milbank Tweed structured, documented and implemented each of these transactions for its client Enron and the defendant banks. Milbank Tweed knew they were manipulative transactions and contrivances, which falsified Enron's financial statements, including the financial statements contained in the Yosemite and credit-linked-notes offering memoranda and circulars that Milbank Tweed wrote.

37. Internal communications show that it was common knowledge among Enron, J.P. Morgan Chase and Citigroup employees that the Mahonia and Delta prepays were designed to achieve false accounting – *not legitimate business* – objectives and that Enron was accounting for the prepay proceeds as trading activity – not debt. Milbank Tweed, J.P. Morgan Chase and Citigroup not only understood Enron's accounting goal – inflating operating cash flow without disclosing the real debt – they designed and implemented the transactions to help the Company achieve its goal and deceive investors. As set out in Enron's Bankruptcy Examiner Neal Batson's ("Enron's Bankruptcy Examiner") Third Report, an internal Citibank memo, "Enron's Capital

Market Exposure with Citibank,” dated 10/26/01, written by Murray Barnes and Elena Matrollo, states:

“[Prepay] financing is advantageous to Enron in that it allows the borrowing to be reported as ‘price risk management’ liability rather than debt. In addition, because of the way Enron classifies trading assets/liabilities on the balance sheet, the amount of the borrowing is actually recorded as cash from operations.”

Likewise, Citibank’s Capital Markets Approval Committee Minutes, dated 6/22/99, approving the Truman Prepay, states:

“The transaction provides favorable accounting treatment for [Enron]. Although the deal is effectively a loan, the form of the transaction would allow [Enron] to reflect it as ‘liabilities from price risk management activity’ on their balance sheet and also provide a favorable impact on reported cash flow from operations.”

And a J.P. Morgan Chase approval memo for a Mahonia transaction, dated 6/3/93, states:

“In essence, a lender such as Chase pays in advance for future deliveries of oil. By entering into swaps or hedges, Chase is able to create a known cash flow which recovers the prepaid amount plus interest.”

Finally, George Serice, a J.P. Morgan Chase managing director, wrote in a 11/25/98 e-mail to Jeffrey Dellapina and Karen Simon:

“Enron loves these deals as they are able to hide funded debt from their equity analysts because they (at the very least) book it as deferred rev or (better yet) bury it in their trading liabilities.”

### **C. CSFB**

38. Milbank Tweed was intimately involved in another manipulative transaction and contrivance known as Firefly, which misrepresented \$475 million of Enron debt that was treated as a minority shareholder’s equity investment. Milbank Tweed helped Enron and CSFB structure and document Firefly so that Enron could get the needed cash, yet misrepresent and conceal the debt the deal, in fact, created for the Company as a minority equity interest.

39. Firefly was a transaction to refinance part of Enron’s investment in Elektro, a Brazilian electricity distribution company – a failed investment on which the Company had lost nearly \$1 billion. Through Firefly, CSFB, Milbank Tweed and Enron hid a significant portion of

this \$1 billion loss *and*, at the same time, refinanced \$475 million of Elektro's project-finance debt. Milbank Tweed knew of the Elektro loss since it represented the lenders on the initial Elektro project-finance structure and advised CSFB on restructuring the financing to avoid, as CFO Fastow called it at a Board meeting, the "goodwill" issue – the loss. The Firefly transaction was very similar to Mahonia and Delta in that it *hid nearly \$475 million of Enron debt*, misrepresenting it to be a minority shareholder's equity investment. Firefly was subsequently rolled into Osprey, yet another Milbank Tweed structured deal, to roll over the loan and continue to hide the huge losses embedded in this deal.

40. Milbank Tweed was intimately involved in creating, structuring and documenting the Osprey transactions that hid debt, disguised losses and defrauded investors. Milbank Tweed:

- Developed, with Enron and CSFB, the initial 9/99 Osprey share trust, a refinancing technique for the Citigroup Nighthawk minority-interest transaction, which Enron could not repay.
- Developed, with Enron and CSFB, the 7/00 Osprey certificate issue, a refinancing for Firefly, which hid Enron's losing investment in Elektro, a Brazilian power distribution company.
- Helped Enron and CSFB hide losses through the issuance of securities in the 10/00 Osprey II share trust.
- Failed to disclose in the Osprey offering memoranda (with the exception of Marlin) the 60 other bogus Enron structured-finance transactions listed in ¶18, which Milbank Tweed knew about.

41. In the case of the Osprey transactions, Milbank Tweed, working with Enron and CSFB, wrote and distributed false and misleading offering memoranda by which Enron-controlled entities sold securities to investors. Milbank Tweed and CSFB designed the Osprey transactions to conceal \$2.65 billion of Enron debt, as well as to hide over \$1.7 billion of losses that Enron suffered on several losing investments. The list of losing investments dumped into Osprey, as noted in Enron's Bankruptcy Examiner's Second, Third and Final Reports, includes (amounts in millions):

Deal	Price Paid by Osprey	Actual Value per Bankruptcy Court	Actual Loss
Nighthawk	\$578.0	0	\$578.0
Sarlux	\$364.0	\$200	\$164.0
Trakya	\$104.7	\$50	\$54.7
Promigas	\$137.2	\$100	\$37.2
Heartland Steel	\$14.8	0	\$14.8
Yosemite I Certif.	\$34.8	0	\$34.8
Yosemite II Certif.	\$16.3	0	\$16.3
Elektro	\$461.5	\$50	\$411.5
Velocity I	\$258.5	\$116	\$142.5
Velocity II	\$281.7	\$126	\$155.7
Enron Broadband	\$14.1	0	\$14.1
TOTALS	\$2470.3	\$861	\$1609.3

The Osprey offering memoranda and circulars concealed that Osprey would *loan* all proceeds to Enron, misrepresented that the Company did not guarantee the Osprey debt – when, in fact, Enron did guarantee it – and failed to disclose that nearly every Enron investment sold to Osprey was at book value, which would be far in excess of its market value. That is, every asset sold to Osprey by Enron was carried on the Company’s books at the historic acquisition cost, which did not reflect its true market value. The offering memoranda and circulars also presented Enron’s financial statements and other financial information that was false and materially misleading, including failing to disclose any of the 60 other Enron debt-hiding transactions listed in ¶18.

42. Osprey II, used to refinance Firefly in 9/00, was arranged by CSFB and Milbank Tweed. Osprey I and II together hid over \$2.65 billion of Enron debt and was very similar – a share-trust transactions – to the Citigroup-designed Nighthawk and the CSFB-underwritten Marlin. In Enron’s share-trust transactions, an Enron-controlled group of entities issued debt secretly guaranteed by the Company and secured by shares of Enron common stock. *The secret-debt guarantee did not appear on Enron’s balance sheet.* In addition, CSFB and Milbank Tweed designed Osprey specifically so that Enron could use it as a dumping ground for numerous losing investments, which totaled nearly \$2 billion, including the Elektro investment in Brazil. Hiding

these losses falsely inflated Enron's earnings during 99-01, helped inflate its share price, and made the Company appear far stronger financially than it actually was. Just days before declaring bankruptcy, Enron revealed in its 9/30/01 10-Q that, in truth, there were **\$1.7 billion of losses buried in Osprey**:

At November 16, 2001, ... Whitewing [*an Osprey subsidiary*] holds ... a contingent obligation of Enron to issue additional shares, if needed, which together have a combined book value of approximately \$2.1 billion.... **Enron recognizes losses associated with this obligation as a reduction of "Revenues"** in the accompanying consolidated income statement.... **As of September 30, 2001, the amount due ... totaled approximately \$1.0 billion** and is included in "Other Liabilities".... Such amount **has increased by approximately \$600 million** as a result of the decline in Enron's common stock price subsequent to September 30, 2001 through November 16, 2001. Based on the subsequent decline in the Enron stock price through November 16, 2001, there would **currently exist an approximate \$700 million pre-tax charge to earnings** due to the shortfall in the recovery of Enron's book investment.

43. Thus, via Osprey, Enron hid at least **\$1 billion** in losses through 9/30/01, deceptively disguised as a reduction of "Revenues." Enron also revealed it owed at least \$1.6 billion to Osprey investors and had an additional \$700 million of unrecognized losses after third-quarter 01, just before declaring bankruptcy. CSFB's and Milbank Tweed's use of Osprey to artificially inflate Enron's earnings also inflated the apparent value of its equity shares held in the Osprey share trust, which **deceived investors about the value of Osprey's primary collateral**. Enron's inflated share price also permitted CSFB and Milbank Tweed over the course of years to raise additional cash for the Company through three separate Osprey security issuances, all of which were underwritten by CSFB, which was represented for each issuance by Milbank Tweed. The law firm wrote offering memoranda for all of the Osprey security issues (debt and equity), which circulars included Enron's false financials and concealed the true extent of its debt. In addition, the offering memoranda represented that the Osprey securities were **not guaranteed** by Enron when, in fact, **they secretly were**. On the cover page of both the 99 and 00 Osprey debt-offering memoranda is the statement: "The Senior Notes are **not guaranteed by**, and the Security for the Senior Notes **does not represent a**

*guarantee by, Enron.*” This was false. Just before filing for bankruptcy – *despite the representation in the offering memoranda* – Enron revealed in its 9/30/01 10-Q that it, in fact, had *guaranteed the Osprey securities*, which, it turned out, had very negative financial consequences for the Company:

In the event Enron *loses its investment grade credit rating and Enron’s stock price is below a specified price, a note trigger event would occur*. This could *require Enron to repay*, refinance or cash collateralize additional facilities totaling \$3.9 billion, which primarily **consist of \$2.4 billion of debt in Osprey Trust (Osprey)** and \$915 million of debt in Marlin Water Trust (Marlin).... In the event a Note Trigger Event occurs, Enron must either issue equity in an amount sufficient to repay the notes or *Enron is obligated to pay the difference in cash*.

\* \* \*

Osprey is capitalized with approximately \$2.4 billion in debt and \$220 million in equity. *The Osprey debt is supported by the assets within Whitewing*, which include Enron Mandatorily Convertible Junior Preferred Stock, Series B (which is convertible into 50 million shares of Enron common stock), and *a contingent obligation of Enron to issue additional shares*, if needed, to retire such debt obligation. In the event that the sale of equity is not sufficient to retire such obligations, Enron is liable for the shortfall.

