

Hearing Date: To Be Determined  
Objection Deadline: 5/25/07 at 4 p.m.

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

Chapter 11

ENRON CORP, et al.,

Case No. 01-16034 (AJG)

Jointly Administered

Debtors

ENRON CORP.,

Plaintiff,

Adversary Proceeding

No. 03-92677 (AJG)

v.

**(Oral Argument Requested)**

J.P. MORGAN SECURITIES, INC., et al.,

Defendants

**DEFENDANTS' (I) MOTION TO COMPEL PRODUCTION  
OF DOCUMENTS TO CONTINUE THE DEPOSITIONS OF CERTAIN  
WITNESSES; AND (II) REQUEST FOR EXPEDITED CONSIDERATION**

The Moving Defendants,<sup>1</sup> through their undersigned attorneys,  
respectfully move the Court for entry of an order pursuant to Fed. R. Civ. P. 37 (1) to  
compel Goldman, Sachs & Co. ("Goldman") to produce all documents concerning  
Goldman's involvement, role and/or participation in Project Truman that occurred  
between August 2001 and December 2001; and (2) to continue the depositions of any  
Goldman witnesses, including but not limited to Robert Hurst and Scott Gieselman, who

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<sup>1</sup> Kelly Properties, Inc., Veritas Software Investment Corp., and the UBS Defendants are the Moving Defendants on this Motion.

were involved in Project Truman, for 30 days after the completion of the ordered document production.

In support of their Motion, the Moving Defendants rely on the Memorandum of Law (“Defendants Memorandum”) submitted concurrently herewith.

The Moving Defendants also respectfully request that the Court, if it deems it necessary to do so, schedule a hearing on this matter on an expedited basis. As set forth in greater detail in the attached affidavit of Owen C. Pell and in the Defendants’ Memorandum, Goldman has failed to produce documents relating to Project Truman, which this Court held were relevant in this litigation. The deposition of Scott Gieselman, one of the key Project Truman executives, is scheduled to commence in eight days, and Goldman’s failure to produce documents has jeopardized the Moving Defendants’ ability to conduct this deposition. Given the pressing nature of this matter and the inherent power of the Court to control the docket, the Moving Defendants respectfully request expedited consideration of their Motion to Compel Production of Documents and to Continue the Depositions of Certain Witnesses, and reserve their right to seek a new date for the depositions, including but not limited to the deposition of Scott Gieselman.

Dated: May 22, 2007

Respectfully submitted,

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/s/ Owen C. Pell

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(313) 259-7100

*Attorneys for Defendant Kelly Properties,  
Inc.*

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

Chapter 11

ENRON CORP, et al.,

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ENRON CORP.,

Plaintiff,

Adversary Proceeding

No. 03-92677 (AJG)

v.

**(Oral Argument Requested)**

J.P. MORGAN SECURITIES, INC., et al.,

Defendants

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION  
TO COMPEL PRODUCTION OF DOCUMENTS AND  
TO CONTINUE THE DEPOSITIONS OF CERTAIN WITNESSES**

The Moving Defendants,<sup>1</sup> through their undersigned attorneys, respectfully move the Court for entry of an order pursuant to Fed. R. Civ. P. 37, (1) compelling Goldman, Sachs & Co. ("Goldman") to produce all documents concerning Goldman's involvement, role and/or participation in Project Truman that occurred between August 2001 and December 2001; and (2) continuing the depositions of any Goldman witnesses, including but not limited to Robert Hurst

<sup>1</sup> Kelly Properties, Inc. ("Kelly"), Veritas Software Investment Corp. ("Veritas") and the UBS Defendants ("UBS") are the Moving Defendants on this Motion. As discussed below, specific document requests were made by the various Moving Defendants, with certain of the Moving Defendants then pursuing meet and confer conferences and other correspondence with Goldman regarding this matter.

and Scott Gieselman, who were involved in Project Truman, for 30 days after the completion of the ordered document production.

## **I. NATURE AND STAGE OF THE PROCEEDINGS**

On October 14, 2005, Kelly requested from Goldman all documents concerning whether Goldman acted as agent in connection with the commercial paper transactions, as well as all documents concerning any agreement between Goldman and Enron. On February 5, 2007, Veritas requested from Goldman all documents relating to Project Truman, to all agreements between Goldman and Enron, to Goldman's meetings with Enron, and to information that was provided to Goldman about Enron's financial condition during August – December 2001, as well as all documents relating to Goldman's affirmative defense that, in buying back the commercial paper, it acted as an agent and mere conduit.

Goldman initially refused to produce any documents relating to Project Truman. Kelly and Veritas each met and conferred with Goldman in an attempt to resolve the discovery dispute, but were unsuccessful. Eventually, Goldman produced to Enron a small number of Project Truman-related documents, almost entirely from the week of October 22, 2001.

Kelly, Veritas and UBS sought a pre-motion conference with the Court to try to resolve the Project Truman issue. Enron, which had attempted without success to obtain from Goldman "Any and all documents concerning your involvement, role and/or participation in the 'Project Truman' that occurred between August 2001 and December 2001," joined their request. The pre-motion conference took place on April 19, 2007. On May 1, 2007, the Court issued a decision stating that the discovery sought was relevant, that the limitations that Goldman was attempting to place on the requested discovery were not appropriate, and that "the parties requesting the conference may file a motion to compel any time after May 11th, if the parties are

not able to work through a consensual resolution of the discovery dispute.” See Transcript of Proceedings (May 1, 2007), at p. 4 (attached hereto as Exhibit A).

On May 2, 2007, Kelly sent an email to Goldman, simplifying the various requests made by the parties and asking whether Goldman would comply with the request to produce “Any and all documents concerning your involvement, role and/or participation in the ‘Project Truman’ that occurred between August 2001 and December 2001.” See Email from Deborah Kovsky-Apap to Thomas Moloney (May 2, 2007) (attached hereto as Exhibit B). Goldman’s response was an outright refusal to proceed.

To date, Goldman has failed to comply with the simplified document request. As a result of Goldman’s continued failure to comply with this single, limited document request, the Moving Defendants file the instant motion.

## **II. GOLDMAN’S INVOLVEMENT WITH “PROJECT TRUMAN” AND THE COMMERCIAL PAPER TRANSACTIONS**

In approximately August or September 2001, Enron and Goldman entered into discussions regarding a potential engagement under which Goldman would serve as a consultant to advise Enron on ways to stave off the financial debacle that Enron faced. See Transcript of Testimony of Andrew Fastow, United States v. Skilling et al., H-CR-04-025SS (S.D. Tex. March 8, 2006), at pp. 6735-6743 (attached hereto as Exhibit C). The undertaking was given the code name “Project Truman.” Mr. Fastow testified that Goldman was selected by Enron even though it had not loaned money to Enron – something that generally disqualified a bank from being chosen to provide advisory services to Enron. Mr. Fastow said that in the case of Project Truman, Goldman’s lack of a lending relationship with Enron was actually an advantage because in order to get help, Enron would have to show the advisor “all our problems.” Id. at 6736. Mr. Fastow feared that upon seeing such information, any bank lending money to Enron would

promptly stop lending, which would cause other banks to stop lending and lead to the “shut down” of Enron’s business. Id. at 6737. Mr. Fastow also testified that he and Kenneth Lay, Enron’s CEO, met with Robert Hurst and Scott Gieselman of Goldman, as well as with Goldman’s head of mergers and acquisitions and other Goldman personnel in early September.

Goldman made a preliminary Project Truman presentation to Enron regarding Enron’s vulnerability and Goldman’s proposed strategy for Enron as early as September 6, 2001. GS ENRON-CP14411-14419 (attached hereto as Exhibit D). On September 21, 2001, Enron and Goldman executed a confidentiality agreement under which Enron agreed to furnish Goldman with confidential, proprietary information in connection with Project Truman. EC004007549-004007551 (attached hereto as Exhibit E). Sometime during the fall of 2001, unidentified Goldman employees occupied a large, closed-door conference room at Enron’s headquarters while Enron personnel provided them with documents. See Transcript of Deposition of Gregory Caudell (Sept. 19, 2006) at pp. 186-189 (attached hereto as Exhibit F).

Documents produced by Goldman further indicate that – contrary to Goldman’s assertions – Goldman did in fact receive confidential information from Enron regarding its financial condition. Handwritten notes (presumably from someone involved in Project Truman) discuss the Enron CP situation, asking “can we buy secondary CP in the mkt” while noting “other side of wall. They don’t know what we know.” GS ENRON-CP14472 (attached hereto as Exhibit G). Other notes (also presumably from someone involved in Project Truman) reference Enron’s CP and also refer to Mr. Hurst in a discussion of Enron’s liquidity. GS ENRON-CP14460 (attached hereto as Exhibit H).

In September and October 2001, the Moving Defendants purchased Enron commercial paper (“CP”) from Goldman. By that time, Goldman had already been advising

Enron on Project Truman and was aware of Enron's true financial condition. Indeed, the documents produced by Goldman to date indicate that the Project Truman team discussed with and/or advised Enron about whether Enron should draw its revolvers, whether to draw the entire revolvers or part of them, whether Goldman could purchase from of Enron's CP to ease investor pressure and how to preserve Enron's access to the CP market.

On October 24, 2001, it appears that Goldman's CP desk consulted with "IBD" (identified as Goldman's investment banking division) regarding Enron's CP. GS ENRON-CP08030 (attached hereto as Exhibit I). On October 25, 2001, Enron drew down on the credit lines that backed its CP. On the morning of October 26, 2001, Goldman immediately dumped its *own* Enron CP – the Enron CP it held in inventory – at a lower priced than was ultimately offered.

In the afternoon of October 26, 2001, Mr. Hurst, who was the vice-chairman of Goldman and was involved in Project Truman, met with Kenneth Lay. Contemporaneous tape recordings indicate that the CP prepayments were causing a major "relationship" crisis between Enron and Goldman, and that Goldman's role in the CP prepayments would be discussed in the meeting between Mr. Hurst and Mr. Lay. Deposition Exhibit 30,482 at p. 1 (unofficial transcription) (attached hereto as Exhibit J). Enron's Gary Hickerson, who was involved with conversations with the CP dealers on October 26, 2001, described the situation to Patricia Bonan, the head of JP Morgan's Short-Term Fixed Income desk, as follows:

Gary: Hey. That was my treasurer, I mean, CFO calling. He's freaking. And he's gonna be... He's got the... vice chairman of Goldman Sachs in Ken Lay's office right now. And they're not going to have a pleasant talk about this CP problem. Just to let you know where it's going.

Id. About an hour later, Mr. Hickerson reported in another taped conversation with Ms. Bonan that "Goldman is doing it as agent." Deposition Exhibit 30,487, at p. 1 (unofficial transcription)



(attached hereto as Exhibit K). The reasonable inference is that Mr. Hurst – who, through his involvement in Project Truman, appears to have been aware of Enron’s true financial condition – discussed the concept, terms and conditions of the alleged agency agreement with Enron’s CFO and/or Mr. Lay on the day that the CP prepayments commenced.

### **III. RELEVANCE OF PROJECT TRUMAN TO THE CP TRANSACTIONS**

First, and most importantly, this Court has already determined that Project Truman is not only relevant to the CP litigation, but is relevant beyond the time frame previously agreed to by Goldman – that is, the week of October 22, 2001. See Exhibit A at p. 4.

In fact, the full scope of the Project Truman documents – which encompasses, at most, the four months from August 2001 through the petition date – is relevant. In the preference litigation, Goldman has claimed that it acted solely as an agent and conduit in the CP transactions. This could affect Enron’s claims against Goldman under § 550 of the Bankruptcy Code, as well as Goldman’s rights vis-à-vis other preference action defendants. The complete picture of the Enron CP buybacks cannot be understood without knowing the extent of Goldman’s involvement in Enron’s decision-making process and the behind-the-scenes role played by Goldman as a participant in Project Truman. Certainly, the Moving Defendants are entitled to understand the facts and circumstances leading up to Enron’s decision to draw its revolvers and buy back its CP, and Goldman’s alleged agency agreement with Enron.