The Osprey offering memoranda and other aspects of their falsity are set forth below:

- Osprey Trust; Osprey I, Inc. The 9/16/99 offering memorandum for the sale of \$1.4 billion of 8.31% Senior Secured Notes due 2003 of Osprey Trust and Osprey I, Inc., stated:

Enron is subject to the informational requirements of the Exchange Act, and in accordance therewith files reports, proxy statements and other information with the Commission.

\* \* \*

#### INCORPORATION BY REFERENCE

The following documents filed by Enron (File No. 1-13159) with the Commission pursuant to the Exchange Act are incorporated herein by reference:

- (a) Annual Report on Form 10-K for the year ended December 31, 1998;
- (b) Quarterly Report on Form 10-Q for the quarter ended March 31, 1999;
- (c) Quarterly Report on Form 10-Q for the quarter ended June 30, 1999;

(d) Current Reports on Form 8-K dated January 26, 1999 and March 18, 1999; and

(e) The description of Enron's capital stock set forth in Enron's Registration Statement on Form 8-B filed on July 2, 1997.

It also contained Enron's income statement for the years ended 12/31/96, 12/31/97, and 12/31/98, as well as the six months ended 6/30/99, and stated:

	At June 30, 1999 (Unaudited)	At December 31,		
		1998	1997	1996
(In \$ millions)				
Balance Sheet Data (at end of period):				
Total assets	\$34,147	\$29,350	\$22,552	\$16,137
Long-term debt	8,979	7,375	6,254	3,349
Minority interests	2,475	2,143	1,147	755
Company-obligated preferred securities of subsidiaries	1,001	1,001	993	592
Shareholders' equity	9,206	7,048	5,618	3,723

It also stated:

Capitalization of Enron  
(\$ in millions)

The following table sets for the consolidated capitalization of Enron as of June 30, 1999.

Short-Term Debt	\$
Notes Payable	—
Current maturities of long term debt	—
	—
Long-Term Debt	8,979
Minority Interests	2,475
Company-Obligated Preferred Securities of Subsidiaries	1,001
Shareholders' Equity	
* * *	
Total Shareholders' Equity	9,206
Total Capitalization	\$21,661

44. The 9/28/00 offering circular for the sale of \$750 million in 7.797% Senior Secured Notes due 2003, and €315million 6.375% Senior Secured Notes due 2003, of Osprey Trust and Osprey I, Inc., stated:

Enron files annual, quarterly and special reports, proxy statements and other information with the Commission.... The Commission allows Enron to “incorporate by reference” the information it files with them, which means that Enron can disclose important information by referring to those documents. The information incorporated by reference is an important part of this Offering Memorandum .... The documents listed below ... are hereby incorporated by reference.

- Enron’s Annual Report on Form 10-K for the fiscal year ended December 31, 1999;
- Enron’s Quarterly Report on Form 10-Q for the quarters ended March 31, 2000 and June 30, 2000;
- Enron’s Current Report on Form 8-K filed May 19, 2000;

\* \* \*

Potential investors should rely only on the information incorporated by reference or provided in this Offering Memorandum or any supplement to this Offering Memorandum.

It also contained Enron’s income statements for the years ended 12/31/97, 12/31/98, and 12/31/99, and the six months ended 6/30/00, and included the same balance-sheet data as the 8/17/00 Enron Credit Linked Note offering circular set forth in ¶35. Each of these offering memoranda or circulars was false and misleading because of the fraudulent presentation of the transactions, specified in this section, which Milbank Tweed helped structure and implement for Enron and the defendant banks. Milbank Tweed knew these manipulative transactions falsified the Company’s financial statements, including those contained in the offering memoranda and circulars the law firm wrote.

45. Milbank Tweed, intimately involved in structuring and documenting the Marlin transactions that defrauded investors:

- Developed, with CSFB and Enron, the share-trust technique used in the initial 12/98 Marlin transaction.

- Developed, with CSFB and Enron, a refinancing through the 7/01 Marlin II transaction, of the Marlin I transaction, which Enron could not repay.
- Failed to disclose (with the exception of Osprey) in the Marlin offering memoranda the 60+ other bogus Enron debt-hiding transactions listed in ¶18.

46. In the case of the Marlin transactions involving CSFB and Deutsche Bank, Milbank Tweed, working with Enron and CSFB, wrote and distributed false and misleading offering memoranda or circulars by which Enron-controlled entities sold securities to investors, raising cash that the Company needed to keep the fraudulent scheme going. Milbank Tweed and CSFB designed the Marlin transactions to conceal \$2 billion of Enron debt, effectively hiding losses on its losing – indeed, disastrous – Wessex Water Services Ltd. investment. The Marlin offering circulars concealed the fact that Enron had grossly overpaid for Wessex Water and thus faced, as CFO Fastow described it, a major “goodwill” problem, *i.e.*, losses. The Marlin circulars misrepresented that Enron did not guarantee the Marlin debt – when, in fact, the Company did so. The Marlin offering memoranda also presented financial statements and other financial information about Enron that was false and materially misleading, including concealing the 50 other bogus debt-hiding transactions listed in ¶18 and about which Milbank Tweed knew.

47. CSFB and Milbank Tweed defrauded investors in the Marlin transactions – additional share trusts – that hid approximately \$2 billion of Enron debt (in two successive \$1-billion offerings). The Marlin transactions were designed, like Osprey and Firefly, to conceal Enron’s losses, in this instance its investment in Wessex Water. In Marlin, Enron-controlled entities issued debt guaranteed by the Company and its equity shares, ***but neither the debt nor the guarantee appeared on Enron’s balance sheet.*** Hiding Marlin’s losses, its debt and related interest expense falsely inflated Enron’s earnings, propped up its share price, and made it appear financially far stronger than it actually was. The Company’s artificially inflated share price also inflated the apparent value of its equity shares held in the Marlin share trust, which deceived Marlin investors

about the value of their primary collateral. Enron's inflated share price also permitted CSFB and Milbank Tweed to offer additional cash to the Company by refinancing Marlin over the course of years. Marlin's securities issuances were underwritten by CSFB, which was represented by Milbank Tweed. The law firm wrote offering memoranda for all of the Marlin security issuances (debt and equity), which memoranda included Enron's false financials and did not reveal the true extent of its debt. In addition, the offering memoranda stated that the Marlin securities were *not guaranteed* by Enron when, in fact, they were. The cover page of the Marlin debt-offering memoranda makes clear:

- “The Senior Notes are *not guaranteed* by, and the Security for the Senior Notes *does not represent a guarantee by Enron.*” Marlin Water Trust I 7.09% Senior Secured Notes due 2001.
- “The Senior Notes *are not guaranteed* by Enron, Azurix or any of their subsidiaries.” Marlin Water Trust II; Marlin Water Capital Corp. II \$475M 6.31% and €515M 6.19% Senior Secured Notes due 2003.

Despite these statements in the offering memoranda, Enron later admitted in its 9/30/01 10-Q that, in fact, it guaranteed the Marlin securities, with fatal ramifications for the Company:

In the event Enron loses its investment grade credit rating and Enron's stock price is below a specified price, a note trigger event would occur. This could require Enron to repay, refinance or cash collateralize additional facilities totaling \$3.9 billion, which primarily consist of \$2.4 billion of debt in Osprey Trust (Osprey) and \$915 million of debt in Marlin Water Trust (Marlin)..... In the event a Note Trigger Event occurs, Enron must either issue equity in an amount sufficient to repay the notes, or *Enron is obligated to pay the difference in cash.*

Enron's guarantee of the Marlin and Osprey securities directly precipitated its downfall: *Before its bankruptcy*, Enron's guarantee of the Marlin and Osprey securities was triggered, which obligated the Company to *immediately repay \$3.9 billion*. Two days later, Enron filed for bankruptcy. *The house of cards in the hall of mirrors had collapsed* and Milbank Tweed had knowingly authored offering memoranda that falsely stated that Enron did not guarantee the Marlin and Osprey securities when, in fact, the Company did.

48. The Marlin-related offering memoranda and additional aspects of their falsity are set forth in more detail below.

- Marlin Water Trust II; Marlin Water Capital Corp. II The 7/12/01 offering circular for the sale of \$475 million 6.31% Senior Secured Notes due 2003, and €515 million 6.19% Senior Secured Notes due 2003 of Marlin Water Trust II and Marlin Water Capital Corp. II, incorporated by reference:
- Enron's Annual Report on Form 10-K for the fiscal year ended December 31, 2000;
- Enron's Quarterly Report on Form 10-Q for the quarter ended March 31, 2001;
- Enron's Current Reports on Form 8-K filed January 31 and February 28, 2001.

It also contained Enron's income statements for the years ended 12/31/98, 12/31/99, and 12/31/00, and the three months ended 3/31/00, and stated:

	<u>At March 31,</u>	<u>At December 31,</u>		
	<u>2001</u>	<u>2000</u>	<u>1999</u>	<u>1998</u>
<u>Balance Sheet Data (at end of period):</u>			<u>(In millions)</u>	
Total assets	\$ 67,260	\$65,503	\$33,381	\$29,350
Long- and short-term debt	11,922	10,229	8,152	7,357
Minority interests	2,418	2,414	2,430	2,143
Company-obligated preferred securities of subsidiaries	904	904	1,000	1,001
Shareholders' equity	11,727	11,470	9,570	7,048

\* \* \*

Enron  
(in millions)

The following table sets forth the consolidated capitalization of Enron as of March 31, 2001.

Short-Term Debt	\$2,159
Long-Term Debt	9,763
Minority Interests	2,418
Company-Obligated Preferred Securities of Subsidiaries	904

Shareholders' Equity	
* * *	
Total Shareholders' Equity	<u>11,727</u>
Total Capitalization	\$26,971

Each of these offering memoranda or circulars was false and misleading because of the fraudulent presentation for the transactions, specified in this section, which Milbank Tweed helped structure and implement for Enron and the defendant banks. The law firm knew these manipulative transactions falsified the Company's financial statements, including those contained in the offering memoranda and circulars Milbank Tweed wrote.

**D. CIBC**

49. Milbank Tweed was extensively involved in the Riverside and Hawaii financings orchestrated by its client, CIBC. These transactions with Enron resulted in the Company's overstating cash flow from operations by \$1.7 billion, recording fictitious profits of \$585 million, hiding debt totaling more than \$436.5 million (as of the date of Enron's bankruptcy) and hiding losses of over \$400 million. For example, the Riverside and Hawaii transactions were structured and documented by Milbank Tweed (representing CIBC) and A&K (representing Enron) as purported sales of assets. In reality, they were *financings*, as all of the risks and rewards of the so-called sold assets were round-tripped back to Enron through the use of hidden swaps. *In sum*, Enron never sold the assets, but recorded the benefit of the sale. In simple terms, CIBC, with Milbank Tweed's guidance, was like a bookie laying off its bets – back to the bettor – while Enron was *pawning* its assets – not selling them. Milbank Tweed knew the transactions were *not* sales, because it had structured the transactions to be financings.

50. While Milbank Tweed was busy representing Citigroup, J.P. Morgan Chase and CSFB in their manipulative and fraudulent transactions with Enron, it was also representing CIBC and structuring, implementing and documenting a series of transactions designed to disguise bank loans to Enron. CIBC's transactions have been labeled FAS 140 trades, a reference to FASB

Statement 140 governing the supposed true-sale characterization. Under FAS 140, a true sale only occurred when Enron disposed of an asset and had no continuing interest in it. Enron, CIBC, Milbank Tweed, and A&K sought to end run this requirement by documenting a purported true sale between Enron and, for example, CIBC's Hawaii II trust, while, at the same time, Enron reabsorbed all the economic risk by entering into a secret swap agreement with CIBC for the same asset. By breaking the purported sale and swap into two steps, Enron, CIBC and Milbank Tweed hid the substance of the trade from investors. CIBC provided the requisite 97% debt and 3% equity for the SPEs in the FAS 140 trades. But CIBC *did not take any risk on the assets* in the SPEs as it entered into swap agreements. When Enron transferred the risk of the assets back to the Company, the bookie, CIBC, merely layed off its bet – *back to the bettor*. Milbank Tweed designed and documented almost 30 of these transactions over a course of four years, including a series within weeks of Enron's bankruptcy. In total, the FAS 140 transactions had a particularly egregious effect on Enron's financials as they (i) inflated operational cash flow by \$1.7 billion; (ii) hid bank debt that totaled \$2.087 billion; (iii) inflated earnings by over \$585 million; and (iv) hid losses from the Company's reckless investments that totaled over \$400 million.

51. Milbank Tweed was intimately aware at all times of the extent of the misrepresentations arising from its client's activities due to the prolonged and repetitive nature of the activity: with Enron totaled nearly 30 separate FAS 140 transactions over 4 years (98-01). CIBC often refinanced the same asset at higher debt levels, even though the value of the underlying asset had decreased. Milbank Tweed was aware of this Ponzi scheme throughout and knew that Enron's reporting of the CIBC FAS 140 transactions as asset *sales* was unfounded because the law firm wrote the hidden swap documents for the CIBC trades. Furthermore, Milbank Tweed wrote credit-derivatives documents to shift to the unsuspecting capital markets whatever risk CIBC took in the

fraudulent Hawaii and Riverside transactions, which allowed CIBC to do even more fraudulent financings with Enron.

**E. Royal Bank of Scotland**

52. Milbank Tweed was extensively involved in the Nixon Prepay, ETOL and Sutton Bridge financings orchestrated by its client, Royal Bank of Scotland (“RBS”), which transactions resulted in Enron’s overstating cash flow from operations by \$462 million, recording fictitious profits of \$163.6 million, and hiding debt totaling more than \$460 million. The Nixon Prepay was structured and documented by the law firm as a \$110 million prepaid oil contract between its client, RBS, and Enron, which allowed the Company to hide the debt and label the proceeds of the deal as cash flow from operations. In truth, the Nixon Prepay was little more than a \$110 million *loan* from RBS to Enron, used as a financial bridge between the Citigroup Delta transactions – Yosemite I and Yosemite II – which were also structured by Milbank Tweed. The Sutton Bridge and ETOL transactions were FAS 140 transactions that were structured and documented by Milbank Tweed as purported asset sales by Enron to RBS. In fact, Sutton Bridge and ETOL were *financings* – all of the risks and rewards of the so-called sold assets were round-tripped back to Enron through the use of hidden swaps. Milbank Tweed knew these transactions were *not sales* because it structured them to be financings on behalf of its client, RBS.

53. The Nixon Prepay was a *loan* that bridged the gap between Citigroup’s Yosemite I and Yosemite II transactions; the latter transaction benefited RBS because its Enron credit risk was transferred to unsuspecting investors. Enron, RBS and Milbank Tweed used the Nixon Prepay, which was substantially similar to the Citigroup Delta and J.P. Morgan Chase Mahonia vehicles, to hide \$110 million in debt as part of the \$324 million multi-party-loan transaction. The other Nixon Prepay parties were Enron, Citigroup, Toronto Dominion, RBS, and Barclays. Enron borrowed the \$324 million from three banks – RBS (\$110 million), Citigroup (\$104 million), and Barclays (\$110

million) – while Toronto Dominion was the shill – the bank posed as a true customer while participating in the Enron swindle of investors – for all three pieces of the loan, which concealed the round-trip to Enron that eliminated all commodity-price risk. Again, the bookie – RBS – layed off its bets back to the bettor.

54. In the Sutton Bridge and ETOL financings, Enron and Milbank Tweed – as they did in the CIBC trades – and RBS sought to end run the requirements of FASB Statement 140 by documenting a purported true sale between Enron and, for example, RBS’s ETOL entity, while at the same time Enron reabsorbed all of the economic risk by entering into a secret swap agreement with RBS for the underlying asset. By breaking the so-called sale and swap into two steps, Enron, RBS and Milbank Tweed hid the substance of the trade from investors. RBS provided both the requisite 97% debt *and* the 3% equity for the SPEs in the FAS 140 trades, but the bank did not take any risk on the assets in the SPEs because it entered into swap agreements with Enron, which transferred the risk of the assets back to the Company. In total, RBS’s FAS 140 transactions had a material effect on Enron’s financials as they (i) inflated operational cash flow by \$352 million; (ii) hid bank debt that totaled \$350 million; and (iii) inflated earnings by over \$163.6 million.

55. Milbank Tweed knew the extent of the misrepresentations arising from its client’s, (RBS’s), activities as it documented the hidden swaps and secret side agreements, which negated any possibility of achieving the purported results of a legitimate commodity purchase or real sale of an asset. In particular, Milbank Tweed documented transactions whereby RBS purportedly purchased two additional interests in the same ETOL asset at higher debt levels, even though it had apparently purchased the whole asset in the first ETOL transaction. Milbank Tweed was aware of this Ponzi scheme and knew that Enron’s reporting of the Sutton Bridge and ETOL transactions as asset sales was unfounded because the law firm wrote the hidden swap documents for the transactions involving its client, RBS. Furthermore, Milbank Tweed wrote credit-derivatives documents to shift to Enron

or the unsuspecting capital markets whatever risk RBS took in the fraudulent transactions, which allowed its client to do even more fraudulent financings with Enron.

#### **F. Barclays**

56. Milbank Tweed was extensively involved in the Roosevelt, Nixon and CSFB Prepays, Nikita, SO<sub>2</sub>, JT Holdings, and Chewco financings orchestrated by its client, Barclays. These transactions with Enron resulted in overstating the Company's cash flow from operations by \$1 billion, recording fictitious profits of \$410 million, and hiding debt totaling more than \$1.77 billion. The Nixon Prepay was structured and documented by Milbank Tweed as a prepaid oil contract by its client, Barclays, and allowed the Company to hide the debt and report the proceeds of the deal as cash flow from operations. In the Roosevelt and CSFB Prepays, the law firm structured and documented the transactions so that Barclays acted as the shell – the bank posed as a true customer while participating in the Enron swindle of investors – for eliminating any commodity-price risk to its other clients – the funding banks, Citigroup and CSFB – by round-tripping the risk to Enron. And the Nikita and SO<sub>2</sub> transactions were FAS 140 transactions that were structured and documented by Milbank Tweed as purported asset sales by Enron to Barclays, but was fraudulent for the same reasons discussed, for example, in the CIBC trades.

57. Enron, Barclays and Milbank Tweed used the Nixon Prepay, which was substantially similar to Citigroup's Delta and J.P. Morgan Chase's Mahonia transactions, to hide \$110 million of debt as part of the \$324 million multi-party-loan transaction described above. In fact, Barclays's share of the Nixon Prepay was little more than a \$110 million *loan* from Barclays to Enron, used to bridge the financial gap between Citigroup's Delta transactions –Yosemite I and Yosemite II – which were structured by Milbank Tweed. The Nixon Prepay was crucial as a bridge loan to Citigroup's Yosemite II transaction because Enron was unable to repay the Jethro Prepay (discussed below), and from which Barclays benefited because its Enron credit risk was transferred to

unsuspecting investors. Likewise, Barclays acted as the shell for the CSFB Prepay and the Roosevelt Prepay, concealing the round-trip to Enron of all commodity price risk. Throughout, Milbank Tweed knew the Roosevelt and CSFB Prepays were little more than disguised loans because the law firm wrote the documents for those deals.

58. In the Nikita and SO<sub>2</sub> financings, Enron, Barclays and Milbank Tweed sought to end run the requirements of FASB Statement 140 by documenting a purported true sale between Enron and, for example, Barclays's Colonnade entity, while at the same time Enron absorbed all the economic risk by entering into a secret swap agreement with Barclays for the underlying assets. In reality, the Nikita and SO<sub>2</sub> transactions were *financings* – not asset sales – because all of the risks and rewards of the so-called sold assets were round-tripped to Enron through the hidden swaps. Milbank Tweed knew the transactions were not sales because it structured the transactions to be financings on behalf of its client, Barclays.

59. Milbank Tweed was intimately aware of the extent of the misrepresentations arising from Barclays's activities. The law firm documented the hidden swaps and secret side agreements, which negated any possibility of achieving the purported results of a legitimate commodity purchase or a true asset sale. Milbank Tweed wrote the documents for the CSFB and Roosevelt Prepays, which used Barclays as a shell – the bank posed as a true customer while participating in the Enron swindle of investors – to hide the circular routing of oil-price risk back to Enron. Furthermore, Milbank Tweed wrote credit-derivatives documents to shift to Enron or the unsuspecting capital markets whatever risk Barclays faced in the fraudulent transactions, which allowed its client to do even more fraudulent financings with Enron.