Furthermore, the Project Truman documents are relevant to whether Goldman benefited from the CP prepayments. This Court has already acknowledged that discovery is appropriate about whether a defendant is liable as a beneficiary of the transfers at issue. In re Enron Corp., 2005 WL 3873891, at \*2 (Bankr. S.D.N.Y. June 29, 2005) (attached hereto as Exhibit L). If Enron had defaulted on its CP, Goldman faced potential liability from its

customers, such as the Moving Defendants. See, e.g., Franklin Savings Bank v. Levy, 406 F. Supp. 40 (S.D.N.Y. 1975) (finding Goldman liable to its customers for the value of defaulted Penn Central commercial paper). Indeed, a policy manual produced by Goldman mentions the Penn Central default, a subsequent settlement between Goldman and the SEC, and the resulting “affirmative obligations” that were placed upon Goldman to “investigate the creditworthiness of an issuer of commercial paper.” GS ENRON-CP00269-70 (attached hereto as Exhibit M). Thus, what Goldman knew about Enron’s financial condition when it sold Enron CP to the Moving Defendants is as relevant and important as what Goldman knew at the time of the buybacks.

Even if, as Goldman claims, it acted merely as a conduit for funds flowing from Enron to the Moving Defendants, it still may be liable to return those funds under § 550. In Gredd v. Bear, Stearns Secs. Corp., 359 B.R. 510 (Bankr. S.D.N.Y. 2007), the Court found Bear Stearns liable to return, to the bankruptcy estate of a hedge fund, over \$125 million that had flowed through the hedge fund’s margin account with Bear Stearns. The Court determined that Bear Stearns benefited from those monies because they were used to cover open short positions for which Bear Stearns would otherwise have been liable. Id. at 521. Similarly, the monies that flowed through Goldman’s accounts – if that is indeed what happened – were used to retired commercial paper for which Goldman might otherwise have been liable. In order to determine whether Goldman would have had such liability, it is critical to discover *what* Goldman knew about Enron’s creditworthiness and *when* Goldman knew it – facts that can only be ascertained from the full record of the Project Truman documents.

#### IV. CONCLUSION

WHEREFORE, the Moving Defendants request that this Court enter an order (1) compelling Goldman to produce all documents concerning Goldman's involvement, role and/or participation in Project Truman that occurred between August 2001 and December 2001; (2) continuing the depositions of any Goldman witnesses, including but not limited to Robert Hurst and Scott Gieselman, who were involved in Project Truman, for 30 days after the completion of the ordered document production; and (3) granting such other relief as the Court deems just.

Dated: May 22, 2007

Respectfully submitted,

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# **EXHIBIT A**

1 UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

2 -----x  
In re

3 ENRON CREDITORS RECOVERY CORP.,  
4 et al,

5 Reorganized Debtors.  
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Case Nos.  
01-16034(AJG)  
(03-92677)(03-92682)

New York, New York  
May 1, 2007  
2:05 p.m.

6  
7 DIGITALLY RECORDED PROCEEDINGS  
(Proceedings -- Entire Day)

8 2:00 (03-92677) Enron Corp. v. J.P. Morgan Securities Inc., et  
al.: DECISION TO BE RENDERED RE: Discovery Dispute.

9 (03-92682) Enron Corp. v. Mass Mutual Life Insurance Co., et  
10 al.: DECISION TO BE RENDERED RE: Discovery Dispute.

11  
12 B E F O R E:

13 THE HONORABLE ARTHUR J. GONZALEZ  
United States Bankruptcy Judge

14 A P P E A R A N C E S:

15 VENABLE LLP

16 Special Litigation Counsel for Reorganized Debtors  
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Baltimore, Maryland 21201

17 BY: ROBERT WILKINS, ESQ. (via telephone)

18 CLEARY GOTTlieb STEEN & HAMILTON LLP  
Attorneys for Goldman Sachs & Co.

19 One Liberty Plaza  
New York, New York 10006

20 BY: LINDSEE GRANFIELD, ESQ. (via telephone)

21 (appearances continued on page 2)

22  
23 DEBORAH HUNTSMAN, Court Reporter  
(212) 608-9053 (718) 774-2551 (917) 723-9898  
24 Proceedings Recorded by Electronic Sound Recording,  
25 Transcript Produced by Court Reporter

1 A P P E A R A N C E S: (continued)

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5 Detroit, Michigan 48243

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7 BIALSON, BERGEN & SCHWAB  
8 Attorneys for Veritas Software Investment Corp.  
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10 Palo Alto, California 94306

11 BY: KENNETH T. LAW, ESQ. (via telephone)

12 WHITE & CASE LLP  
13 Attorneys for UBS, et al.  
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15 New York, New York 10036

16 BY: OWEN PELL, ESQ. (via telephone)

17 PEITZMAN WEG KEMPINSKY LLP  
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20 Los Angeles, California 90067

21 BY: SHIVA S. DELRAHIM, ESQ. (via telephone)

22

23

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25

1 JUDGE GONZALEZ: This is Judge Gonzalez.

2 The parties I understand are on the phone. The  
3 parties have requested the conference, as well as Goldman. I  
4 just want acknowledgment that they are on the phone before I  
5 go any further.

6 THE OPERATOR: Your Honor, this is the operator. We  
7 do have attorneys on the phone.

8 (Pause.)

9 JUDGE GONZALEZ: Hello?

10 MS. DELRAHIM: I am on the phone, Your Honor.

11 JUDGE GONZALEZ: Would you identify yourself, please.

12 MS. DELRAHIM: Shiva Delrahim of Peitzman Weg &  
13 Kempinsky.

14 MS. KOVSKY-APA: This is Deborah Kovsky-Apa of Pepper  
15 Hamilton on behalf of Kelly Properties.

16 MR. PELL: Owen Pell of White & Case for UBS.

17 MR. LAW: Good morning, Your Honor. Kenneth Law of  
18 Bialson, Bergen & Schwab on behalf of Veritas Investment Corp.

19 MR. WILKINS: Good afternoon, Your Honor. Robert  
20 Wilkins from Venable on behalf of Enron.

21 MS. GRANFIELD: Your Honor, Lindsee Granfield of  
22 Cleary Gottlieb Steen & Hamilton LLP on behalf of Goldman  
23 Sachs & Co.

24 JUDGE GONZALEZ: All right. Thank you.

25 Based upon the current complaint as filed, the prior

1 rulings of the Court in Enron Corp., and the Westlaw citation  
2 that was provided by Enron in their letter, the Truman Project  
3 appears to be relevant beyond the time frame that was  
4 consented to by Goldman. In light of this ruling, what the  
5 Court will do is the Court will direct that the parties  
6 requesting the conference may file a motion to compel any time  
7 after May 11th, if the parties are not able to work through a  
8 consensual resolution of the discovery dispute.

9 So the ruling with respect to the informal conference,  
10 the moving parties for that conference can file a motion to  
11 compel any time after May 11th, if the parties have not  
12 otherwise resolved the outstanding issue.

13 Regarding the ripeness, in light of Enron's joinder  
14 with respect to the request for the conference, I think any  
15 issue of ripeness is put to rest by that joinder.

16 That concludes the Court's ruling with respect to the  
17 request for the informal conference and the ruling thereafter.  
18 Thank you.

19 MR. WILKINS: Thank you, Your Honor.

20 MS. KOVSKY-APA: Thank you, Your Honor.

21 (Time noted: 2:09 p.m.)  
22  
23  
24  
25



## C E R T I F I C A T E

STATE OF NEW YORK       )  
                                      : SS:  
COUNTY OF NEW YORK     )

I, DEBORAH HUNTSMAN, a Shorthand Reporter and  
Notary Public within and for the State of New York, do hereby  
certify:

That the within is a true and accurate  
transcript from the official electronic sound recording of the  
proceedings held on the 1st day of May, 2007.

I further certify that I am not related by blood  
or marriage to any of the parties and that I am not interested  
in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand  
this 2nd day of May, 2007.

DEBORAH HUNTSMAN  
DEBORAH HUNTSMAN

PROOFREAD BY HALLIE CANTOR

0	9	CANTOR [1] - 5:20 Cascade [1] - 2:13 Case [2] - 1:2, 3:16 CASE [1] - 2:9 Center [1] - 2:3 certify [2] - 5:7, 5:11 citation [1] - 4:1 CLEARY [1] - 1:18 Cleary [1] - 3:22 Co [3] - 1:9, 1:18, 3:23 compel [2] - 4:6, 4:11 complaint [1] - 3:25 concludes [1] - 4:16 conference [6] - 3:3, 4:6, 4:9, 4:10, 4:14, 4:17 consensual [1] - 4:8 consented [1] - 4:4 continued [2] - 1:21, 2:1 CORP [1] - 1:3 Corp [5] - 1:7, 1:9, 2:6, 3:18, 4:1 Counsel [1] - 1:15 COUNTY [1] - 5:3 COURT [1] - 1:1 Court [5] - 1:23, 1:24, 4:1, 4:5 Court's [1] - 4:16 CREDITORS [1] - 1:3 current [1] - 3:25	E	I
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718 [1] - 1:23 723-9898 [1] - 1:23 774-2551 [1] - 1:23				