#### **G. Toronto Dominion Bank**

60. Milbank Tweed was extensively involved in the TD Prepay, and the Truman, Jethro, Nixon, Alberta, and London Prepays orchestrated by its client, Toronto Dominion Bank. These

transactions with Enron resulted in overstating the Company's cash flow from operations by \$2 billion and hiding debt totaling \$2 billion. The TD Prepay was structured and documented by Milbank Tweed as a \$250 million prepaid oil contract between Enron and its client, Toronto Dominion, which allowed the Company to hide the debt and label the proceeds from the deal as cash flow from operations. Toronto Dominion was the shill – posing as a true customer – in the Truman, Jethro and Nixon Prepays, which were funded by other Milbank Tweed bank clients, and concealed the round-trip to Enron of all commodity-price risk. Toronto Dominion funded \$250 million of the Truman Prepay, \$337.5 million of the Jethro Prepay, \$105 million of the Alberta Prepay, and \$165 million of the London Prepay, effectively *loaning* those amounts to Enron.

61. Enron, Toronto Dominion and Milbank Tweed used the TD Prepay, and the Truman, Jethro, Nixon, Alberta, and London Prepays – substantially similar to the Citigroup Delta and J.P. Morgan Chase Mahonia transactions – to hide \$2 billion in debt, as described above. In truth, the TD Prepay was little more than a \$250 million loan from Toronto Dominion to Enron, that was structured by Milbank Tweed. The Truman Prepay was simply a warehousing of Enron credit until the closing of Citigroup's Yosemite I transaction. That is, Toronto Dominion acted as a shill – the bank posed as a true customer while participating in the Enron swindle of investors – for Citigroup's \$250 million and funded \$250 million of the \$500 million Truman Prepay, which was also structured by Milbank Tweed. Truman was followed by the Jethro Prepay, which was a rollover of the Truman prepay, because Citigroup and Milbank Tweed were slow in figuring out how to deceive investors with their Yosemite I transaction. *In sum*, Toronto Dominion acted as the shill – the bank posed as a true customer while participating in the Enron swindle of investors – for Citigroup's \$337.5 million and funded \$337.5 million of the \$675 million Jethro Prepay, which was structured by Milbank Tweed. Toronto Dominion benefited directly from Citigroup's Yosemite I transaction – structured and documented by Milbank Tweed – because it transferred to unsuspecting investors

\$337.5 million of Enron credit risk funded by Toronto Dominion in the Jethro Prepay. Similarly, the Nixon Prepay was a bridge loan to Citigroup's Yosemite II transaction, which was structured by Milbank Tweed. Toronto Dominion acted as the shill – the bank posed as a true customer while participating in the Enron swindle of investors – for the funding banks, while Milbank Tweed documented the swaps and undisclosed side agreements that round-tripped to Enron all commodity-price risk, which made the transaction a simple *loan*. Toronto Dominion loaned money to Enron, disguised as prepaid commodity swaps in the Alberta and London Prepays, both structured and documented by Milbank Tweed, to fraudulently round-trip to Enron all commodity-price risk, which made the transactions loans, not operational cash flow. Milbank Tweed also documented credit-default swaps for Toronto Dominion, whereby the bank sold to the unsuspecting capital markets the Enron credit risk it had absorbed in the Alberta and London Prepays.

62. Milbank Tweed knew the extent of the misrepresentations and omissions arising from its client's, Toronto Dominion's, activities because the law firm documented the hidden swaps and side agreements that negated any possibility of achieving the purported results of a legitimate commodity purchase. Milbank Tweed wrote the documents for the TD Prepay, and the Truman, Jethro, Nixon, Alberta, and London Prepays, in each using a shill – the bank posed as a true customer while participating in the Enron swindle of investors – to hide the circular routing of oil-price risk back to Enron. In some cases Toronto Dominion funded the transaction, in some it was the shill – the bank posed as a true customer while participating in the Enron swindle of investors – and in others it played both roles. Furthermore, Milbank Tweed wrote credit-derivatives documents to shift to the unsuspecting capital markets whatever risk Toronto Dominion took in those fraudulent transactions in order to do even more fraudulent financings with Enron.

63. Milbank Tweed concurrently represented Enron, many of its subsidiaries and controlled entities, as well as J.P. Morgan Chase, Citigroup, CIBC, Deutsche Bank, Barclays, Royal

Bank of Scotland, Toronto Dominion, and CSFB throughout the Enron fraudulent scheme set out in detail in the Complaint. The law firm materially furthered the scheme by helping to structure and implement the manipulative and fraudulent transactions detailed above. Milbank Tweed wrote and distributed false and misleading statements about Enron, its business and finances in key structured-finance transactions in the offering circulars detailed above, by which the Company raised billions of dollars to keep the scheme going.

64. Because of its knowledgeable participation in the Mahonia, Delta, FAS 140, Firefly, Marlin, and Osprey transactions – and **50 others** listed in ¶18 – Milbank Tweed knew that Enron’s financial condition and statements were falsified and, in fact, that the Company’s financial condition was much worse than publicly represented.

65. Milbank Tweed represented the banks in all of the transactions detailed above and through that representation, as well as its ongoing client relationship with Enron, knew that these transactions were manipulative devices to falsify the Company’s financial results and deceive investors. Over several years Milbank Tweed was intimately involved in structuring these inherently fraudulent transactions, knowing they had no legitimate business purpose, but, rather, were manipulative devices to falsify Enron’s financial condition and results. ***In sum:***

- The law firm knew that the Mahonia and Delta transactions were designed to secretly provide Enron with debt capital disguised as purported commodity trades between the Company and Milbank Tweed’s bank clients, and knew the purpose of the transactions was to inflate Enron’s operating cash flows.
- Milbank Tweed knew that Firefly was designed to secretly provide Enron with debt capital disguised as an equity investment, syndicated by a Milbank Tweed bank client, CSFB, and to hide losses from the Company’s reckless Brazilian Elektro investment.
- The law firm knew that the Marlin and Osprey transactions were designed to secretly provide the Company with debt capital disguised as equity investments in purportedly unrelated entities, as well as to hide losses from Enron’s reckless investments.

- Milbank Tweed knew that CIBC's FAS 140 transactions were designed to disguise bank loans to the Company as purported asset sales to apparently unrelated entities, as well as to hide losses and inflate income and cash flow from operations.
- The law firm knew that the prepay and FAS 140 transactions of its bank clients, Toronto Dominion, Royal Bank of Scotland and Barclays, were designed to disguise bank loans as Enron's operating cash flow and inflate its income.

Milbank Tweed's complicity in these transactions enabled its bank clients to pocket hundreds of millions of dollars in fees and excessive interest charges, while the law firm earned in excess of \$50 million. These were its rewards for knowingly enabling Enron to perpetuate its Ponzi scheme and falsify its financial statements, hiding almost \$18 billion in debt from investors, inflating operating cash flows by a like amount, and covering up almost \$3 billion in losses.

66. Enron, in working with J.P. Morgan Chase, CSFB, and Citigroup to structure the Mahonia, Marlin, Osprey, and Delta subterfuges, insisted that its counsel, Milbank Tweed, serve as counsel for the three investment banks in those deals. Moreover, Enron compensated Milbank Tweed so it had control of the law firm in these ultra-sensitive transactions. For its part, because of its experience and financial sophistication, Milbank Tweed knew that these transactions were inherently fraudulent, lacked true economic substance, and were designed and executed for the purpose of apparently generating cash from Enron's operations without showing debt on the Company's books. The law firm was not only intimately involved in structuring these inherently fraudulent transactions, it worked closely with CSFB, J.P. Morgan Chase and Citigroup to insulate them from any economic risk in these transactions, which were executed with a company that Milbank Tweed and the banks knew was falsifying its financial statements. Indeed, Milbank Tweed knew that Enron was a house of cards that could collapse. In the case of J.P. Morgan Chase and Mahonia, this involved obtaining illegal insurance on the purported commodity trades. In the case of Citigroup and Delta, Milbank Tweed's efforts involved utilizing a series of offerings of Enron credit-linked notes, which raised cash to fund the Delta transactions while shifting the Enron credit risk –

upon which those transactions depended – to unsuspecting domestic and foreign investors and away from Citigroup. In the case of CSFB, Milbank Tweed structured and authored offering memoranda for a series of transactions – Firefly, Marlin and Opsrey – that permitted Enron to obtain billions of dollars of hidden debt and concealed staggering losses, all to the detriment of the investing public.

67. Milbank Tweed’s role was indispensable to the success of the offerings and continuation of the fraudulent scheme. Normally, counsel for the initial purchasers or underwriters of such securities will investigate the issuer or entities upon whose credit and business the quality and creditworthiness of the securities depends. But an independent investigation or skeptical evaluation of its business was the last thing Enron wanted or could tolerate. Even a cursory investigation would have revealed not only the Mahonia and Delta subterfuges and manipulations, but other aspects of the Company’s financial chicanery as well. Upon discovery of such events, the Company’s executives would either have to disclose the staggering off-balance-sheet debt and disguised loans, or the offerings would have to be cancelled. Either way, Enron’s house of cards would collapse. To avoid disaster, it was crucial that counsel for the initial purchasers of the Enron-related securities sold between 9/99 and 7/01 be compliant to the Company’s needs to continue to conceal the Mahonia and Delta transactions, as well as the 50 others listed in ¶18, and the falsification of its financial statements. Milbank Tweed, having helped put together and structure those 70 transactions – *knowing they were inherently fraudulent* – was willing to comply, because to expose them as *loans* would expose its own participation in a massive ongoing fraud.

68. Milbank Tweed knew or recklessly disregarded that Enron’s financial statements in the offering circulars, as detailed above, were false and misleading. Milbank Tweed was intimately involved in structuring and implementing the Mahonia, Delta, Prepay, Firefly, FAS 140, Marlin, and Osprey transactions, while representing Enron, J.P. Morgan Chase, Citigroup, CIBC, Toronto Dominion Bank, Royal Bank of Scotland, Barclays, and CSFB.

## INVOLVEMENT OF ANDREWS & KURTH

69. A&K's involvement in the Enron fraud, like that of Vinson & Elkins ("V&E"), has not gone unnoticed in the media. As reported by *Business Week*:

The outside firms that handled "the vast majority" of Enron's controversial off-balance-sheet transactions were V&E and Houston-based Andrews & Kurth (A&K), says a former Enron staff lawyer. They were frequently seated across the table from Kirkland & Ellis (K&E), a Chicago-based outfit that often represented the "independent" special-purpose entities (SPEs) that bought Enron's assets. "Most of the heavy lifting was done by outside firms," says an Enron insider.

\* \* \*

Despite V&E's close relationship with Enron, it chose not to write opinions for some of the FAS 140/125 deals, according to both V&E partner Reasoner and Enron attorneys. In those instances, sources say, the company was able to get the letters from A&K instead. According to the summary of the special committee's interview with Ephross, Enron lawyers believed that "it would be easier to get an opinion from A&K than V&E because A&K would raise less issues than V&E...."

Oddly enough, the players who seemed least interested in the opinion letters were those they were meant to benefit: the banks funding the SPEs.... To Boston University legal ethics expert Koniak, that should have raised a big red flag. V&E and A&K "had to have a bag over their head not to see that there was something fishy going on here," says Koniak. "The fact the buyer did not want a true-sale opinion is not some subtlety. It is a blatant sign of possible fraud."

Nonetheless, evidence concerning A&K's conduct was not revealed as early as the evidence relating to V&E, and Lead Plaintiff entered an agreement with A&K that tolled the statute of limitations during Lead Plaintiff's investigation and until this Complaint was filed.

70. Then, on November 24, 2003, the Final Report filed by Enron's Bankruptcy Examiner was made public. That report details the breadth and impropriety of A&K's conduct. In essence, Enron's Bankruptcy Examiner concluded that A&K knew Enron's purported FAS 125/140 transactions were bogus, but nonetheless wrote opinion letters hiding the bogus nature of the transactions from Enron's auditor and investors, and falsely representing the transactions were valid.

First, Andrews & Kurth knew that Enron sought to raise funds through each transaction that would not be reflected as debt on its balance sheet although Andrews & Kurth knew Enron retained the risks and rewards of owning the transferred asset. Second, Andrews & Kurth knew that Enron recognized gain on its income statement

in those FAS 140 Transactions where the proceeds received exceeded the basis in the transferred asset....

Andrews & Kurth also knew that the opinions it rendered in the FAS 140 Transactions were critical to Enron’s intended accounting treatment. Andrews & Kurth understood that its opinions provided Andersen with evidence of the “legal isolation” required by FAS 140. With only one exception, Andrews & Kurth’s opinion letters were addressed to Enron. No third party was permitted to rely on them except Andersen, who was permitted to use the opinion “solely as evidential support in determining the appropriate accounting and financial treatment of the [t]ransactions.” A fact-finder could conclude that, but for the opinions provided by Andrews & Kurth, Enron could not have obtained the accounting treatment it desired on the FAS 140 Transactions, and that Andrews & Kurth knew this.

Enron’s Bankruptcy Examiner also referenced “examples in the documentary evidence that Andrews & Kurth was on notice that Enron was characterizing the proceeds received through the FAS 140 Transactions as cash flow from operating activities.” As he concluded, A&K “*knew that the transactions were being used ... to manipulate [Enron’s] financial statements.*”

71. A&K, along with V&E, served as outside corporate counsel to Enron throughout the Class Period. During this time, Enron was one of A&K’s largest clients and A&K garnered over \$30 million in fees from Enron. In addition, A&K’s representation of Enron-related entities was at least as significant as A&K’s representation of Enron. The following is only a sampling of Enron-related entities A&K represented during the Class Period:

Bentley Group	Holding Company L.L.P.	Enron Brazil Power
Bridgeline Holdings	Enron Assets Holdings LLC	Holdings XVIII Ltd.
BT Exploration, LLC	EOTT Energy Corp.	Enron Facility Services
ENA CLO I	Investments Limited Partnership	National Energy Production Corporation
Holding Company L.L.P.	JEDI	Northern Border Partners
Enron Assets Holdings LLC	Limbach Group Mariner Energy, Inc.	Northern Natural Gas Company
Enron Brazil Power Holdings XVIII Ltd.		SK-Enron Co., Ltd.
Enron Facility Services		
Enron International Power Barge Ltd.		
Enron South America, Inc.		
Enron South America Turbines LLC		
Enron Wind Corp.		

The extent of A&K's work for Enron not only endowed A&K with significant knowledge of Enron's operations, it also gave A&K great knowledge of Enron's financial statement strategies and manipulations.

72. Indeed, A&K structured, prepared the transaction documents for, and improperly issued to Enron and its auditor opinions, causing the false accounting treatment of transactions that manipulated Enron's reported net income, cash flow, and debt by billions of dollars.

**Known Effect of A&K Bogus FAS 140 Transactions on Enron's Financial Statements**

Year	Overstated Cash Flow	Understated Debt	Overstated Net Income	Overstated Equity
1998	\$380 million	\$380 million	\$200 million	\$200 million
1999	\$827 million	\$827 million	\$115.3 million	\$115.3 million
2000	\$326 million	\$326 million	\$164.9 million	\$164.9 million
2001	\$247.2 million	\$247.2 million	\$108.8 million	\$108.8 million

73. The broad impact of A&K's conduct upon Enron's investors is illustrated by the list of Enron-related entities (many created on paper simply to execute Enron's sham deals) involved in the so-called structured finance transactions A&K performed and for which A&K often issued to Enron and its auditor improper opinions, to manipulate Enron's financial statements:

Bob West Treasure LLC	ESPI Interest Owner Trust	LAB Trust
Blackbird 1 Interest Owner Trust	J.M. Owner Trust	Caymus Trust
PR-B Interest Owner Trust	LLC Interest Holdings I Owner Trust	Tahiti Trust
Lost Creek Gas Gathering Company, L.L.C.	Owens Corning Energy LLC	ServiceCo Holdings, Inc.
WR-B Interest Owner Trust	MEGS, L.L.C.	Sphynx Trust
LFT I Interest Owner Trust	Santa Maria Trust	Besson Trust
ES Power 3 L.L.C.	JGB Trust	Enron North America Corp
Enron Dutch Holdings B.V	EESO-OC Holdings #2, L.L.C.	ES Power I L.L.C.
ET Power 1 LLC	Pinta LLC	ES Power 2 L.L.C
ET Power 2 LLC	Nina I, LLC	
ET Power 3 LLC	Enron Energy Services, L.L.C.	European Power Investor LLC
Mesquite Holdings, B.V.	Hawaii 125-0 Trust	McGarret VI, L.L.C.
ECT Powder River, L.L.C.	Hawaii II 125-0 Trust	Big Island VI, L.L.C.
ECT-PR-B, L.L.C.	Hawaii I 125-0 Trust	Enron Broadband Services, Inc.
ECT-PR-C, L.L.C.	Heracles Trust	McGarret VIII, L.L.C

ECT-PR-Z, L.L.C.	McGarret I, L.L.C.	Big Island VIII, L.L.C.
ECT Wind River, L.L.C.	Big Island I, L.L.C	Enron Asset Holdings, LLC
ECT-WR-B, L.L.C.	Danno II, L.L.C.	Aeneas, L.L.C.
ECT-WR-C, L.L.C.	Maui II, L.L.C.	Psyche, L.L.C.
ECT-WR-Z, L.L.C.	LLC Interest Holdings I Owner Trust	McGarret X, L.L.C.
LFT Power I, LLC	McGarret II, L.L.C.	Big Island X, L.L.C.
LFT Power II, LLC	Big Island II, L.L.C.	JEDI
LFT Power III, LLC	McGarret III, L.L.C.	McGarret XI, L.L.C.
Atlantic Commercial Finance, Inc.	Big Island III, L.L.C.	Big Island XI, L.L.C.
ES Power I LLC	EBIC-Apache, L.L.C.	Enron Capital Management Limited Partnership
ES Power 2 LLC	Fort Union Gas Gathering, L.L.C.	Enron Capital Corp.
ES Power 3 LLC	JJB-I Asset, L.L.C.	Pronghorn I, LLC
Enron Compression Services Company	JJB-II Asset, L.L.C.	McGarret XII, L.L.C.
ECS Compression Company, L.L.C.	MEB-I, L.L.C.	Big Island XII, L.L.C.
G-Present, L.L.C.	MEB-II, L.L.C.	McGarret XIII, L.L.C.
G-Future, L.L.C.	Enron Communications Inc.	Big Island XIII, L.L.C.
G-Past, L.L.C.	Enron Broadband Investments Corp.	McGarret XIV, L.L.C.
ECT Coal Company No.2, LLC	EVC LLC JSB Asset, L.L.C.	Big Island XIV, L.L.C.
Enron Energy Services Operations, Inc.	KGB, L.L.C.	Enron European Power Investor LLC
Blackbird I LLC	Enron Ventures Corp.	EES Service Holdings, Inc.
Blackbird 2 LLC	Sonoma I, L.L.C.	Pyramid I Asset, L.L.C.
EESO-OC holdings #1, L.L.C.	Napa I, L.L.C.	Nikita, L.L.C.
		Timber I, L.L.C.

74. Perhaps the most significant effect A&K had on Enron’s financial statements resulted from approximately 30 bogus FAS 125/140 transactions A&K structured and documented, and for which A&K knowingly rendered improper and false legal opinions. A&K’s improper legal opinions, issued to Enron and its auditor, were essential to the false accounting treatment for the transactions. These transactions falsely inflated Enron’s reported net income and shareholder equity approximately \$350 million and cash flow \$1.2 billion, and falsely decreased Enron’s reported debt approximately \$1.1 billion. As Enron’s Bankruptcy Examiner concluded, the bogus FAS 140 transactions (identified in the stock chart herewith) were in fact loans, and not sales of assets – as A&K made them appear to be for Enron’s desired accounting treatment.