<b>M</b>	<b>Pepper</b> <sup>[1]</sup> - 3:14 <b>phone</b> <sup>[4]</sup> - 3:2, 3:4, 3:7, 3:10 <b>Plaza</b> <sup>[2]</sup> - 1:15, 1:19 <b>proceedings</b> <sup>[1]</sup> - 5:10 <b>PROCEEDINGS</b> <sup>[1]</sup> - 1:6 <b>Proceedings</b> <sup>[2]</sup> - 1:7, 1:24 <b>Produced</b> <sup>[1]</sup> - 1:24 <b>Project</b> <sup>[1]</sup> - 4:2 <b>PROOFREAD</b> <sup>[1]</sup> - 5:20 <b>Properties</b> <sup>[1]</sup> - 3:15 <b>Property</b> <sup>[1]</sup> - 2:2 <b>provided</b> <sup>[1]</sup> - 4:2 <b>Public</b> <sup>[1]</sup> - 5:6 <b>put</b> <sup>[1]</sup> - 4:15	<b>S</b>	<b>W</b>
<b>marriage</b> <sup>[1]</sup> - 5:12 <b>Maryland</b> <sup>[1]</sup> - 1:16 <b>Mass</b> <sup>[1]</sup> - 1:9 <b>matter</b> <sup>[1]</sup> - 5:13 <b>Michigan</b> <sup>[1]</sup> - 2:3 <b>Monica</b> <sup>[1]</sup> - 2:14 <b>Morgan</b> <sup>[1]</sup> - 1:7 <b>morning</b> <sup>[1]</sup> - 3:17 <b>motion</b> <sup>[2]</sup> - 4:6, 4:10 <b>moving</b> <sup>[1]</sup> - 4:10 <b>MR</b> <sup>[4]</sup> - 3:16, 3:17, 3:19, 4:19 <b>MS</b> <sup>[5]</sup> - 3:10, 3:12, 3:14, 3:21, 4:20 <b>Mutual</b> <sup>[1]</sup> - 1:9	<b>R</b>	<b>Sachs</b> <sup>[2]</sup> - 1:18, 3:23 <b>Santa</b> <sup>[1]</sup> - 2:14 <b>Schwab</b> <sup>[1]</sup> - 3:18 <b>SCHWAB</b> <sup>[1]</sup> - 2:6 <b>Securities</b> <sup>[1]</sup> - 1:7 <b>set</b> <sup>[1]</sup> - 5:14 <b>SHIVA</b> <sup>[1]</sup> - 2:15 <b>Shiva</b> <sup>[1]</sup> - 3:12 <b>Shorthand</b> <sup>[1]</sup> - 5:5 <b>Software</b> <sup>[1]</sup> - 2:6 <b>Sound</b> <sup>[1]</sup> - 1:24 <b>sound</b> <sup>[1]</sup> - 5:9 <b>SOUTHERN</b> <sup>[1]</sup> - 1:1 <b>Special</b> <sup>[1]</sup> - 1:15 <b>SS</b> <sup>[1]</sup> - 5:2 <b>STATE</b> <sup>[1]</sup> - 5:2 <b>State</b> <sup>[1]</sup> - 5:6 <b>STATES</b> <sup>[1]</sup> - 1:1 <b>States</b> <sup>[1]</sup> - 1:13 <b>Steen</b> <sup>[1]</sup> - 3:22 <b>STEEN</b> <sup>[1]</sup> - 1:18 <b>Suite</b> <sup>[4]</sup> - 1:15, 2:3, 2:7, 2:14	<b>Y</b>
<b>N</b>	<b>re</b> <sup>[1]</sup> - 1:2 <b>RE</b> <sup>[2]</sup> - 1:8, 1:9 <b>Real</b> <sup>[1]</sup> - 2:7 <b>Recorded</b> <sup>[1]</sup> - 1:24 <b>RECORDED</b> <sup>[1]</sup> - 1:6 <b>recording</b> <sup>[1]</sup> - 5:9 <b>Recording</b> <sup>[1]</sup> - 1:24 <b>RECOVERY</b> <sup>[1]</sup> - 1:3 <b>Regarding</b> <sup>[1]</sup> - 4:13 <b>related</b> <sup>[1]</sup> - 5:11 <b>relevant</b> <sup>[1]</sup> - 4:3 <b>Renaissance</b> <sup>[1]</sup> - 2:3 <b>RENDERED</b> <sup>[2]</sup> - 1:8, 1:9 <b>Reorganized</b> <sup>[2]</sup> - 1:5, 1:15 <b>Reporter</b> <sup>[3]</sup> - 1:23, 1:24, 5:5 <b>request</b> <sup>[2]</sup> - 4:14, 4:17 <b>requested</b> <sup>[1]</sup> - 3:3 <b>requesting</b> <sup>[1]</sup> - 4:6 <b>resolution</b> <sup>[1]</sup> - 4:8 <b>resolved</b> <sup>[1]</sup> - 4:12 <b>respect</b> <sup>[3]</sup> - 4:9, 4:14, 4:16 <b>rest</b> <sup>[1]</sup> - 4:15 <b>ripeness</b> <sup>[2]</sup> - 4:13, 4:15 <b>ROBERT</b> <sup>[1]</sup> - 1:17 <b>Robert</b> <sup>[1]</sup> - 3:19 <b>ruling</b> <sup>[4]</sup> - 4:4, 4:9, 4:16, 4:17 <b>rulings</b> <sup>[1]</sup> - 4:1	<b>T</b>	<b>WEG</b> <sup>[1]</sup> - 2:13 <b>Weg</b> <sup>[1]</sup> - 3:12 <b>Westlaw</b> <sup>[1]</sup> - 4:1 <b>WHEREOF</b> <sup>[1]</sup> - 5:14 <b>White</b> <sup>[1]</sup> - 3:16 <b>WHITE</b> <sup>[1]</sup> - 2:9 <b>WILKINS</b> <sup>[3]</sup> - 1:17, 3:19, 4:19 <b>Wilkins</b> <sup>[1]</sup> - 3:20 <b>WITNESS</b> <sup>[1]</sup> - 5:14
<b>O</b>	<b>NEW</b> <sup>[3]</sup> - 1:1, 5:2, 5:3 <b>New</b> <sup>[7]</sup> - 1:4, 1:19, 2:11, 5:6 <b>Nos</b> <sup>[1]</sup> - 1:2 <b>Notary</b> <sup>[1]</sup> - 5:6 <b>noted</b> <sup>[1]</sup> - 4:21	<b>telephone</b> <sup>[6]</sup> - 1:17, 1:20, 2:4, 2:8, 2:12, 2:15 <b>THE</b> <sup>[2]</sup> - 1:12, 3:6 <b>thereafter</b> <sup>[1]</sup> - 4:17 <b>TO</b> <sup>[2]</sup> - 1:8, 1:9 <b>Transcript</b> <sup>[1]</sup> - 1:24 <b>transcript</b> <sup>[1]</sup> - 5:9 <b>true</b> <sup>[1]</sup> - 5:8 <b>Truman</b> <sup>[1]</sup> - 4:2 <b>Two</b> <sup>[1]</sup> - 1:15	<b>YORK</b> <sup>[3]</sup> - 1:1, 5:2, 5:3 <b>York</b> <sup>[7]</sup> - 1:4, 1:19, 2:11, 5:6 <b>yourself</b> <sup>[1]</sup> - 3:11
<b>P</b>	<b>p.m</b> <sup>[2]</sup> - 1:5, 4:21 <b>page</b> <sup>[1]</sup> - 1:21 <b>Palo</b> <sup>[1]</sup> - 2:7 <b>parties</b> <sup>[7]</sup> - 3:2, 3:3, 4:5, 4:7, 4:10, 4:11, 5:12 <b>Pause</b> <sup>[1]</sup> - 3:8 <b>PEITZMAN</b> <sup>[1]</sup> - 2:13 <b>Peitzman</b> <sup>[1]</sup> - 3:12 <b>Pell</b> <sup>[1]</sup> - 3:16 <b>PELL</b> <sup>[2]</sup> - 2:12, 3:16 <b>PEPPER</b> <sup>[1]</sup> - 2:2	<b>U</b>	<b>UBS</b> <sup>[2]</sup> - 2:10, 3:16 <b>UNITED</b> <sup>[1]</sup> - 1:1 <b>United</b> <sup>[1]</sup> - 1:13
		<b>V</b>	<b>Venable</b> <sup>[1]</sup> - 3:20 <b>VENABLE</b> <sup>[1]</sup> - 1:14 <b>Veritas</b> <sup>[2]</sup> - 2:6, 3:18 <b>via</b> <sup>[6]</sup> - 1:17, 1:20, 2:4, 2:8, 2:12, 2:15

# **EXHIBIT B**

## Kovsky-Apap, Deborah

---

**From:** Kovsky-Apap, Deborah  
**Sent:** Wednesday, May 02, 2007 2:25 PM  
**To:** tmoloney@cgsh.com  
**Cc:** 'lkempinsky@pwklp.com'; 'Shiva S. Delrahim'; 'ken@bbslaw.com'; 'Michael Klingler'; 'Pell, Owen'; jchung@whitecase.com; 'ehollander@whitecase.com'; Murphy, David  
**Subject:** Project Truman document requests

Dear Mr. Moloney:

In light of the Court's ruling yesterday that the Project Truman documents are not only relevant, but relevant beyond the time period to which Goldman Sachs had limited production, we hope that this matter can be resolved without further Court intervention. As you are aware, Enron has requested that Goldman produce "Any and all documents concerning your involvement, role and/or participation in the 'Project Truman' that occurred between August 2001 and December 2001." Veritas has made similar requests regarding the Project Truman documents. Please let me know by the end of the week whether Goldman will comply with these requests, or if we need to begin preparing our motion to compel production and to continue all Goldman depositions 30 days after completion of the requested production.

I look forward to your response.

Sincerely,

Deborah Kovsky-Apap  
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# **EXHIBIT C**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA	*	H-CR-04-025SS
	*	Houston, Texas
VS.	*	
	*	March 8, 2006
JEFFREY K. SKILLING AND	*	8:29 a.m.
KENNETH L. LAY		

JURY TRIAL

VOLUME 22

BEFORE THE HONORABLE SIM LAKE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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25



1                   So we needed some dramatic solution, and  
2                   we needed a bank to help us figure it out.

08:57:48   3                   Q.   All right.  Before I ask you about that, you  
4                   mentioned selling of the pipelines.

5                   Was that of significance, a suggestion to  
6                   sell the pipelines?

7                   A.   Well, I was a little nervous saying that, but --

08:58:00   8                   Q.   Why is that?

9                   A.   Well, the pipelines were really the beginning of  
10                  Enron.  Enron started off as a pipeline company that was  
11                  put together by Mr. Lay.  It was sort of -- in my mind, it  
12                  was a little bit taboo to talk about getting rid of the  
13                  pipelines because they were Mr. Lay's baby.

08:58:19   14                  Q.   Did you mention them nonetheless?

15                  A.   Yes.

16                  Q.   And what was his reaction?

17                  A.   No -- no reaction one way or the other.

08:58:31   18                  Q.   Okay.  And so, then you said -- you mentioned some  
19                  sort of need to go to a bank or investment bank?

20                  A.   That's right.

21                  Q.   And what did you talk about on that point?

22                  A.   Mr. Lay asked me what bank I recommended.

23                  Q.   And what did you say?

08:58:41   24                  A.   I say -- I recommended Goldman & Sachs.

25                  Q.   And why did you mention that one?

08:58:55      1      A.    Well, this was -- it was -- I explained it was a  
2      bit -- it was a bit odd to recommend Goldman & Sachs,  
3      because we had a policy within the finance group, and we  
4      generally followed it at Enron, which is that we tried to  
5      give our investment banking business to the banks that  
6      actually lent us money, because we always had to borrow  
7      money at Enron. And Goldman & Sachs had made a decision  
8      not to lend Enron money.

08:59:11      9                      So we tended to avoid giving them any of  
10      the investment banking business where they could earn  
11      fees. We saved that for the banks that were, you know,  
12      helping us out, in our view, by giving us money.

08:59:28      13                     In this case, I said, "Ironically, Goldman  
14      & Sachs is the best choice for two reasons." I said, "If  
15      we're going to get a bank to help us solve all these  
16      problems -- you know, solve this problem, we have to show  
17      them all our problems. We had to" -- I kept using this  
18      phrase, "We have to open up the kimono."

08:59:39      19      Q.    What did you mean by that?

20      A.    Well, we have to show them -- you know, we have to  
21      show them the skeletons in the closet. We have to show  
22      them what our assets are really worth. We have to show  
23      them how we accounted for things at EES. We have to show  
08:59:51      24      them what the Raptors were. We have to show them our real  
25      expectations on Dabhol and New Power Company, et cetera,

1 et cetera, because that's the only way you could truly  
2 value the company, to work out a merger or a split-up or  
3 something.

09:00:08

4 I said, "Given the fact that Goldman &  
5 Sachs doesn't lend us money actually works in their favor  
6 this time because my fear was that, if any bank actually  
7 saw all of these problems and revalued the company, that  
8 that bank would immediately stop lending to us, the other  
9 banks would see that they stopped lending to us, and it  
10 would shut down the business."

09:00:28

11 So we needed to pick a bank that wouldn't  
12 pull their credit lines from us, because they didn't have  
13 any. I also said that I thought Gold & Sachs happened --  
14 happened to have the high-level contacts across the  
15 industry -- across most industries, and that this type of  
16 merger or sale would have to be done at the  
17 chairman-to-chairman level.

09:00:42

18 Q. Okay. And so was there an agreement to try to set up  
19 such a meeting?

09:00:52

20 A. Yes.

21 Q. And was there a meeting then had afterwards?

22 A. Yes. Two or three weeks later, I think we had a  
23 meeting.

09:01:06

24 Q. And what happened at that -- was that the first  
25 meeting, then, after the suggestion, with Goldman & Sachs

1 representatives?

09:01:21 2 A. That was the first -- that was the first high-level  
3 meeting. I may have -- I may have talked with the account  
4 officer in order to get the meeting set up and things like  
5 that. But, yes, that was the first sit-down meeting.

6 Q. All right. And who attended that meeting, to your  
7 recollection?

09:01:39 8 A. Mr. Lay and myself from Enron, the vice-chairman of  
9 Goldman & Sachs, which I believe is Bob Hurst -- pardon  
10 me -- the Goldman & Sachs account officer, Scott  
11 Gleselman. I believe there were a number of other people  
12 from Goldman & Sachs there, including, I think, their head  
13 of mergers and acquisitions.

09:02:00 14 Q. Now, did Goldman & Sachs show up with any kind of  
15 presentation or anything like that?

16 A. Yes.

17 Q. And what do you remember about that?

09:02:10 18 A. It was sort of the standard investment banker  
19 presentation. They had an idea why we wanted to get  
20 together. They had seen our stock price falling. They  
21 didn't -- I don't think they quite had any idea of the  
22 magnitude of the issues. I think -- but they based  
23 their -- typical banker investment, "Here are some of our  
09:02:29 24 smart ideas of how you can get your stock price back up."

25 Q. Okay. And did it include -- you said something about

1 the stock price had fallen.

2 Was there something with respect to that  
3 possibility of takeover attempts?

09:02:39 4 A. Yes.

5 Q. And was this information in their presentation based  
6 on publicly available items, or had there already been  
7 some of this opening of the kimono at this point?

8 A. I don't think we had really opened the kimono, if you  
09:02:58 9 will, started telling about the problems. We -- I think I  
10 certainly gave them some significant clues in the luncheon  
11 that we had that there were -- that there were significant  
12 issues, but I think it was based almost exclusively on  
13 publicly available information.

09:03:17 14 Q. Okay. And after that meeting -- which was in early  
15 September; is that right?