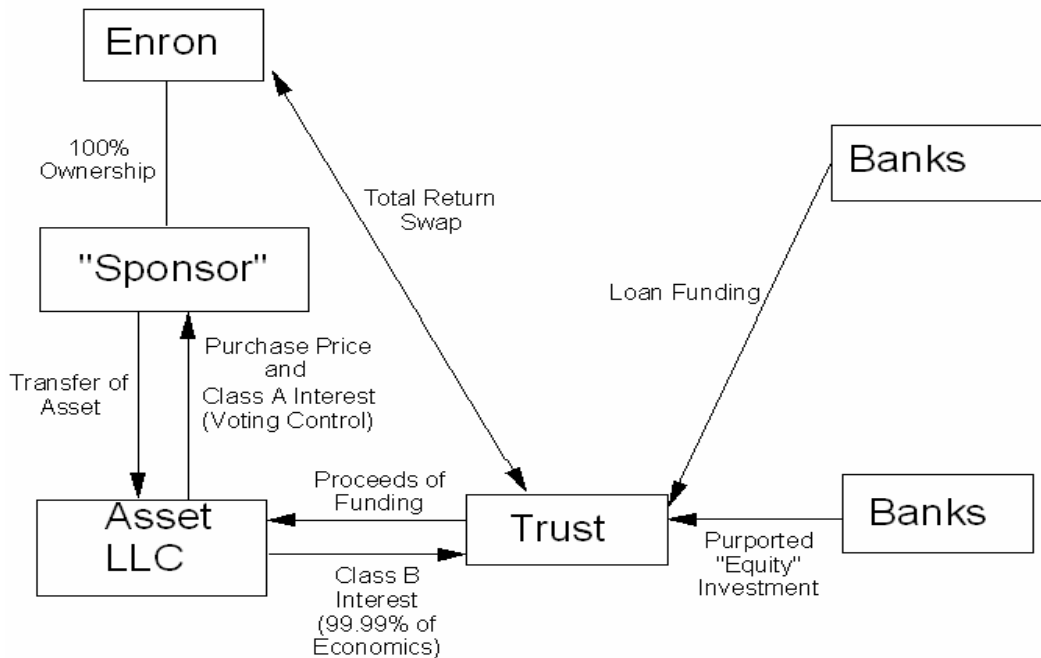
**Fraudulent Nature of the FAS 140 Transactions  
(Disguising Loans as Sales of Assets) and A&K's  
Critical Role in Manipulating Enron's Financial Statements<sup>3</sup>**

75. A significant portion of the hidden debt that caused Enron's meltdown in late 01 was caused by bogus FAS 140 transactions, and A&K structured, documented and rendered improper opinions on approximately 95% of those transactions beginning in late 99.

76. In the bogus FAS 140 transactions Enron "monetized" illiquid, money-losing, or otherwise nonperforming assets. The assets included stock, partnership interests, and interests in trusts or limited liability companies formed by Enron. In the bogus FAS 140 transactions, Enron removed those assets from its balance sheet, creating the appearance of a "sale," through strawmen ("Sponsor"/"Asset LLC") created for the purpose of the transaction, but Enron retained control and any risk or rewards of the asset. The phony "sale" was accomplished with loan financing, and Enron reported income on the difference between the cash proceeds of the loan and Enron's purported carrying value of the asset. Notwithstanding the supposed "sale" of these assets, Enron continued to treat them as part of its own holdings. And Enron was also obligated to repay the loan proceeds through "Total Return Swaps" – instruments documented by A&K and used to assist in disguising the nature of the loan. A&K structured these transactions and related transactions demonstrating Enron's control of the assets, and wrote "true sale," "true issuance," "nonconsolidation," or other legal opinions intended to be relied upon by Enron's auditor to determine the transactions were legitimate (when they were not).

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<sup>3</sup> The bogus FAS 125/140 transactions were fraudulent structured finance transactions that A&K imbued with the appearance of compliance with Financial Accounting Standard 125, "Accounting for Transactions and Servicing of Financial Assets and Extinguishment of Liabilities," which governed these purported transactions in most instances until 4/1/01, when FAS 125 was replaced by FAS 140. FAS 140 was effective 4/1/01 and also applied to certain disclosures for periods ending as early as 12/16/00. Hereafter, both purported FAS 125 and FAS 140 transactions will be referred to as FAS 140 transactions.



77. Under FAS 140 – the Financial Accounting Standard these transactions were made to appear in compliance with – the transfer of the asset to the “Asset LLC” must be a “true sale” and equity in the “Trust” must be truly at risk. Despite A&K’s representations to the contrary, in the bogus FAS 140 transactions the substance of the transactions was a loan, not a sale. Enron retained the risks and rewards of the asset because, among other reasons: (a) post-“sale” conduct (including transactions orchestrated by A&K) indicated Enron retained control over the asset; (b) A&K understood Enron’s intent was financial statement effect (not sale of the asset); (c) the banks’ conduct demonstrated to A&K the banks understood the transactions were loans (not sales); and (d) indeed, Enron effectively guaranteed repayment of the loan in “Total Return Swaps” documented by A&K. Moreover, equity was not truly at risk because (among other reasons) A&K orchestrated a pattern of early repayments or “remonetizations,” ensuring the purported equity holders (banks) received their payments from Enron despite that it was not required.

78. As documented by Enron's Bankruptcy Examiner, A&K attorneys working on the bogus FAS 140 transactions admit that A&K knew Enron sought to raise funds through each transaction that would not be reflected as debt on Enron's balance sheet despite that Enron would retain the risks and rewards of owning the purportedly "sold" asset. A&K attorneys similarly admitted to Enron's Bankruptcy Examiner that A&K knew Enron reported as income cash loan proceeds that exceeded the basis in the "sold" asset. And e-mails in 3/01, to and from A&K attorney Tom Popplewell, demonstrate A&K was aware that Enron reported the loan proceeds in the bogus FAS 140 transactions as cash flow from operating activities.

79. As documented by Enron's Bankruptcy Examiner, "Andrews & Kurth also knew that the opinions it rendered in the FAS 140 Transactions were critical to Enron's intended accounting treatment."

"Sargent Sworn Statement, at 37-37:

Q. Is it your impression that in each FAS 125, FAS 140 that you have done for anyone, one of the parts of this closing binder was a true sale non-substantive consolidation opinion?

A. Well, what I understand is that for the accountants to meet the FAS 125 criteria ... that they have asked for that opinion.

Barbour Sworn Statement, at 47:

Q. So sometime in the evolution between the start of FAS 125 in '96 and November of 1998, you became aware that a condition to the FAS 125s was the receipt of ... a bankruptcy opinion?

A. That's correct."

A&K's attorneys further admitted that they understood their opinions provided Andersen with necessary evidence of the "legal isolation" required by FAS 140. Moreover, the opinion letters were issued to Enron and stated on their face that only Andersen was permitted to use the opinion and Andersen's use was to be "solely as evidential support in determining the appropriate accounting and financial treatment of the [t]ransactions."

80. In spite of rendering such opinions, A&K knew or was severely reckless in disregarding that the transactions were not legitimate sales but in fact were loan financings of the assets involved. As Enron's Bankruptcy Examiner concluded:

Andrews & Kurth recognized that Enron retained the risks and rewards of the assets being transferred and that Enron did not want to surrender control of the asset being transferred. Moreover, Andrews & Kurth assisted Enron with the repeated and consistent prepayment and unwinding of many of these FAS 140 Transactions, such that a fact-finder could determine that Andrews & Kurth came to know that these assets were not being isolated from Enron by these transactions.

For example, a memo prepared by A&K in 4/00 for an in-house seminar on the bogus FAS 140 transactions, stated “*Enron, as a practical matter, retains all the risks and rewards of owning the assets.*”

81. That Enron retained the risks and rewards of owning the assets it purportedly “sold” in the bogus FAS 140 transactions is also demonstrated by the Total Return Swap agreements A&K documented in the transactions. Enron's Bankruptcy Examiner found that the Total Return Swaps were an “important feature[]” in showing the bogus FAS 140 transactions “more closely resemble[d] a loan than a commercial sale of an asset to an unrelated third party.” The Total Return Swaps were, in essence, loan guarantees for the financing of the assets A&K and Enron said were sold. Under the Total Return Swaps, Enron was obligated to pay principal and interest on the notes issued in connection with the “sale” of the assets. In other words, while another party supposedly purchased Enron's assets, Enron paid the principal and interest on the financing used to accomplish the phony purchase. In addition, the purportedly “purchasing” party was obligated by the Total Return Swaps to return nearly all appreciation in the asset to Enron. As Enron's Bankruptcy Examiner concluded, “Andrews & Kurth understood that the net economic effect of the Total Return Swap was that Enron retained the reward of any appreciation in the value of the asset transferred and the risk of any decline in the asset value.”

82. A&K attorneys not only acknowledged that Enron effectively owned the assets Enron purportedly “sold,” but admitted that the structure created by A&K which accomplished this was not normal according to their experience. First, as admitted by the A&K attorneys responsible for the bogus FAS 140 transactions, the Total Return Swaps used in their transactions were unprecedented in their experience. Second, as documented by Enron’s Bankruptcy Examiner, the primary A&K attorney for these transactions had done 300-400 securitizations prior to working on the transactions for Enron and not one of those transactions had the “monetized” asset held by an entity separate and apart from the entity that received financing for acquisition of the asset. But in nearly all of the bogus FAS 140 transactions A&K created that separate entity, “Asset LLC,” described in the diagram above, so that Enron could control the entity directly or by an Enron affiliate.

83. A&K knew that Enron intended to continue its control the assets “monetized” in the bogus FAS 140 transactions, and Enron’s control was accomplished by Asset LLC, the structure that kept the assets separate and apart from the entity that received financing for acquisition of the assets. As Enron’s Bankruptcy Examiner stated, “continuing control over the asset resulted from the fact that the asset remained in Asset LLC.” Communications between A&K and Enron demonstrate A&K knew this and acknowledged the purpose of isolating Asset LLC from the entity that financed the supposed purchase of the assets was to give the appearance of a “sale” of assets while Enron nonetheless maintained control of the assets:

“Whilst Sarlux and Nimitz were structured as sales for the purpose of accounting treatment, Enron retained full control over its interest in Sarlux S.R.L. and commercially the transactions look more like financings. For example, even in the event that the lenders foreclosed on the asset, they would only be entitled to receive distributions from the project. They could not obtain any control or voting rights.... It is also relevant to note that all upside in the project over the amount required to pay off the financing was retained by Enron, as well as all downside risk.”

The communication above was written by A&K to Enron and referred to the “Sarlux” asset “monetized” in the Pilgrim transaction and the asset monetized in the Nimitz transaction.

84. That these transactions were shams was also obvious to A&K because Enron additionally continued its control of the purportedly sold assets by repeatedly prepaying or refinancing the notes issued to finance the transactions only to “sell” the same asset again. Enron accomplished this by purchasing the equity held by the Trust entity’s equity certificate holder – in nearly every instance one of the Bank Defendants (identified in *Newby*, H-01-3624) with whom Enron had an established relationship. After purchasing the equity certificate, Enron prepaid the bank’s loan and unwound the transaction, or refinanced.