16 A. I believe so.

17 Q. -- what happened next in terms of trying to get them  
18 engaged and get the process going?

09:03:31 19 A. Well, really two things were worked on: They were  
20 working on a small project to make a presentation to the  
21 Enron Corp board about poison pills and potential defenses  
22 if someone tried to take us over. That was a fairly  
23 standard approach when your stock price had dropped.

09:03:52 24 But more importantly, the -- we began to  
25 work with the Goldman Sachs account officer on putting

1 together an engagement letter to work on this massive  
2 restructuring project.

09:04:05 3 Q. Was that engagement letter, to your recollection,  
4 ever signed?

5 A. I don't think we got it signed by the time I had left  
6 Enron.

7 Q. And by the way, what was the -- why was this  
8 engagement letter needed?

09:04:18 9 A. Well, engagement letters are fairly standard. It  
10 lays out -- it's one way for the investment bank to make  
11 sure they know what they're going to get paid for the  
12 transaction. But in this case, from our standpoint, the  
13 confidentiality provisions were very important.

09:04:34 14 Q. All right. Do you recollect a later meeting where  
15 Goldman & Sachs, in fact, had compiled some analysis on  
16 some of these restructuring alternatives, to include some  
17 pipelines sale analysis?

18 A. Yes.

09:04:48 19 Q. And was that on about October 17th?

20 A. Yes.

21 MR. HUESTON: Let's go to Exhibit 7636, which  
22 we move in as a calendar entry. Post that, please.

23 THE COURT: All right. It's admitted.

09:04:58 24 (Government's Exhibit Number 7636 was admitted)

25 BY MR. HUESTON:

1 Q. And then while that's going up, Mr. Fastow, if you  
2 could turn to Exhibit 3991, which is probably in the next  
3 notebook.

09:05:11 4 A. Just a moment.

5 Q. 3991. All right.

6 First, Mr. Fastow, if I could direct your  
7 attention to the calendar. This is dated October 17. And  
8 there are names here: Scott Gleselman, Mitch Taylor,  
9 Phillip Lord.

09:05:45

10 Who are those folks?

11 A. Scott Gleselman was the account officer from Goldman  
12 Sachs that covered Enron, and the following next to his  
13 name, indicates that he probably brought a group of people  
14 along with him.

09:05:59

15 Mitch Taylor and Phillip Lord were the two  
16 people at Enron -- Mitch reported to me -- Mr. Taylor  
17 reported to me; Mr. Lord reported to Mr. Causey -- would  
18 be charged with pulling together all of the information  
19 and trying to begin building a spreadsheet, basically a  
20 financial analysis of how we should actually really value  
21 the company. And this spreadsheet would be the basis to  
22 use to figure out how to best restructure the company.

09:06:18

23 Q. All right. And did they bring presentation materials  
24 to the meeting, Mr. Fastow?

09:06:34

25 A. Yes, they did.

1 Q. And with reference to Exhibit 3991, what's that?

2 A. This is the presentation that I brought -- that they  
3 brought.

09:06:46 4 MR. HUESTON: Okay. We'd move that into  
5 evidence at this time, Your Honor.

6 THE COURT: It is admitted.

7 (Government's Exhibit Number 3991 was admitted)

8 MR. HUESTON: And permission to publish,  
09:06:51 9 please, briefly. Show that.

10 BY MR. HUESTON:

11 Q. Is this the presentation, Mr. Fastow?

12 A. I'm sorry?

13 Q. Posted, this is the presentation?

09:06:59 14 A. Yes.

15 Q. And just turn, for example, to Page 26. Included  
16 some data before the pipeline evaluations?

17 A. Yes.

18 Q. And is that pursuant to, or borne of, your meetings  
09:07:18 19 early on with Mr. Lay on these topics?

20 A. Yes. I had mentioned that at a lunch, you know, when  
21 we were at that lunch with the vice-chairman of Goldman  
22 Sachs, the things I mentioned -- when I mentioned earlier,  
23 you know, I gave some, what I thought were very

09:07:36 24 significant clues that this was a serious situation.

25 I mentioned to him that, you know, nothing



09:07:55 1 is taboo, you know, selling the pipelines, breaking apart  
2 the -- you know, the company, giving up control of the  
3 company to another acquirer. These were, I thought,  
4 fairly significant statements to make in front of  
5 investment bankers about what you were willing to do.  
6 Q. Okay. Move to a different topic.  
7 MR. HUESTON: But if I could have Government  
8 Demo 19, please.  
09:08:09 9 BY MR. HUESTON:  
10 Q. And this is the third quarter, August through  
11 October.  
12 MR. HUESTON: Can you start the first build.  
13 BY MR. HUESTON:  
09:08:20 14 Q. Just by August 15th, then, Mr. Fastow, we discussed  
15 these things, Raptor issues? Yes?  
16 A. Yes.  
17 Q. The worsening international portfolio?  
18 A. Yes.  
09:08:31 19 Q. Write-down of goodwill impairments, that was  
20 discussed with Mr. Lay?  
21 A. Yes.  
22 Q. And you described this meeting with Mr. Lay to  
23 discuss those items listed below: 5 to \$7 billion of  
09:08:42 24 embedded losses; is that right?  
25 A. Yes.

# **EXHIBIT D**



## Discussion Materials for Enron

Goldman, Sachs & Co.  
06-Sep-2001

GOI/SRC 0172

Confidential

GS ENRON-CP14411



---

## Rating Agency Strategy

---

### ■ Concerns

- Strain on liquidity and financial flexibility
- Uncertainty around potential for increased financial leverage
- Certainty and impact of off-balance sheet obligations
- Ability to convert non-strategic assets into cash
- Ability of wholesale business to support total debt

### ■ Key to stabilizing the credit rating

- Management's steadfast commitment to Enron credit quality
- Significantly improve both liquidity and cash management procedures
- Continued ability to instill confidence in risk management practices
- Demonstration of sustained trading volumes and general counterpart acceptance
- Detailed deleveraging plan, with a specific timeline for financial targets

### ■ Key target ratios for investment grade (BBB+ to BBB-)

- Total debt / total cap      46% - 53.5%
- FFO interest coverage      4.5x - 3.1x
- EBIT interest coverage      4.0x - 2.6x
- FFO / average total debt    31% - 22%



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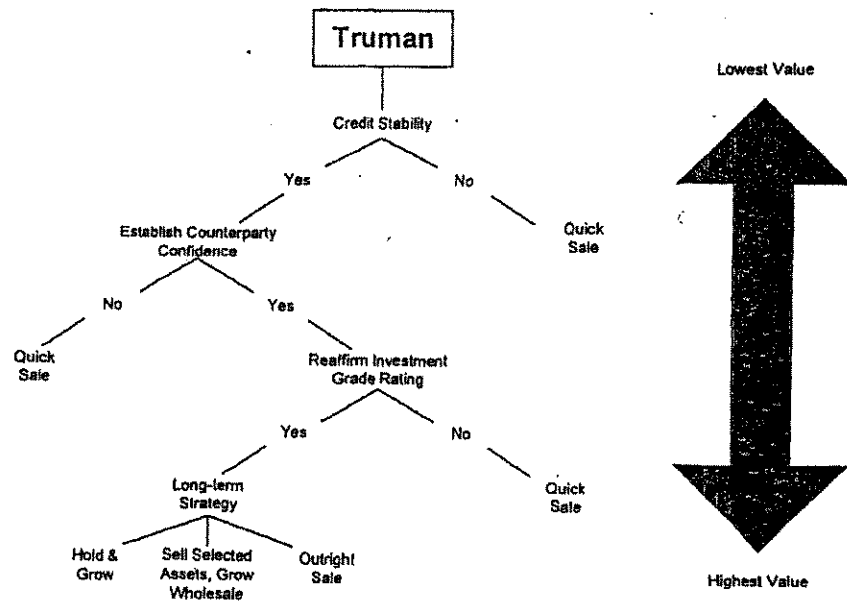
## What Message Do You Deliver to the Street

---

- Update:
  - CFO change
  - Business review and update
  - Expanded disclosure posture
- Liquidity:
  - Current standing
  - Rating agency discussions
  - CP lines; back-up credit
  - Bank (new) facility
- Balance Sheet:
  - Off balance sheet disclosure (timing is key)
  - Offsetting asset contributions
- Future Restructuring:
  - Ongoing asset sales
  - Cost reduction and cash management activities
  - Strategic alternatives



## Next Steps



Lowest Value

Highest Value

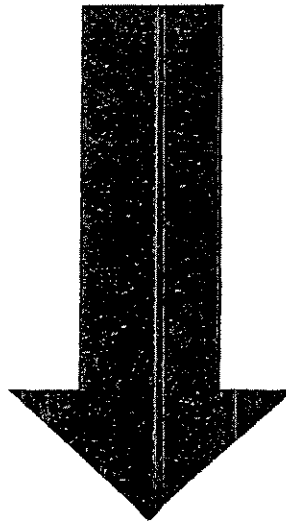


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## Immediate Next Steps

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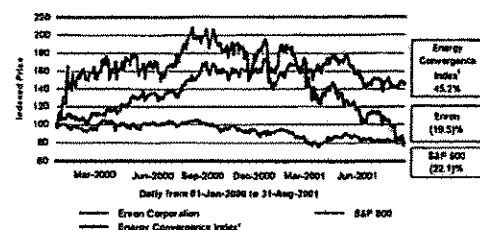
- Stabilize credit
- Solidify trading business
- Prepare rating agency presentation (2 weeks)
- Clarify due diligence items
  - SEC investigation
  - Off balance sheet items
  - Wholesale free cash flow
  - Wholesale Net Book Value
  - Symmetry of trading book
- Develop detailed action plan





# Enron Appears to be Significantly Undervalued

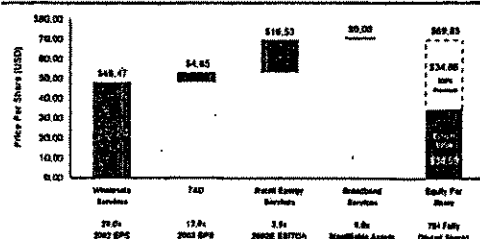
## Relative Stock Price Performance



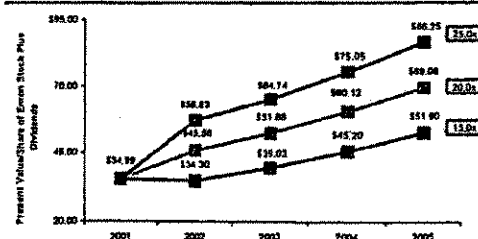
## Summary Research Analyst Estimates

Broker Estimates	Recommendation	2002E EPS	Target	% Premium to Current <sup>2</sup>
Goldman Sachs	Strong Buy	\$2.25	\$68.00	94%
A. G. Edwards	Buy	2.10	55.00	57
Bank of America	Strong Buy	2.16	60.00	71
Barclays	Buy	2.15	70.75	128
CRIC Oppenheimer	Buy	2.15	65.00	88
Credit Suisse First Boston	Strong Buy	2.25	84.00	140
Dain Rauscher Wessels	Strong Buy	2.15	70.00	117
First Albany	Strong Buy	2.20	80.00	129
Lehman Brothers	Strong Buy	2.18	72.00	108
Merrill Lynch	Hold	2.00	74.50	113
Morgan Stanley	Strong Buy	2.15	85.00	143
Prudential	Strong Buy	2.12	65.00	87
Salomon Smith Barney	Strong Buy	2.15	75.00	114
IBES Median Estimates <sup>3</sup>		\$2.15		113%

## Preliminary Sum-of-the-Parts Valuation<sup>1</sup>



## Present Value of Theoretical Future Stock Price<sup>4</sup>



<sup>1</sup> Energy Convergence Index comprised of Aquila, Dominion, Duke, Dynegy, El Paso, Williams and Potomac Electric.

<sup>2</sup> Based on Enron closing stock price of \$34.89 as of August 31, 2001.

<sup>3</sup> Based on Goldman Sachs research.

<sup>4</sup> Discounted to 31-Dec-2001 at 10%; Assume 2002E-2005E dividends per share equal \$0.50 and are reinvested and discounted at the same rate.





## Is Enron Vulnerable?

### Which Companies Are Vulnerable Today?

#### Structurally

- No Classified Board
  - Leading shareholder topic for last 3 years
  - Significant majority of institutions have voted against proposals to establish a classified board
  - Only 6 companies since 1992 have declassified their boards as a result of shareholder proposals (2 of the 6 were in response to majority votes for shareholder proposals)
  - CSC/Computer Associates, Weyerhaeuser/Willamette, Barrett Resources/Shell
- Ability for Shareholders to call special meetings
- Ability to act by written consent
- Ability to remove directors without cause

#### Operationally

- Stock performance on an absolute and relative basis
- Perception of weak management

### Key Defensive Considerations for Enron

#### Structurally

- No Classified Board
  - Board can change the bylaws (to classify the board), but shareholders can repeal or modify
- 10+% of shareholders can call a special meeting
- Ability to remove directors without cause
- No written consent (must be unanimous)
- No cumulative voting
- Reincorporate in Delaware/other?
  - Why?
    - Implement staggered board
    - Well developed body of case law
    - Experienced, corporate-oriented judiciary
    - Tax driven (offshore)
  - Why Not?
    - Oregon similar to Delaware (Fair Price; DE 203)
    - Board has broader latitude in factors to consider in a transaction
    - Requires shareholder vote

#### Operationally

- Operating performance strong in core business
- Leadership well regarded and experienced
- Management taking action
  - Vulnerable if stock continues to lag after restructuring completed

Goldman  
Sachs

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## Strategic Partner Analysis

(US\$ in millions, except per share amounts)

Company	Equity Value <sup>1</sup>	Enterprise Value <sup>1</sup>	Calendarized P/E Multiples <sup>2</sup>		Debt to Cap.	2002E Accretion/Dilution <sup>3,4,5</sup>	
			2001	2002		100% Stock	100% Cash <sup>6</sup>
Enron	\$27,423	\$43,888	19.4x	18.3x	53.1%		
<b>Potential Aggressive/Hostile</b>							
General Electric <sup>7</sup>	\$407,792	\$605,441	27.9x	23.8x	77.8%	(1.4)%	8.5
Royal Dutch/Shell <sup>8</sup>	293,565	294,029	14.8	16.3	10.9	(7.0)	12.1
Dynegy <sup>9</sup>	\$14,388	\$19,359	20.8x	16.5x	45.5	(3.3)	NM
Kinder Morgan <sup>10</sup>	8,597	11,301	29.8	22.7	58.0	24.5	NM
<b>Strategic Interest</b>							
AIG <sup>11</sup>	\$183,488	\$228,986	25.6x	22.8x	53.3%	(3.4)%	18.4%
BP Amoco <sup>12</sup>	190,821	245,894	13.8	15.8	42.4	(7.8)	12.3
El Paso <sup>13</sup>	25,048	42,414	14.5	12.6	59.6	(14.4)	NM
Exxon Mobil <sup>14</sup>	275,874	277,755	18.4	19.0	13.3	(4.7)	9.7
<b>Possible, but Unlikely Strategic Interest</b>							
AES <sup>15</sup>	\$17,893	\$39,615	18.5x	14.1x	75.6%		
Chevron/Texaco	97,089	110,710	11.8	14.5	30.3		
Duke	30,851	46,844	15.7	14.2	50.4		
E.ON	41,836	46,805	20.9	18.0	32.8		
ENI	53,064	83,485	9.9	10.4	31.4		
Repsol	20,571	42,850	9.9	19.3	52.8		
RWE	22,333	30,398	20.1	18.2	72.3		
Suez	34,700	70,382	21.1	19.2	81.4		
Total	109,435	118,984	14.9	15.0	32.7		
Tyco	99,859	153,911	17.5	14.9	84.1		
Vivendi	58,266	93,864	51.9	36.9	36.9		

<sup>1</sup> Source: Latest publicly available financial statements. Equity value based on fully diluted shares outstanding.<sup>2</sup> Source: IBES median estimates unless otherwise noted.<sup>3</sup> Assumes 20% of excess purchase price is allocated to tangible asset write-ups, 0% is allocated to intangible assets and 0% is allocated to other assets.<sup>4</sup> Assumes 80% of excess purchase price is allocated to goodwill.<sup>5</sup> Assumes excess purchase price allocated to non-goodwill assets is amortized over a weighted average useful life of 20 years. Excess purchase price allocated to goodwill is not amortized.<sup>6</sup> Assumes a pre-tax cost of debt of 7.5% and a marginal tax rate of 35.0%.<sup>7</sup> Assumes acquirer pays a 50% premium to Enron's closing stock price of \$34.99 on August 31, 2001.<sup>8</sup> Assumes acquirer pays no premium to Enron's closing stock price of \$34.99 on August 31, 2001.



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## Managing the New Enron

### Current Market Perceptions, What Can We Do?

#### Market View - Potential Issues

- Recent management departures
- Lack of adequate disclosure
- Potentially significant write-downs
- Broadband fundamentals
- California exposure
- India negotiations
- Delay of key asset sales
- High leverage (on/off-balance sheet)
- Insider related party transactions
- Low morale

#### Restoration of Investor Confidence

- Increase transparency and disclosure
  - Income from operations vs. asset write-offs
  - Demonstration of earnings quality
  - Detailed break-out of wholesale services
- State clear, definitive business focus and direction
- Articulate prudent capital plan
- Further delineate Broadband scope
  - Reduce capital and operating expenditures
  - Focus on infrastructure and trading
  - Abandon content strategy
- Drive current action plan
  - Rapid/disciplined divestiture of non-core assets
- Consider additional asset rationalizations
  - Sell EOTT stake
  - Sell pipelines, form MLP
  - Asset sales beyond Asia and Latin America

# **EXHIBIT E**

September 21, 2001

Goldman, Sachs & Co.  
85 Broad Street  
New York, NY 10004

Attention: Eric Mullins

Ladies and Gentlemen:

Enron Corp. and its affiliates, (collectively, the "Protected Party"), are prepared to furnish you with certain confidential, proprietary information in connection with a potential engagement of Goldman, Sachs & Co. in connection with the Protected Party's consideration of various structural and strategic alternatives available to the Protected Party (the "Engagement").

As a condition to furnishing you such information, you agree as follows:

1. Nondisclosure of Confidential Information. For a period of three (3) years from the date of this Agreement, you shall use the Confidential Information (as defined in Section 4) solely in connection with the Engagement and you shall not disclose the Confidential Information to any person other than those of your partners, directors, officers and employees who are working on or consulted in connection with the Engagement (collectively, the "Representatives") and your counsel, except with the consent of the Protected Party or pursuant to a subpoena or order issued by a court of competent jurisdiction or by a judicial or administrative or legislative body or committee. You shall safeguard the Confidential Information from unauthorized disclosure. You represent that each of your partners, directors, officers and employees is formally apprised of his or her obligations concerning the confidentiality of all client affairs and information. The term "person" as used in this Agreement shall be broadly interpreted to include, without limitation, any corporation, company, partnership, individual or other entity.

2. Notice Preceding Compelled Disclosure. If you or your Representatives or counsel are requested or required (by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, you will promptly notify the Protected Party of such request or requirement so that the Protected Party may seek an appropriate protective order or waiver in respect of the Confidential Information. In the absence of a protective order or the receipt of a waiver hereunder, you or your Representatives or counsel, as the case may be, shall disclose only that portion of the Confidential Information that, in the written opinion of your counsel, is required or deemed advisable. (The issuance of such opinion shall be contemporaneously communicated to the Protected Party). You shall cooperate with the Protected Party's efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. You shall be entitled to reimbursement for your expenses,

EC004007549

including the fees and expenses of your counsel, in connection with action taken pursuant to this paragraph.

3. Definition of "Confidential Information". As used herein, "Confidential Information" means all confidential, proprietary information that is furnished to you or your Representatives or counsel by the Protected Party that concerns the Protected Party, its affiliates or subsidiaries, including without limitation information pertaining to the Engagement and the fact that the Confidential Information has been made available to you, that you have inspected any portion of the Confidential Information, that discussions with respect to the Engagement are taking place or other facts with respect to these discussions, including the status thereof. Any information furnished to you or your Representatives or counsel in connection with the Engagement by a director, officer, employee or representative of the Protected Party shall be deemed for the purpose of this Agreement to be furnished by the Protected Party. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes available to the public other than as a result of an unauthorized disclosure by you or your Representatives or counsel, (b) information that was already in your possession prior to being furnished to you by the Protected Party or (c) information that becomes available to you from a source other than the Protected Party if such source was not known by you to be in breach of an obligation of secrecy to the Protected Party.

4. Return of Information. The written Confidential Information, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for you, will be returned to the Protected Party immediately upon the Protected Party's request, and no copies shall be retained by you or your Representatives and counsel. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for you, oral Confidential Information and written Confidential Information not so requested or returned will be held by you and kept subject to the terms of this Agreement or destroyed.

5. No Warranty of Accuracy. You understand that the Protected Party will endeavor to ensure that the materials and information furnished you are reasonable, reliable, and relevant for the purpose of your evaluation. You further hereby acknowledge that the Protected Party makes no representation or warranty hereby as to the accuracy or completeness of any information that is so provided, and neither the Protected Party nor any representative of the Protected Party shall have any liability hereunder to you or your Representatives and counsel resulting from the use of such information by you or your Representatives and counsel. For the purposes of this Section 5, "information" is deemed to include all information furnished by or on behalf of the Protected Party to you or your Representatives and counsel, whether or not Confidential Information as defined by Section 3.

6. No Waiver. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

7. Remedies, Jurisdiction, Arbitration and Governing Law. Money damages would not be a sufficient remedy for any breach of this Agreement by you or your Representatives, and the Protected Party shall be entitled to seek specific performance and injunctive relief as remedies upon proof of any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement by you or any of your Representatives but shall be in addition to all other remedies available

at law or in equity to the Protected Party. This Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to the principles of conflicts of laws thereof.

8. Termination. Notwithstanding the foregoing, if, in connection with an offering of securities by the Protected Party, the Protected Party files a registration statement, circulates an offering circular or prospectus or enters into an underwriting, placement or similar agreement with Goldman, Sachs & Co., nothing in this letter agreement shall (i) prevent either Goldman, Sachs & Co. or the Protected Party from complying with all applicable disclosure laws, regulations and principles in connection with such offering or sale of securities, (ii) restrict the ability of Goldman, Sachs & Co. to share information obtained or reviewed in connection with the due diligence performed relating to such offering with any other underwriters participating in any such offering of securities, (iii) prevent Goldman, Sachs & Co. from retaining documents or other information in connection with the due diligence effort in such offering or (iv) prevent Goldman, Sachs & Co. from using any documents or other information obtained or reviewed in connection with such offering in investigating or defending itself against claims made or threatened by purchasers, regulatory authorities or others in connection with such an offering or sale of securities.

Very truly yours,

ENRON CORP.

By: Mitchell S. Taylor  
Name: Mitchell S. Taylor  
Title: Managing Director

*Amk  
For KM*

Agreed and accepted as of  
the date first written above:

Goldman, Sachs & Co.  
GOLDMAN, SACHS & CO.