85. A&K, as of the time it structured its first bogus FAS 140 transaction, knew Enron’s prepayments and unwinds were planned, because it structured the transaction to allow for prepayment of the financing and unwinding. As stated in a memo written by A&K attorneys and dated 3/19/00: ““In the deals which closed in December we were given very clear instructions that Enron had to be able to prepay and get the assets back at any time. A right to prepay in full was included in the documents (as for all previous deals).”” Internal A&K documents in fact make clear that A&K knew that while these transactions were supposed to be sales of assets, Enron never intended such. As stated in an A&K memo to the file dated 11/19/98: ““GB [Gareth Bahlmann] did not want to mention the auction in the consent. I said this was okay as long as Enron were [sic] absolutely confident that there would never in practice be a sale to a third party. GB said that this was correct.””

86. A&K repeatedly structured the bogus FAS 140 transactions in this way. And, in another example showing the transactions were simply cooked up, in many instances, while A&K was effecting the unwinding of the transactions, it was simultaneously rendering its legal opinion asserting the transactions were legitimate. As Enron’s Bankruptcy Examiner found, “[o]n some occasions, the unwind work was completed before delivery of the opinion.” Enron’s Bankruptcy Examiner also documented that in one day, 8/14/01, A&K delivered Enron nine opinions, six of

which concerned transactions that closed the prior year. The planned prepayment and unwind of these transactions was not an isolated event, and as A&K attorneys admitted to Enron’s Bankruptcy Examiner, this occurred like clockwork, for the banks always accommodated Enron in this process.

Transaction	Closing	Unwind	Opinion Delivered	Maturity
Discovery	12/29/99	End Feb. 2000	01/14/00	09/30/00
Ghost	12/21/99	03/20/00	After 2/28/00	06/30/01
Specter	03/27/00	04/10/00	04/18/00	09/15/00
Hawaii (McGarret B)	06/29/00	09/29/00	07/24/00	03/29/01
Hawaii (McGarret A)	03/31/00	12/14/00	04/18/00	11/19/02
Catalytica	12/07/00	03/12/01	On or after 02/25/01	06/11/02
Hawaii (McGarret H)	12/22/00	03/29/01	08/14/01	11/19/02
Bacchus	12/20/00	06/01/01	08/14/01	09/21/01
Hawaii (McGarret N)	06/29/01	08/01/01	After 10/31/01	03/28/02
Hawaii (McGarret F)	12/07/00	09/07/01	08/14/01	11/19/02
Avici A	12/07/00	10/04/01	08/14/01	06/11/02
Avici B	12/07/00	10/04/01	08/14/01	06/11/02
Hawaii (McGarret C)	08/31/00	10/17/01	09/18/00	11/19/02
Hawaii (McGarret K)	03/29/01	10/17/01	After 10/31/01	12/28/02
Hawaii (McGarret M)	06/22/01	10/17/01	Not Delivered	03/22/02

87. No material facts whatsoever concerning the nature of these transactions were ever disclosed to Enron’s shareholders, and in Enron documentation drafted by A&K it is acknowledged that the prepayment plan Enron and A&K used in these transactions had to be hidden from Enron’s auditor to achieve the accounting treatment Enron wanted.

“Keep in mind that the Auction-related mechanisms will come into play ONLY if the indebtedness is not prepaid by the Sponsor, which is always Global Finance’s planned means of unwind and has been, with one exception I’m aware of, the actual means of unwind. Nonetheless, because *this prepayment plan is not memorialized in any deal documentation (and cannot be for financial accounting and legal opinion purposes)*, these mechanisms still must be analyzed from a tax perspective.”

As Enron’s Bankruptcy Examiner concluded in a major understatement, there is “evidence suggesting that Andrews & Kurth knew that these planned early unwinds were a problem for the intended accounting of the transactions both from a legal and an accounting standpoint.”

## EXAMPLES OF BOGUS FAS 140 TRANSACTIONS

### A. Bacchus

88. Bacchus closed on 12/20/00, and it was prepaid and unwound by Enron three months prior to its scheduled maturity date of 9/21/01. In Bacchus, A&K rendered its legal opinion while it

was unwinding the transaction for Enron, and did not execute the opinion until more than one month after the transaction was unwound. Through its work on Bacchus, including its legal opinion, A&K caused Enron's income and equity to be *overstated* \$112 million, and debt to be *understated* \$200 million, while cash flow was *overstated* \$200 million.

## **B. Discovery**

89. Discovery closed on 12/29/99, and it was prepaid and unwound by Enron very shortly thereafter in 2/00, seven months prior to its scheduled maturity date of 9/30/00. In Discovery, A&K rendered its legal opinion within two-and-a-half weeks of unwinding the transaction for Enron. Communications between A&K and Enron on 12/21/99, show that A&K knew (before Discovery closed) that Enron intended to prepay and unwind Discovery two months later and questioned the propriety of such a transaction. Nonetheless, A&K thereafter unwound Discovery by early prepayment and issued the necessary legal opinion to achieve Enron's desired accounting treatment. Through its work on Discovery, including its legal opinion, A&K caused Enron's reported debt to be *understated* \$126.4 million, and cash flow to be *overstated* \$126.4 million.

## **C. Ghost & Specter**

90. Ghost & Specter illustrate how Enron, through A&K, continuously circulated its assets by bogus FAS 140 transactions in a blatant effort to achieve financial statement effect. Ghost & Specter, respectively, "monetized" and "remonetized" Rhythms common stock. While A&K was working on Discovery it was also closing Ghost, which closed on 12/21/99 and "monetized" 5,393,258 shares of Rhythms common stock. Ghost was prepaid and unwound by Enron just three months after its close despite its scheduled maturity date of 6/30/01. In Ghost, A&K rendered its legal opinion within 10 days of unwinding the transaction for Enron. Through its work on Ghost, including its legal opinion, A&K caused Enron's debt to be *understated* \$225 million, and cash flow to be *overstated* \$225 million.

91. Specter “remonetized” over 3 million shares of the Rhythms common stock that were “monetized” in Ghost. A&K closed Specter on 3/27/00, seven days after Ghost was unwound, and Specter was then prepaid and unwound just 14 days after its close, and well ahead of its scheduled maturity date of 9/15/00. As documented by Enron’s Bankruptcy Examiner, e-mails between A&K and Enron on 3/15/00, demonstrate that A&K understood prior to closing Specter that Specter’s term would only be two weeks, but A&K nonetheless falsely indicated a term of six months in Specter’s documentation. In Specter, like many of the other bogus FAS 140 transactions, A&K unwound the transaction prior to rendering its legal opinion that the transaction was legitimate for Enron’s accounting purposes. A&K’s legal opinion was executed 4/18/00, eight days after Specter unwound. Through its work on Specter, including its legal opinion, A&K caused Enron’s reported debt to be *understated* \$125 million, and cash flow to be *overstated* \$125 million.

92. The following chart summarizes the known financial statement effect of A&K’s bogus FAS 140 transactions, by transaction:

**Known Financial Statement Effect of Bogus FAS 140 Transactions (By Transaction)**

<b>Transaction Name</b>	<b>Overstated Cash Flow</b>	<b>Understated Debt</b>	<b>Overstated Net Income</b>	<b>Overstated Equity</b>
Bacchus	\$200 million	\$200 million	\$112 million	\$112 million
Discovery	\$126 million	\$126 million		
Ghost	\$225 million	\$225 million		
Specter	\$125 million	\$125 million		
Cerberus	\$517.5 million	\$517.5 million		
Nikita	\$80 million	\$80 million	\$10 million	\$10 million
Hawaii	\$448.2 million	\$436.5 million	\$273.7 million	\$273.7 million
Pilgrim	\$380 million	\$380 million	\$200 million	\$200 million
Leftover	\$101.1 million	\$101.1 million	\$59 million	\$59 million
Nimitz	\$355.8 million	\$355.8 million	\$42 million	\$42 million
Alchemy	\$11.3 million	\$11.3 million	\$11 million	\$11 million
Avici	\$35 million	\$35 million		
<b>Total:</b>	\$2,604.9 million	\$2,593.2 million	\$707.7 million	\$707.7 million

## CLASS ACTION ALLEGATIONS

93. Plaintiffs bring this action pursuant to Rule 23 of Federal Rules of Civil Procedure on behalf of all persons who acquired Enron's publicly traded securities (the "Publicly Traded Securities") during the Class Period (the "Class"), including persons who purchased Enron securities traceable to false and misleading Registration Statements (the "Offering Subclasses") and Enron employees who purchased Enron stock individually or for their 401(k) retirement plans during the Class Period.<sup>4</sup> The Class includes purchasers of all securities identified herein issued by Enron-related entities during the Class Period, the value or repayment of which was dependent on the credit, financial condition or ability to pay of Enron. Excluded from the Class are the defendants herein, all defendants in *The Regents of California v. Royal Bank of Canada*, No. H-04-\_\_\_\_, all defendants in *Newby v. Enron Corp.*, No. H-01-3624, in which The Regents is Lead Plaintiff, all defendants in *Washington State Investment Board v. Lay*, No. H-02-3401, all defendants in *The Regents of the University of California v. Toronto-Dominion Bank*, No. H-03-5528, and members of their immediate families, any officer, director or partner of any defendant, any entity in which a defendant has a controlling interest and the heirs of any such excluded party.

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<sup>4</sup> The Publicly Traded Securities include Enron's publicly traded debt and equity securities as well as preferred securities issued by Enron, Enron Capital LLC 8% Cumulative Guaranteed Monthly Income Preferred Shares, Enron Capital Trust I Trust Originated Preferred Securities, Enron Capital Trust II Trust Originated Preferred Securities and Enron Capital Resources, L.P. 9% Cumulative Preferred Securities (collectively, the "Preferred Securities"), and Osprey \$1,400,000,000 8.31% Senior Secured Notes due 03, Yosemite \$750,000,000 8.25% Series 1999-A Linked Enron Obligations due 11/15/04, Yosemite £200,000,000 8.75% Series 2000-A Linked Enron Obligations due 07, Enron Credit Linked Notes \$500,000,000 8% due 05, Osprey \$750,000,000 7.797% Senior Secured Notes due 03 and €315,000,000 6.375% Senior Secured Notes due 03, Enron Credit Linked Notes II \$500,000,000 7.375% due 06, Enron Euro Credit Linked Notes Trust €200,000,000 6.5% due 06, Enron Sterling Credit Linked Notes Trust £125,000,000 7.25% due 06, and Marlin \$475,000,000 6.31% Senior Secured Notes due 03 and €515,000,000 6.19% Senior Secured Notes due 03 (collectively, the "Foreign Debt Securities").

94. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown at the present time, as of 12/31/00, there were more than 750 million shares of common stock outstanding, more than 25 million shares of the Preferred Securities and billions of dollars of debt securities, owned by thousands of investors.

95. Plaintiffs' claims are typical of the claims of the Class because plaintiffs and all the Class members sustained damages which arose out of the defendants' unlawful conduct complained of herein.

96. Plaintiffs are representative parties who will fully and adequately protect the interests of the Class members. Plaintiffs have retained counsel who are experienced and competent in both class action and securities litigation. Plaintiffs have no interest which is in conflict with those of the Class they seek to represent.

97. A class action would be superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

98. The prosecution of separate actions by individual Class members would create a risk of inconsistent and varying adjudications, which could establish incompatible standards of conduct for defendants. Questions of law and fact common to the Class predominate over any questions which may affect only individual members. Among the common questions of law and fact are:

(a) whether defendants implemented the manipulative devices or engaged in the wrongful scheme alleged herein;

(b) whether defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(c) whether defendants misrepresented material facts;

(d) whether the 1934 Act or the 1933 Act was violated by defendants' acts as alleged herein;

(e) whether defendants knew or recklessly disregarded that the statements made by them were false and misleading;

(f) whether the prices of the Publicly Traded Securities were artificially inflated; and

(g) the extent of damage sustained by Class members and the appropriate measure of damages.

**FIRST CLAIM FOR RELIEF**  
**For Violation of §10(b) of the 1934 Act and Rule 10b-5**

99. Plaintiffs incorporate ¶¶1-98 by reference.

100. This Claim is brought by plaintiffs against A&K and Milbank Tweed.

101. Each of the defendants named herein participated in defendants' wrongful scheme, the implementation of the manipulative devices discussed herein and/or in the preparation and dissemination of the false statements as described in the First Amended Consolidated Complaint in *Newby*, H-01-3624, which they knew or recklessly disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

102. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

(a) Employed devices, schemes, and artifices to defraud;

(b) Made untrue statements of material facts or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; or

(c) Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon plaintiffs and others similarly situated in connection with their purchases of Enron securities during the Class Period.

103. Defendants' material misrepresentations and/or omissions were made knowingly and/or in reckless disregard of the truth and for the purpose and effect of concealing Enron's falsified financial results, operating condition and prospects from the investing public and supporting the artificially inflated price of its publicly traded securities.

104. Plaintiffs and the other members of the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices in connection with their purchase of Enron securities. Plaintiffs and the members of the Class would not have purchased Enron securities at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' wrongful scheme and/or false and misleading statements.

**SECOND CLAIM FOR RELIEF**  
**For Violations of §§11 and 15 of the 1933 Act**

105. Plaintiffs incorporate ¶¶1-104. For purposes of this Claim, plaintiffs expressly exclude and disclaim any allegation that could be construed as alleging fraud or intentional or reckless misconduct, as this claim is based solely on claims of strict liability and/or negligence under the 1933 Act.

106. This Claim is brought pursuant to §11 of the 1933 Act, 15 U.S.C. §77k against Goldman Sachs & Co. and pursuant to §15 of the 1933 Act, 15 U.S.C. §77o against The Goldman Sachs Group, Inc.

107. The Registration Statement and Prospectus for the 7% Exchangeable Notes were false and misleading, as they omitted to state facts necessary to make the statements made not misleading

and failed to adequately disclose material facts as described in the First Amended Consolidated Complaint in *Newby*, H-01-3624.

108. Non-party Enron is the registrant of the securities sold via the Registration Statements.

109. Pulsifer bought on the first day the security was offered or within a few months thereafter. Some of the offerings at issue were registered pursuant to a shelf registration statement. The date the SEC accepted the registration statement is not necessarily the “effective date” for purposes of needing to plead and prove reliance on the untrue statements and omissions. The registration statements may be deemed “effective” months after they were first filed.<sup>5</sup>

110. On 12/30/99 and afterward, Pulsifer bought units of Enron 7% Exchangeable Notes. The public offering of 7% Exchangeable Notes commenced 8/10/99, the date of the Prospectus. The effective date of the Registration Statement is, at the earliest, 8/10/99, the date of Amendment No. 2 to the Form S-3 registration statement covering the 7% Exchangeable Notes. Enron did not issue an

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<sup>5</sup> 17 C.F.R. §230.158 provides:

(c) For purposes of the last paragraph of section 11(a) only, the effective date of the registration statement is deemed to be the date of the latest to occur of (1) the effective date of the registration statement; (2) the effective date of the last post-effective amendment to the registration statement, next preceding a particular sale by the registrant of registered securities to the public filed for purposes of (i) including any prospectus required by section 10(a)(3) of the Act, (ii) reflecting in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement, or (iii) including any material information with respect to the plan or distribution not previously disclosed in this registration statement or any material change to such information in the registration statement, or (3) the date of filing of the last report of the registrant incorporated by reference into the prospectus, and relied upon in lieu of filing a post-effective amendment for purposes of paragraphs (c)(2) (i) and (ii) of this rule, next preceding a particular sale by the registrant of registered securities to the public.

earning statement covering a period of at least 12 months beginning after the effective date of the Registration Statement between 8/10/99 and 12/30/99.

111. Goldman Sachs & Co. was the lead underwriter on the offering of Enron's 7% Exchangeable Notes as defined in §11(a)(5) of the 1933 Act. The underwriters were obligated to make reasonable and diligent investigations of the statements contained in the Registration Statements and Prospectuses at the time they were filed with the SEC and/or became effective, to ensure that said statements were not misleading and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. The underwriters did not make a reasonable and diligent investigation, nor did they possess reasonable grounds for the belief that the statements contained in the Registration Statements and Prospectuses at the time they became effective were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading.

112. Pulsifer and certain other members of the Class purchased the 7% Exchangeable Enron Notes, traceable to a false and misleading Registration Statement. As a direct and proximate result of defendants' acts and omissions in violation of the 1933 Act, plaintiffs and other class members suffered substantial damage in connection with their purchases of the Enron securities sold in the offerings. By reasons of the conduct herein alleged, Goldman Sachs violated, and/or in violation of §15 of the 1933 Act controlled a person who violated, §11 of the 1933 Act.

113. At the times they purchased Enron securities traceable to the defective Registration Statements, plaintiffs and the members of the Class were without knowledge of the facts concerning the false or misleading statements or omissions alleged herein.

114. Plaintiffs executed a tolling agreement with Goldman Sachs. The tolling agreement states any action against Goldman Sachs is deemed to have commenced on dates no later than 4/4/02. The tolling agreement is on behalf of both Lead Plaintiff and the putative class and tolls the

applicable statutes of limitations (and similar defenses) for any claim asserted in this litigation. The Complaint was filed within the applicable statute of limitations period pursuant to the tolling agreement.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiffs pray for relief and judgment, including preliminary and permanent injunctive relief, as follows:

- A. Determining that this action is a proper class action, and certifying plaintiffs as class representatives under Rule 23 of the Federal Rules of Civil Procedure;
- B. Restitution of investors' monies of which they were defrauded;
- C. Awarding compensatory damages in favor of plaintiffs and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- D. Awarding plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- E. Such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury.

DATED: January 9, 2004

MILBERG WEISS BERSHAD  
HYNES & LERACH LLP  
WILLIAM S. LERACH  
DARREN J. ROBBINS  
HELEN J. HODGES  
BYRON S. GEORGIU  
JAMES I. JACONETTE  
MICHELLE M. CICCARELLI  
JAMES R. HAIL  
ANNE L. BOX  
JOHN A. LOWTHER  
ALEXANDRA S. BERNAY  
MATTHEW P. SIBEN  
ROBERT R. HENSSLER, JR.

---

WILLIAM S. LERACH

401 B Street, Suite 1700  
San Diego, CA 92101  
Telephone: 619/231-1058

MILBERG WEISS BERSHAD  
HYNES & LERACH LLP  
G. PAUL HOWES  
JERRILYN HARDAWAY  
Texas Bar No. 00788770  
Federal I.D. No. 30964  
1111 Bagby, Suite 4850  
Houston, TX 77002  
Telephone: 713/571-0911

MILBERG WEISS BERSHAD  
HYNES & LERACH LLP  
STEVEN G. SCHULMAN  
One Pennsylvania Plaza  
New York, NY 10119  
Telephone: 212/594-5300

**Lead Counsel for Plaintiffs**

SCHWARTZ, JUNELL, GREENBERG  
& OATHOUT, LLP  
ROGER B. GREENBERG  
State Bar No. 08390000  
Federal I.D. No. 3932

---

ROGER B. GREENBERG

Two Houston Center  
909 Fannin, Suite 2000  
Houston, TX 77010  
Telephone: 713/752-0017

HOEFFNER & BILEK, LLP  
THOMAS E. BILEK  
Federal Bar No. 9338  
State Bar No. 02313525  
440 Louisiana, Suite 720  
Houston, TX 77002  
Telephone: 713/227-7720

**Attorneys in Charge**

WOLF POPPER LLP  
ROBERT C. FINKEL  
845 Third Avenue  
New York, NY 10022  
Telephone: 212/759-4600

**Attorneys for Nathaniel Pulsifer**

CUNEO WALDMAN & GILBERT, LLP  
JONATHAN W. CUNEO  
MICHAEL G. LENETT  
317 Massachusetts Avenue, N.E.  
Suite 300  
Washington, D.C. 20002  
Telephone: 202/789-3960

**Washington Counsel**

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing COMPLAINT FOR VIOLATIONS OF THE SECURITIES LAWS document has been served by sending a copy via electronic mail to [serve@ESL3624.com](mailto:serve@ESL3624.com) on this January 9, 2004.

I further certify that a copy of the foregoing COMPLAINT FOR VIOLATIONS OF THE SECURITIES LAWS document has been served via overnight mail on the following parties, who do not accept service by electronic mail on this January 9, 2004.

Carolyn S. Schwartz  
United States Trustee, Region 2  
33 Whitehall Street, 21st Floor  
New York, NY 10004

A handwritten signature in black ink that reads "Mo Maloney". The signature is written in a cursive style with a long horizontal stroke extending to the right.

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Mo Maloney