## **EXHIBIT F**



VIDEOTAPED DEPOSITION OF GREGORY CAUDELL  
CONDUCTED ON TUESDAY, SEPTEMBER 19, 2006

Page 130		Page 132	
1	UNITED STATES BANKRUPTCY COURT	1	40,016 Short-Term Liquidity Position 236 236:7
2	SOUTHERN DISTRICT OF NEW YORK	2	
3	-----X	3	EXHIBITS NOT MARKED BUT REFERENCED IN DEPOSITION
4	In re Enron : Chapter 11	4	BEGIN REFERENCE
5	ENRON CORP., et al., : Case No. 01-16034 (AJG)		
6	Reorganized Debtors. : Jointly Administered	5	40,002 139:22
7	-----X	6	40,004 139:22, 170:18
8	ENRON CORP., :	7	40,005 139:23, 200:8
9	Plaintiff, :	8	40,006 139:23, 197:6
10	v. : Adv. No. 03-92677 (AJG)	9	40,008 139:23
11	J.P. MORGAN SECURITIES INC., :	10	40,007 139:24, 164:7
12	et al., :	11	40,009 176:16
13	Defendants. :	12	20,016 139:24, 204:15
14	-----X	13	40,012 157:24
15	ENRON CORP., :	14	40,003 195:25, 213:10
16	Plaintiff, :	15	
17	v. : Adv. No. 03-92682 (AJG)	16	
18	MASS MUTUAL LIFE INSURANCE :	17	
19	CO., et al., :	18	
20	Defendants. :	19	
21	-----X	20	
22	*****	21	
23	ORAL AND VIDEOTAPED DEPOSITION OF GREGORY CAUDELL	22	
24	VOLUME 2	23	
25	SEPTEMBER 19, 2006	24	
	*****	25	
	REPORTED BY:		
	CAROL JENKINS, CSR		
	CERTIFICATE NO. 2660		

Page 131		Page 133	
1	I N D E X	1	Oral and Videotaped Deposition of GREGORY CAUDELL,
2		2	Volume 2, taken on September 19, 2006, beginning at 9:38
3	PAGE	3	a.m., in the offices of Fulbright & Jaworski, 1301
4	Stipulations 133	4	McKinney, Suite 5100, Houston, Texas 77010, before Carol
5	Appearances 134-136	5	Jenkins, Certified Shorthand Reporter in and for the
6	Testimony of GREGORY CAUDELL	6	State of Texas, taken pursuant to notice and the Federal
7	EXAMINATION BY: PAGE TOTAL RUNNING TIME	7	Rules of Civil Procedure.
8	Mr. Hutchinson 140, 238 (00h16m)	8	
9	Mr. Hackell 151 (00h04m)	9	
10	Mr. Paloian 154 (00h06m)	10	
11	Mr. Clement 158, 214 (00h34m)	11	
12	Ms. Kovsky-Apap 178, 212 (00h20m)	12	
13	Mr. Schatzow 190 (00h26m)	13	
14	Mr. Rosenthal 209, 240 (00h05m)	14	
15	Mr. Feldman 217 (00h31m)	15	
16	TOTAL DEPOSITION RUNNING TIME: (02h22m)	16	
17	Signature 241	17	
18	Certificate 244	18	
19		19	
20	INDEX OF EXHIBITS	20	
	BEGIN	21	
21	EXHIBIT NO. DESCRIPTION MARKED REFERENCE	22	
22	40,013 Mr. Newgard's E-mail of 10/15/01 142 142:1	23	
23	40,014 Amended Complaint 156 156:10	24	
24	40,015 Ms. Perkins' E-mail of 11/6/01 220 220:14	25	
25	To Mr. Bowen, et al, Bates ECD 236:17		
	028453024-026		

VIDEOTAPED DEPOSITION OF GREGORY CAUDELL  
CONDUCTED ON TUESDAY, SEPTEMBER 19, 2006

<p style="text-align: right;">Page 182</p> <p>1 that certainly presented issues in the market. 2 Q. Just to clarify, when you say Enron was having 3 trouble placing commercial paper, by placing do you mean 4 selling? 5 A. Yes. 6 Q. And what exactly do you mean by having difficulty 7 placing commercial paper? 8 A. Well, just because you have a program with a 9 capacity of 3 billion doesn't mean that you can issue 3 10 billion. There have to be people who are interested in 11 buying it. So when I say having trouble placing, Enron 12 was having trouble finding buyers willing to buy Enron 13 commercial paper at prices that Enron was willing to 14 pay. And I attribute that as well to discomfort in the 15 capital markets at the time, not just Enron related 16 issues. 17 Q. About when would you say this difficulty began? 18 A. Well, there was probably a lot of confusion and 19 discussion specifically related to Enron in August when 20 Jeff Skilling resigned. And the week following the 21 September 11th attacks, the capital markets went 22 haywire; and it was very difficult. And I don't know 23 that it got easier after that. 24 Q. Now, you said before that you weren't directly 25 involved in the commercial paper program; is that</p>	<p style="text-align: right;">Page 184</p> <p>1 Perkins' office looking at cash, cash forecast and cash 2 position. And so in helping her come up with the cash 3 number, clearly issuances of commercial paper came up 4 and maturities of commercial paper came up. And 5 discussions about general cash availability were part of 6 the effort. 7 Q. You mentioned just a moment ago that Mr. Skilling 8 quit the company in August; is that correct? 9 A. Yes. 10 Q. Do you remember the date? 11 A. It was mid August. I don't recall the exact day. 12 Q. Do you have an understanding of why he left the 13 company? 14 A. I know what he said, that he wanted to spend more 15 time with his family. 16 Q. Was that your understanding of the actual 17 situation? 18 A. It didn't seem like the most logical reason. 19 It's hard to believe that the CEO of a Fortune 10 20 company would quit six months after being appointed CEO 21 to spend more time with his family. 22 Q. Were there any rumbles or rumors within Enron 23 about his departure? 24 A. One person called me and said he called in rich. 25 Q. Were there problems that were created by</p>
<p style="text-align: right;">Page 183</p> <p>1 correct? 2 A. The person who did most of the day-to-day 3 activities was in my group. I was not involved in 4 day-to-day activities. 5 Q. What was the basis of your awareness of Enron's 6 difficulties in placing its commercial paper? 7 A. I -- I can't give you a specific event other 8 than, you know, there were the public events and then 9 there was the fact that I worked on the floor in the 10 corporate finance group. And the guy who placed 11 commercial paper sat by my desk. 12 Q. So you had conversations with him? 13 A. Yes. 14 Q. And that would be Jim Newgard? 15 A. Yes. 16 Q. And so he discussed with you the difficulties in 17 placing Enron commercial paper? 18 A. Again, discussed might be overstating what I 19 recall the conversations to be. 20 Q. Did you have any communications or hear anything 21 from anyone besides Jim Newgard about Enron's 22 difficulties in placing commercial paper? 23 A. Well, the last two months I was at Enron -- I 24 said this yesterday -- the last two months I was at 25 Enron, I spent just about every afternoon in Mary</p>	<p style="text-align: right;">Page 185</p> <p>1 Skilling's departure? 2 A. There were problems created by Skilling's 3 departure. The market perception of Enron and why would 4 the CEO of a Fortune 10 company quit six months after he 5 had been appointed CEO, it appeared that it was what he 6 had been driving for his whole career; and he had just 7 walked away. It confused a lot of people. 8 Q. Did Skilling have anything to do with the CP 9 program? 10 A. Not that I'm aware. 11 Q. And Jeff McMahon is the -- he's the one who took 12 Skilling's place? 13 A. I think eventually he took Skilling's -- no, you 14 know, I can't tell you how that whole thing transpired. 15 He took Andy Fastow's place when Andy left the company 16 in the fall of 2001. And I think eventually Jeff 17 McMahon was appointed CEO, but -- and then he left 18 fairly quickly, too. 19 Q. Well, when Skilling left, who took over? 20 A. Ken Lay stepped back in. 21 Q. And as far as you know, did Ken Lay have anything 22 to do with the CP program? 23 A. I don't think it would have been on his daily 24 radar. 25 Q. Yesterday Mr. Ackerly had asked you some</p>

VIDEOTAPED DEPOSITION OF GREGORY CAUDELL  
CONDUCTED ON TUESDAY, SEPTEMBER 19, 2006

<p style="text-align: right;">Page 186</p> <p>1 questions about the Truman project. I recall you said 2 you didn't know it by that name but you were aware that 3 Goldman Sachs was in the building; is that correct? 4 A. I was aware that Goldman Sachs was in the 5 building. 6 Q. Do you remember the time frame in which Goldman 7 Sachs was present at Enron? 8 A. It was the fall of 2001. That was a very busy 9 time. There was a lot of stuff going on. I -- I don't 10 remember specific dates. 11 Q. If I recall correctly, you said that Goldman 12 Sachs occupied a conference room about the size of this 13 one; is that correct? 14 A. I did say that. It might have been a little 15 smaller, but it -- it was a large conference room. 16 Q. And that people were feeding them documents; is 17 that correct? 18 A. Yes. 19 Q. Do you remember which people had contact with 20 Goldman Sachs during that time? 21 MR. LUFT: Objection, foundation. 22 Q. (By Ms. Kovsky-Apap) Do you recall what -- I'm 23 sorry, you can go ahead and answer. 24 A. I -- I really don't recall specifically. I 25 suspect Tim Despain had knowledge of what was going on,</p>	<p style="text-align: right;">Page 188</p> <p>1 A. I understood that the doors in the conference 2 room they were sitting in were closed. And they closed 3 them when they walked in and when they walked out. 4 Q. Did you believe that what Goldman Sachs was doing 5 with Enron was confidential? 6 MR. LUFT: Objection, foundation and form. 7 A. You know, at this point, I'm not even sure what 8 confidential means. They were there. It was one of 9 many avenues that those people who were flying all over 10 the country were pursuing to try to address the 11 liquidity issues. 12 Q. (By Ms. Kovsky-Apap) So it was your 13 understanding that Goldman Sachs was there to help Enron 14 address liquidity issues; is that correct? 15 A. I wouldn't say they were there to help 16 specifically. I think they were there to help Enron 17 evaluate options available. 18 Q. How did you come to that understanding of the 19 purpose of Goldman Sachs being there? 20 A. You're asking me questions about events that 21 happened five years ago that I was not involved in. I 22 -- I don't know the answer to that question. I don't 23 recall. 24 Q. At the time that this was going on, would you 25 have known?</p>
<p style="text-align: right;">Page 187</p> <p>1 but I don't know if he was directly involved with what 2 was going on. I think at that point, Andy Fastow and 3 Ben Glisan were gone. And Jeff McMahon was probably 4 involved in those conversations, but I don't know for 5 certain. 6 Q. When you said that people were giving Goldman 7 Sachs documents, do you know who was giving them 8 documents? 9 A. No. 10 MR. LUFT: Objection, foundation. 11 Q. (By Ms. Kovsky-Apap) Are you aware of any -- are 12 you aware of which documents may have been given to 13 Goldman Sachs? 14 A. No. 15 Q. Did you ever know? 16 A. I don't think so. 17 Q. Do you know who at Enron might have knowledge 18 about documents that were given to Goldman Sachs during 19 this time? 20 A. It might be Tim Despain. Probably Jeff McMahon 21 was involved. I don't -- don't recall who else was 22 going in and out of the closed doors. 23 Q. When you say closed doors, do you mean that you 24 understood the meetings with Goldman Sachs to be 25 confidential?</p>	<p style="text-align: right;">Page 189</p> <p>1 A. No. 2 Q. So there's nothing that could refresh your 3 recollection about -- 4 A. I was not involved with Goldman Sachs being at 5 Enron at that time. I was not providing documents to 6 Goldman Sachs at that time. I may have shown them where 7 the kitchen and the bathroom was, and I think that was 8 the extent of my interaction with Goldman Sachs at that 9 time. 10 Q. But you did state that you thought that Goldman 11 Sachs was there to help Enron evaluate options that 12 might be available to it; is that right? 13 A. Yes. 14 Q. Was that your understanding at the time? 15 A. At the time, yes. That -- that's what I thought 16 they were there to do. 17 Q. Do you recall what made you think that? 18 MR. LUFT: Objection, asked and answered. 19 A. You know, it was conversations on the floor, and 20 there were not a lot of conversations about what Goldman 21 Sachs was doing. I don't even recall if it was October 22 or November that Goldman Sachs was there. 23 MS. KOVSKY-APAP: Thank you very much. 24 That's it for now, and I'll reserve the balance of my 25 time.</p>

# **EXHIBIT G**

Wangberg

5321

58113

Draw-it + draw it all:  
Debt/Cap  
no mce.

Calculation of Debt/Cap  
on back-up line?

How much disclosure to agencies  
Guarantees

Some  
banks are  
pull out.

best  
way to  
fix and  
find them  
have  
legitimacy

\$200m cr B/A. vs. 99-99 1/2. met today  
98-95 fairly well in that met  
it doesn't know

Precluded from being a buyer of cr  
w/ our knowledge. (at several pt  
discount)

- buy cr w/ back-up line to shore-up  
cr must. way to test that back-up  
facilities in place, restore order market
- 1. Can't bid in paper
- 2. other side if wall they don't  
know what we know.

Community  
4-25-30  
settles  
mostly in  
w/ 1/2

Can we buy secondary cr  
in the mkt

- brought back Ltd amt \$ back
- investors asking questions, getting scared.
- take active steps:
- help preserve access going fwd.
- can bid, but Ltd. → don't buy much.

James H. Schroeder

John Wollen - Runs money mkt globally  
Kob Wall? mgt of desk day-to-day

## **EXHIBIT H**

Mark Dampsky  
852 9260 8013

- Long \$30m CP bid writer. w/m (others backing away)
- 600m equity exposure

up to \$2bn of equity  
2-3 mos

- if market closed
- double digit counter parties

Come Clean on Monday

check all ORE  
↳ \$5bn debt

- Mike Sherwood
- Tony Gordon
- Edgar
- Edgar Cooper

- immediate liquidity
- burst. look at trade position monetize quickly

monetizing receivables  
take other lines down.

- can't do public equity raise w/c of SEC review.
- advice of counsel

Cu/AZ.  
physical  
short  
200-300.

Used the cash tomorrow

4 buckets

- ① Trade / inv. positions we can buy \$0.5 bn
- ② other ST liquidity contribution → the price.
- ③ Private Placement. 200s? have to do it realize
- ④ asset sales / restructuring → longer term fix.

# **EXHIBIT I**



**Johnston, Charles**

---

**From:** Neill, Blanton  
**Sent:** Wednesday, October 24, 2001 8:03 AM  
**To:** Ackermann, Hilary  
**Cc:** Johnston, Charles  
**Subject:** FW: Enron

I've passed inv guidance to Rob Wall. Let's ocordinate when you're in.

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

**From:** Broderick, Craig  
**Sent:** Wednesday, October 24, 2001 7:58 AM  
**To:** Neill, Blanton; Ackermann, Hilary  
**Subject:** Enron

We should probably immediately terminate our CP pgm with the co. We should discuss this with IBD, the CP desk and P Gerhard . As per Risk Cmtee this am, we should cut our inventory line to 0 and require each position to be approved by Credit - and we should manage to well under \$50mm. Thks

-----  
Sent from my BlackBerry Wireless Handheld ([www.BlackBerry.net](http://www.BlackBerry.net))

## **EXHIBIT J**

JPMC-CP-05982 10/26/2001

14:40:13 Bonan

[First phone call]

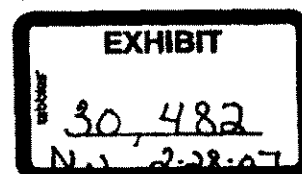
[Hold music]

Gary: Hi. Hello?

Pat Bonan: Oh, yeah Gary, sorry about that.

Gary: Hey. That was my treasurer, I mean, CFO calling. He's freaking. And he's gonna be... He's got the... vice chairman of Goldman Sachs in Ken Lay's office right now. And they're not going to have a pleasant talk about this CP problem. Just to let you know where it's going.

Pat Bonan: Ok, you think... is... uh... Ok, what I need to do right now is... is two things, which is one I... I will be calling John right now. And we may... He may be calling you back. Uh, both of us may call you back, uh, to talk about where we stand. Uh, the second thing is, um, what we would... what we would do right now is call every one of our customers to say this... this is the operational difficulty uh... and uh you know... give... give



them the spin in terms of when we expect the settlement et cetera and I think everybody will go home feeling comfortable.

Gary: Yeah. We want to settle today if we can...

Pat Bonan: Ok, let me call...

Gary: [Interrupts] ...Pat. Because, it's... it's headline news... for the Wall Street on Monday.

Pat Bonan: Ok. Ok. Let me call John then... Let me call you.

Gary: [Interrupts] Yeah. I mean...

Pat Bonan: I have your cell phone number.

Gary: There's going to be a call, to you know, Shapiro or John...

Pat Bonan: [Interrupts] He's on the phone right now...

Gary: I know... or Bill.

Pat Bonan: So he probably got that call. So let me... let me talk with him right now and I'll be back with you in about maybe five or ten minutes. I'll call you on your cell phone?

Gary: That's fine.

Pat Bonan: Ok, great. Bye.

[second phone call]

Pat Bonan: Hi, sorry.

John Steinhardt: That's all right.

Pat Bonan: Uh, you should be expecting a call from somebody if you haven't gotten it already. This guy knows you well apparently.

John Steinhardt: Who is it?

Pat Bonan: Gary Hendrickson... Or Herrickson.

John Steinhardt: Yeah.

Pat Bonan: Um... Apparently um... Ken Lay...

John Steinhardt: Yup.

Pat Bonan: ...is on the uh... phone with the Vice Chairman of Goldman and he's expecting to call Mark Shapiro. What their big concern is... is uh... and... that there's going to be a headline that they tried to redeem...

John Steinhardt: Mmhh.

Pat Bonan: ...and they couldn't. They want to get this thing done today.

John Steinhardt: Mmhh.

Pat Bonan: Uh... So if you want to take that risk, if we don't think that... you know, they're on the phone with Goldman, maybe Goldman will back off too. I have no clue.

John Steinhardt: Well, how much would come back through us? How much do we have outstanding?

Pat Bonan: Right now we have a hundred and one million dollars wants to be... oh no, maybe it's stepped up... [Talking to someone off the line] What's the total amount coming? The total amount... [Back on the line] Uh, we have three hundred and some million of which... right now.

John Steinhardt: Mmhh.

Pat Bonan: [Talking to someone off the line] Like hundred, two hundred, three hundred? [Back on the line] Two hundred now. Yeah, it was a hundred and one and more people are coming back... still coming back in.

John Steinhardt: Well, how much do we have outstanding total?

Pat Bonan: Three hundred and some.

John Steinhardt: So it can't be more than three hundred some.

Pat Bonan: Right. Right.

John Steinhardt: All right. Stay  
near your phone. I'll be back to you.

Pat Bonan: Ok, great.

John Steinhardt: Yup.

# **EXHIBIT K**



JPMC-CP-05986 10/26/2001

15:53:21 Bonan

[Sound of dialing]

Pat Bonan: [Talking to someone off the line] Not me. [Laughter]

Gary Hickerson: Hello.

Pat Bonan: Hi, Gary?

Gary Hickerson: Yeah.

Pat Bonan: Pat Bonan. Are you there?

Gary Hickerson: Hey, yeah. Pat?

Pat Bonan: Yeah... Ok, um...

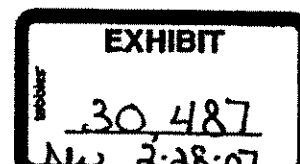
Gary Hickerson: By the way, Goldman is doing it as agent.

Pat Bonan: We're doing it as agent too. I just was calling to tell you that.

Gary Hickerson: Oh, great.

Pat Bonan: Ok, so we're going to notify all the customers now that we're doing it. Um... We'll put in a ticket today for settlement on Monday and uh... We're... We're starting that process now.

Gary Hickerson: Ok, so you're not going to do any same day?



Pat Bonan: I... I don't think we can...  
It's... There's just no...

Gary Hickerson: No. Wait. Wait.  
Hold on.

Pat Bonan: Yeah.

Gary Hickerson: Can you call me  
back on my...? My... This phone is like almost  
dead.

Pat Bonan: Oh. I'm sorry. Ok.  
713-853-7617?

Gary Hickerson: Yes, m'am.

Pat Bonan: Ok. Great.

Gary Hickerson: Thanks.

[Sound of dialing]

Pat Bonan: [Talking to someone in  
the background] Goldman's doing the same  
thing now. [Inaudible] As agent.

[Phone ringing]

Gary Hickerson: Gary.

Pat Bonan: Gary, Pat.

Gary Hickerson: Hey.

Pat Bonan: Sorry about that. I  
should have known to call you. I have two  
numbers that are mixed up...

Gary Hickerson: No, I just... No, I've done that... I don't run our Commercial Paper.

Pat Bonan: [Laughter]

Gary Hickerson: I... I operate a totally... a trading group. [Laughter]

Pat Bonan: [Laughter] No, I... I...

Gary Hickerson: ...and they've enlisted my help, 'cause I had done this when I was at TCB.

Pat Bonan: Wow.

Gary Hickerson: Right before you guys... or before Chemical bought us.

Pat Bonan: Worth Brook was trying to reach me earlier. I was just... I... I haven't been able to call him back, though, today.

Gary Hickerson: I used to work for him.

Pat Bonan: Oh, did you? 'Cause Worth and I have worked, uh... closely together over the last few years.

Gary Hickerson: I bet you have. With Ruth and Allen...

Pat Bonan: That's right.

Gary Hickerson: ...and Garrison and all of them. They used to work for me.

Pat Bonan: Oh.

Gary Hickerson: I ran the money markets group there and the investment group.

Pat Bonan: When did you leave?

Gary Hickerson: I worked uh... there from '81 to '95.

Pat Bonan: Oh then, well ok... our paths would have just barely crossed, 'cause you uh... I came from Heritage Chase and that was the merger... When did they merge? '96, I guess.

Gary Hickerson: Ah.

Pat Bonan: So I started to working with Worth and Lewis since ninety... since... since then... 'Cause then we... we got clearance to be able to use uh... Worth's sales force for distribution of our product.

Gary Hickerson: Right. Well, I was the Ina Drew of TCB.

Gary Hickerson: Ah.

Gary Hickerson: I was specifically her.

Pat Bonan: Ok. So you... You uh...  
You've been through uh some interesting drills  
I'm sure in the past. [Inaudible]

Gary Hickerson: I've been through  
this drill.

Pat Bonan: [Laughter] Anyway. I...

Gary Hickerson: But I had my own  
sales staff. That's the problem. I didn't  
have to deal with dealers, because we had  
decided to get rid of our dealers. So sorry  
about all this uh... tenseness, but...

Pat Bonan: No, I... and I... I  
understand where you came from and I - I - I  
felt very um... very bad today that there were  
so many conflicting signals everywhere, here  
and stuff. Um... But the only way practically  
we could do it. We couldn't do it cash settle  
at 4 o'clock and...

Gary Hickerson: Okay.

Pat Bonan: ...and customers don't want  
to do that.

Gary Hickerson: Regular settle is  
fine. Some of our customers at uh Goldman...  
Um... Most of them have elected regular for  
Monday.

Pat Bonan: Ok.

Gary Hickerson: Only two... one... two...  
Maybe one or two elected same day.

Pat Bonan: Ok.

Gary Hickerson: And um... For your  
information all of Lehman, Lehman purchased it  
as principal for same day.

Pat Bonan: Yeah.

Gary Hickerson: They decided to  
take the risk and uh... the preference risk... and  
we're settling with them.

Pat Bonan: Ok.

Gary Hickerson: How much do you  
think...? How much...?

Pat Bonan: Uh. Right now it's 14  
accounts. 192 million.

Gary Hickerson: Out of a total of...?

Pat Bonan: Uh... 300... Well actually,  
some matured today, I think. Um... I think the  
total is 350. I have to pull up my email  
again. Hold on. Let me see.

Gary Hickerson: Hold on one sec.  
Hold on.

Pat Bonan: Ok. [Talking to herself]  
376. 10/24. [Pause] 352.

# **EXHIBIT L**



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(Cite as: **Not Reported in B.R.**)

## H

In re Enron Corp.

Bkrtcy.S.D.N.Y.,2005.

Only the Westlaw citation is currently available.Not  
for Publication

United States Bankruptcy Court,S.D. New York.

In re: ENRON CORP., et al., Reorganized Debtors.

Enron Corp., Plaintiff,

v.

J.P. Morgan Securities, Inc., et al., Defendants.

**Bankruptcy No. 01 B 16034(AJG).**

**Adversary No. 03-92677 A.**

July 29, 2005.

Martin J. Bienenstock, Howard B. Comet, Michael P. Kessler, Brian S. Rosen, Weil, Gotshal & Manges LLP, Barry J. Dichter, Edward Smith, Cadwalader, Wickersham & Taft LLP, Albert Togut , Togut, Segal & Segal LLP, Peter S. Goodman, Andrews Kurth LLP, William S. Schaaf, Elizabeth Page Smith, Kathryn R. Eiseman, Edward J. Estrada , Leboeuf Lamb Greene & MacRae, LLP, Irena M. Goldstein, Dewey Ballantine LLP, Michael Earl Comerford, Milbank, Tweed, Hadley & McCloy, LLP, New York, NY, Frederick W. H. Carter, Colleen M. Mallon, Michael Schatzow, Richard L. Wasserman, Venable, Baetjer and Howard, LLP, Baltimore, MD, Melanie Gray, Sylvia Ann Mayer, Weil Gotshal & Manges, LLP, Patricia Williams Prewitt, Locke, Liddell & Sapp, LLP, Houston, TX, Martin Sosland, Weil, Gotshal & Manges, LLP, Dallas, TX, Andrew M. Troop, Weil, Gotshal & Manges, LLP, Boston, MA, Herbert K. Ryder, Pitney Hardin, LLP, Morristown, NJ, James A. Pardo, Jr., King & Spalding, Atlanta, GA, Michael T. Stewart, Klett Rooney Lieber & Schorling, Newark, NJ, for Reorganized Debtors.

***OPINION AND ORDER DENYING MOTION FOR  
SUMMARY JUDGMENT BY DEFENDANT  
MERRILL LYNCH INVESTMENT MANAGERS,  
L.P.***

GONZALEZ, Bankruptcy J.

\*1 The Motion for summary judgment before the Court concerns an adversary proceeding commenced by Enron Corp. ("Enron") in which it seeks to recover, after avoiding as preferential or fraudulent conveyances, certain payments it made in transactions concerning its own commercial paper.

In the complaint filed in this adversary proceeding, Enron alleges that in certain transactions (the "CP Transactions") involving payments for Enron commercial paper, Merrill Lynch Investment Managers, L.P. ("Merrill IM") was either (i) an initial transferee of these payments or an entity for whose benefit such transfer was made, or (ii) an immediate or mediate transferee of such payments.

In its motion for summary judgment, Merrill IM argues that because it is an investment advisor, as a matter of law, it is not a transferee, recipient, beneficiary or owner of Enron commercial paper. As such Merrill IM contends that Enron cannot recover the value of the alleged transfer of funds and that summary judgment should be granted in its favor.

Alternatively, Merrill IM argues that even if it could be considered a transferee in connection with the CP Transactions, Merrill IM was not involved with them. Rather, according to Merrill IM, Merrill Lynch Investment Managers, Co., Ltd. ("Merrill Japan") was the investment advisor involved with those transactions. Merrill maintains that Merrill Japan is a separate entity licensed as a Japanese investment trust management company and investment advisory firm. As such, Merrill IM argues that the claims concerning the CP Transactions cannot be asserted against Merrill IM.

Merrill IM further argues that the claims based upon fraudulent transfer should be dismissed because Enron received reasonably equivalent value and was given fair consideration in connection with the CP Transactions which Merrill IM characterizes

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**(Cite as: Not Reported in B.R.)**

as repurchases.

Enron argues that it has not had any opportunity to engage in any discovery with any of the defendants, including Merrill IM. Enron further argues that the facts that it needs to discover in order to respond to the factual allegations in the summary judgment motion are in the exclusive possession of defendants, including Merrill IM. As such Enron contends that Merrill's request for summary judgment is premature. Enron further argues that Merrill IM's contention that Enron's fraudulent transfer claims fail as a matter of law cannot be decided as a matter of law because such claims involve quintessential fact issues.<sup>FN1</sup>

FN1. Along with numerous other defendants, Merrill IM previously filed a motion to dismiss this adversary proceeding pursuant to Fed.R.Civ.P. 12(b)(6). On June 15, 2005, this Court issued an Opinion denying the various motions to dismiss.

Fed.R.Civ.P. 56(c) incorporated into bankruptcy practice by Fed. R. Bankr.P. 7056 provides that summary judgment shall be rendered "if the pleadings, depositions, answers to interrogatories, and admissions of file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

After the non-moving party to the summary judgment motion has been afforded a sufficient time for discovery, summary judgment must be entered against it where it fails to make a showing sufficient to establish the existence of an element essential to its case and on which it has the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317,322 106 S.Ct. 2548, 2552 (1986). It is said that there is no genuine issue concerning any material fact because "a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." 477 U.S. at 323, 106 S.Ct. at 2552. The summary judgment standard is interpreted in a way to support its primary goal of "dispos[ing] of factually

unsupported claims or defenses." *Celotex*, 477 U.S. at 323-24, 106 S.Ct. at 2553.

\*2 Fed.R.Civ.P. 56(f) provides that when a party opposing a motion for summary judgment submits an affidavit which sets forth the reasons why, at that time, it is unable to present by affidavit those facts that are essential to justify its opposition, "the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just."

Fed. R. Civ. P. 56(f); *Meloff v. N.Y. Life Ins. Co.*, 51 F.3d 372, 375 (2d Cir.1995). Thus, under Rule 56(f), summary judgment is considered inappropriate when the nonmoving party "shows that it cannot at the time present facts essential to justify its opposition." *Miller v. Wolpoff & Abramson L.L.P.*, 321 F.3d 292, 304 (2d Cir.2003). Rather, as a safeguard against a premature grant of summary judgment, the nonmoving party must first be afforded the opportunity to conduct discovery of the information essential to its opposition. *Id.*

The Rule 56(f) affidavit must show

- 1) what facts are sought to resist the motion and how those facts will be obtained,
- 2) how those facts are reasonably expected to create a genuine issue of material fact,
- 3) what effort affiant has made to obtain those facts, and
- 4) why the affiant was unsuccessful in those efforts.

*Miller v. Wolpoff & Abramson L.L.P.*, 321 F.3d 292, 303 (2d Cir.2003) (citing *Gurary v. Winehouse*, 190 F.3d 37, 43 (2d Cir.1999); *Meloff v. N.Y. Life Ins. Co.*, 51 F.3d at 375).

Merrill IM argues that Enron has failed to make a showing on an essential element of its case with respect to which it has the burden of proof and therefore summary judgment should be granted. However, summary judgment can be granted against a non-moving party based on its failure to make such a showing only after it has been afforded an opportunity for discovery related to the facts essential to its opposition. *Miller*, 321 F.3d at 303-04. In is inappropriate for the non-moving

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party to “be ‘railroaded’ into his offer of proof in opposition” to the summary judgment issue. *Id.* at 304.

Here, Enron has provided a Rule 56(f) affidavit detailing the efforts it made to obtain the facts essential to its opposition and the reasons that it was unsuccessful in those efforts, including Merrill IM's resistance to discovery and Enron's efforts to preserve its right to discovery with respect to any summary judgment motion. The Court concludes that Enron has met the showing for those elements.

With respect to the first two elements, Enron contends that it needs discovery, *inter alia*, of whether Merrill IM and Merrill Japan exercised control over, had title to, had discretion or authority concerning, or benefitted from the payments made in the CP Transactions. Enron further contends that it needs to depose the individuals whose supporting declarations were submitted by Merrill IM to determine whether Merrill IM was involved at all with the CP Transactions at issue. Enron further argues that such discovery will show whether there is a genuine issue of material fact as to whether Merrill IM is a transferee or beneficiary of those payments and whether Merrill IM is a proper defendant.

\*3 The Court concludes that it is premature to consider the motion for summary judgment prior to affording Enron an opportunity to conduct discovery. Moreover, under the circumstances of this case where the essential facts are within the control of Merrill IM, “a rigid adherence to the requirements of the first and second elements would be unjust and would offend the general policy in favor of liberal discovery.” *Roebuck v. Hudson Valley Farms, Inc.* 208 F.R.D. 34, 36 n. 5 (N.D.N.Y.2002). Here, the debtor cannot be faulted for failing to “precisely” inform the Court what information it might obtain from discovery as the facts it seeks to obtain are within Merrill IM's control. *Miller*, 321 F.3d at 303. Further, the debtor has adequately detailed its efforts to obtain the information and how its efforts were resisted.<sup>FN2</sup>

FN2. In addition, Merrill IM's request to

dismiss the fraudulent transfer claims is denied as premature.

As Merrill IM has not filed any proofs of claim against the Debtors, the parties agree that the cause of action in the Complaint seeking disallowance of any claims filed by Merrill IM should be dismissed. Otherwise, Enron must be afforded an opportunity for discovery concerning those facts that are essential to its opposition and, as such, summary judgment should be denied as premature. Based upon the foregoing, it is hereby

Ordered, that the cause of action seeking disallowance of any claims filed by Merrill IM is dismissed as against Merrill IM, and it is further

Ordered, except as specifically provided in the first decretal paragraph, that the motion for summary judgment by Merrill IM is denied without prejudice to renewal after Enron has had a reasonable opportunity to conduct discovery.

Bkrcty.S.D.N.Y.,2005.

In re Enron Corp.

Not Reported in B.R., 2005 WL 3873891  
(Bkrcty.S.D.N.Y.)

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## **EXHIBIT M**



## MONEY MARKET SECURITIES

The following compliance policies and procedures address certain questions that may arise in connection with the trading of commercial paper, certificates of deposit, bank notes and bankers' acceptances.

### I. TRADING THROUGH GOLDMAN SACHS MONEY MARKETS, L.P.

**A. General.** Commercial paper (with the exception of tax-exempt commercial paper and certain high yield commercial paper) is traded in the United States only through Goldman Sachs Money Markets, L.P. ("GSMMLP"). In general, "commercial paper" within the scope of the consent decree (discussed in Part I.B below) is traded through GSMMLP. Accordingly, such "commercial paper" may be offered and sold in the United States only by GSMMLP salespersons or with a GSMMLP salesperson on the telephone (in which case the GSMMLP salesperson receives credit for the trade). GSMMLP's sole general partner, GSMM Corp., assists in the clearance and settlement of commercial paper for GSMMLP and of other money market instruments for Goldman, Sachs & Co. ("GS&Co."). ✓

GSMMLP is separate from GS&Co. and The Goldman Sachs Group, L.P. ("GS Group") and should not be identified as a "part" or "division" of GS&Co. or GS Group. In dealings with investors, no reliance should be placed on the credit, reputation or business conduct of any entity other than GSMMLP. Neither GS&Co. nor GS Group "supports," "backs," "guarantees" or "stands behind" the obligations, transactions or other dealings of GSMMLP. Accordingly, under no condition should the balance sheets or annual reports of GS&Co. or GS Group be distributed for the purpose of representing the creditworthiness or business of GSMMLP.

**B. Consent Decree.** In May 1974, GS&Co. and the Securities and Exchange Commission (the "SEC") agreed to the entry of a permanent injunction arising out of the sale by GS&Co. of commercial paper of Penn Central Transportation Company ("Penn Central"). In August 1995, this injunction was removed and currently no longer applies to GS&Co. and GSMMLP. Penn Central went bankrupt in the early 1970s and defaulted on its commercial paper obligations, including commercial paper sold by GS&Co. The Penn Central bankruptcy affected the commercial paper market generally, and the Federal ✓



Reserve Board had to intervene to restore confidence in that market. The injunction contained an undertaking by GS&Co. to implement a statement of policy concerning its activities as a commercial paper broker or dealer. These policies imposed upon employees of GSMMLP and GS&Co. certain affirmative obligations to investigate the creditworthiness of an issuer of commercial paper.

## **II. COMMERCIAL PAPER.**

**A. Definition of Commercial Paper.** In general, commercial paper refers to short-term promissory notes sold to institutional investors and, to a lesser extent, to high net worth individuals. Commercial paper notes typically are sold in denominations ranging from \$100,000 to \$5,000,000 or more (depending on the exemption relied upon). Maturities can vary from one to 270 days (non-Section 3(a)(3) commercial paper, discussed in Part II.B below, may have maturities of up to one year), but most commercial paper is issued for terms of 15 to 45 days.

Most commercial paper is settled on a book-entry basis through The Depository Trust Company ("DTC"), although some commercial paper is still physically settled. Before the first issuance of book-entry commercial paper, the issuing and paying agent issues and holds in custody for DTC master notes which represent all the commercial paper to be issued by the issuer. The master notes should contain all the information that a physical certificate would contain. With entries by the issuing and paying agent on the master notes and onto DTC's electronic system representing new issuances and payments of maturing notes, the amount of commercial paper represented by the master notes will fluctuate as commercial paper is issued and matures. The documentation required to qualify a commercial paper program for settlement through DTC includes an eligibility form, confirmation of rating and a "letter of representations" agreement among the issuer, the issuing and paying agent and DTC.

**B. U.S. Securities Law Exemptions.** No offer or sale of commercial paper may be made in the United States by an issuer or an affiliate of the issuer unless the commercial paper is registered under the Securities Act of 1933 (the "Securities Act") or an exemption from the registration requirements of the Securities Act is available. See Policies and Procedures Memorandum entitled "Basic Legal Issues in SEC Registered Public Offerings." Discussed below are certain exemptions that may be available for offers and sales of commercial paper.